Consolidated Civil Procedure Notes - September 30th

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Under Pennoyer, the main problem was getting a corporation or individual to come back to the forum state for activities in the past, this was done through the use of legal fictions, such as the appointment of an agent for service of process.

* Legal fiction of appointment of agent for service of process
	+ If you want to do business in a state, you either appoint an agent for service of process in the state, or your doing business is taken to imply that one exists.
	+ Constitutional Issues:
		- Can a state condition doing business in the state upon the appointment of an agent for service of process?
		- Does a state’s requirement that an agent of service of process be created put a limit on interstate commerce?  Does this violate the Commerce Clause of the Constitution?
		- With respect to individuals, does it violate the Privileges and Immunities Clause?

*International Shoe v. Washington*

* Court takes a case where the outcome likely would have been the same under the Pennoyer standard, but recharacterized the standard to give forum states more freedom in bringing back corporations who no longer have a presence.
* Eliminates the need for a fictional agent.
* One chooses to get the protections of a state’s laws, this creates a reciprocal obligation to submit to that state’s courts.
* The cause of action is now relevant, and should be compared to the contacts the corporation has with the forum state.
* Examples:
	+ Continuous and systematic contacts and contacts gave rise to the liabilities sued on = does have PJ
	+ Single or isolated activities where cause of action does not rise from actions in that state = no PJ
	+ Substantial continuous actions, but cause of action happened in another state = PJ (follows under Pennoyer)
	+ Isolated indecent where cause of action arises within that state = depends on the level of contact and the action.
* Look at the inconveniences to the parties.
* Justice Black’s concurring opinion - worried about limiting the power of the state to exercise personal jurisdiction.
	+ Does not believe Supreme Court should read its own opinions into due process

Three theories of personal jurisdiction:

1. Pennoyer: Power over defendant’s person or property at the beginning of the suit only - both past contacts and the cause of action are irrelevant.
	1. For past contacts to be relevant, one must use legal fictions
2. Past acts can create reciprocal obligation - International Shoe.
* contacts with a forum state can be great enough to create an obligation, even for out-of-state conduct.
* Unlike individuals, corporations are contact having by nature - should look at the extent of these contacts, and weigh them against the cause of action when deciding if personal jurisdiction exists.
* Even if these contacts no longer exist, if the cause of action arises from past acts in the forum state, the state can exert personal jurisdiction without the need for legal fictions.
1. International Shoe also suggests another theory - that the convenience of the forum state to both the defendant and the plaintiff should be considered when deciding if personal jurisdiction exists.

Specific Jurisdiction - PJ for specific causes of action where the activities happened within the forum state.

* Not necessarily limited to one state (example, contract entered in one state, is performed in another state) – might be specific PJ in both states
* Specific jurisdiction is always *in personam* jurisdiction.

General Jurisdiction - court has PJ over the defendant for actions that did not take place in the forum state.

* If one has sufficient contacts for general jurisdiction, any cause of action can theoretically be brought in that jurisdiction.

“Category Jurisdiction” – third type of jurisdiction, proposed by Professor Green, not officially recognized by SCt, but seems to be implicitly relied upon by some courts

* In some cases, the courts have ruled that jurisdiction of a defendant exists, even if the cause of action did not arise within that state (no specific jurisdiction), and there are not sufficient contacts for general jurisdiction.
* In these special cases, the court has jurisdiction, without having jurisdiction over the defendant for every cause of action (as implied by general jurisdiction).
* PJ only for certain categories of actions
* Example: *Ex Parte Newco Mfg* (Ala. 1985).

**General In Personam PJ over Corporations**

*Perkins v. Benguet Consolidated Mining Co.*

* Plaintiff, not a resident of Ohio (the forum state)
* Defendant - Philippine mining company
	+ Company had moved to Ohio during WWII, then returned after the war ended.
* Plaintiff sues for her dividends as a stockholder and for damages for not issuing stock
	+ cause of action occurred prior to the company moving to Ohio.
* Defendant moves to quash service - issue was actually over PJ
* Ohio court rules it does not have jurisdiction.
* Plaintiff appeals to Supreme Court
	+ Supreme Court rules there is no conflict with the Constitution, Ohio state court can decide if it wants jurisdiction or not.
	+ Remands for new determination of whether it should exercise PJ - the state court’s earlier decision was possibly prejudiced by its belief that it was unconstitutional to exert jurisdiction.
* Easy case – substantial, systematic, continuous contacts with Ohio

 Hypo: GM closed down Tennessee plant in 2006. Being sued in Tennessee state court concerning 2005 breach of contract signed in 2004 in NY with performance in NY.

* Had the suit been filed in Tennessee prior to 2006, there would have been grounds for general jurisdiction.
* However, just because there were grounds for general jurisdiction in the past, does not mean there will always be general jurisdiction.
	+ For the sake of general jurisdiction, you look at the contacts at the time the suit is being filed, not at the time the cause of action arose.

*Goodyear Dunlop Tires Operations, S. A. v. Brown*  (U.S. Supreme Ct., June 27, 2011)

MSG: “Nice case, decided unanimously”

Facts: A bus accident outside Paris took the lives of two 13-year-old boys from North Carolina. The bus’s faulty tires causing the accident were made in Turkey by Goodyear’s Turkish subsidiary.

Procedure: Suing Goodyear (Ohio corporation) and its subsidiaries in NC state court.

Issues:

1. Jurisdictional Possibilities.

a. Possible for this action to be brought in federal court because of diversity jurisdiction. Example: North Carolinians v. Francos – between citizens of diff states with additional foreign parties

i. Petitioners probably sued in state court in hopes of a more sympathetic judge

b. Not specific jurisdiction because there’s nothing the defendants did to reach out to NC in a way that is tied to the cause of action; Tire that caused accident never anywhere near N.C.

            c. Possible to indirectly reach out to a state on the basis of the domicile of the plaintiff (e.g. kill someone in France because he is from NC) – not applicable here. Again, nothing that Goodyear Turkey did to reach out to NC in a way that is tied to cause of action

 d. Can’t get PJ in NC just because it is a subsidiary of Goodyear USA and there is general PJ over Goodyear USA in NC

PJ over Goodyear Turkey by the fact that it’s a subsidiary of Goodyear USA was not discussed by the court.  The Court would have entertained the question if the defendant brought that idea to the table.

What might be relevant: ‘Piercing the Corporate Veil’: phrase used to get at the assets of the sub through the parent.. determine who’s actually at play –

i. considerations: how much of an alter ego? do the parent and sub share boards? What percentage of the sub’s shares are owned by the parent?

2. Defendants’ Contacts with Forum.

a. ‘Stream of Commerce’: small % of tires distributed in the state through intermediaries; Plaintiffs said that tires made their way through intermediaries to N.C., establishes a somewhat attenuated connection

 b. New words in connection with determining constitutionality in this case: forum for the exercise of general jurisdiction for a corporation: “corporation fairly regarded as at **home**”

c.    For individual, paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at **home**.

If so PJ for causes of action that didn’t arise in NC

But contact not enough to be at home

*Helicopteros Nacionales de Colombia, S.A. v. Hall* (US 1984)

MSG: “...Iffy specific jurisdiction case that they tried to turn into a general jurisdiction case. Unclear why.”

Facts:  Helicopter accident in Peru, trying to get PJ in a Texas court over a Colombian corporation. Helicopter pilot trained in Texas, helicopter purchased in Texas.

Holding: No general jurisdiction.

Comments: If the petitioner had sued the helicopter pilot trainer or the helicopter manufacturer, there could have been specific jurisdiction.

*Ex Parte Newco Mfg* (Ala. 1985)

MSG: Discussing this case because “there’s more possibility for creativity...this case happened well before the Goodyear decision… argument for category jurisdiction.”

Facts: AL plaintiff brings wrongful death in AL state court against NewCo (incorporated in MO, PPB in MO), who manufactured and sold thimble clamps in MD.  Manufacture and sale of thimble clamps for grist blast machines was in MD. Plaintiff’s accident occurred in TN. Thimble clamp sold in MD gave rise to cause of action.

Holding: AL S. Court concludes that there is general personal jurisdiction (not specific, cause of action didn’t arise in AL). Held that continuous contact occurred in AL, (product gets into forum state indirectly) Considerable number of thimble clamps went to AL– very same type of product that gave rise to the cause of action is being sent to the forum state.  Ruled that the business was substantial.

Notes:

1.  Difference between Goodyear & Newco is intent for product to reach the region.

a.     The particular type of Goodyear Turkey tire caused the accident did not reach NC. The AL thimble clamps are the same type as the clamp that caused the TN accident

2.   MSG: AL S. Ct holding based on advertisement, also, the type of product is the same that’s sent to the forum state. In addition, higher percentage of products reached the forum state compared to Goodyear

3. Does that mean there’s general jurisdiction? (general – sued on any cause of action.) Probably not.

a. but certain categories of causes of action CAN be brought, namely causes of action concerning thimble clamps

4. MSG: thinks that that’s what Goodyear attempted to argue, and failed. They can be sued about tires blowing up. Not a NC tire, but a tire.

               a. called “category jurisdiction.” (an MSG original) – not GJ, because that connotes ‘anything’

i. “Category” Jurisdiction – cause of action that doesn’t arise from anything that comes from within the forum state.  Not general jurisdiction, as it is not “at home” in the forum state.

 ii. Gives jurisdiction in some cases where cause of action is in another forum, but does not give jurisdiction to all causes of action.

5. Question. Is the S. Ct. saying there’s no middle ground b/t GJ and SJ? If true, they’re rejecting Newco. MSG: we still don’t know; there are still open questions.

6. Distinguishing SJ from General PJ

        → Hard to tell, sometimes, what the client is arguing for.

        → Again, this is sometimes where this third category – the “category” jurisdiction  comes into play.