Civil Procedure Notes - 10/3/13

*McGee*

* Limiting specific jurisdiction case about how little you can have in terms of activities by the D directed at the forum state that establishes PJ (D sent single piece of paper to plaintiff) – if those activities are the cause of action
* McGee factors (these are important)
  + Does not have to do with D’s intentional reaching out to forum state or anything D did to create an obligation to the forum state
  + Forum state’s interest in providing their courts as a place for litigation of disputes
  + Disadvantage of plaintiff to have to go to another place (D’s state of incorp. or PPB)
  + Burden on defendant of going to forum state
  + Location of witnesses

*Asahi*

* Need to show power in reaching out to forum state (power = what defendant did to give the forum state jurisdiction over them) *and* McGee factors – even if there is power, if McGee factors are not satisfied, no PJ

Contract cases

* You can be creative in showing PJ through the D’s willing acts
* Who is the initiator in the relationship between contracting parties?
  + If D reached out to forum state (plaintiff’s domicile), it’s a lot more likely that D will be submissible to PJ theer
* Who made the offer? Who made the acceptance?
  + Being the one who offers may be relevant, but Green thinks being the initiator is more relevant (offer might come after initiation).

*Chung v. NANA Dev. Corp.*

* interaction between clients results in the shipping of a good
* case interesting because:
  + plaintiff (virginian) initiated the relationship
    - by going to alaska
    - asks defendant to ship product to VA
      * not a regular action by defendant

* not sufficient to create PJ in VA
  + Holding: No, shipping isn’t sufficient. Looks like Virginian initiated the relationship AND requested that the reindeer horns be shipped to VA. AK vendor didn’t normally ship to VA.

*Thompson*

* Defendant doesn’t advertise in Miss.
* This is a tort (Ala. D ships defective part to Miss.), and this makes a difference to courts (tortious contact makes courts more likely to assert PJ)

*Bensusan Rest. Corp v. King*

* USSC hasn’t said anything about the internet and PJ
* Does having a website mean that you initiate contact with everyone in the world?
* New York club owner sues Missouri club owner for trademark infringement
  + grounded in claim over internet site run by the Missouri club owner
    - site was not interactive
    - if a user wanted to go to the club they could not get their ticket via the website
  + Passive websites – usually insufficient to create PJ
  + Active websites – usually sufficient to create PJ
    - this is the reason that many interactive sites have choice of forum clauses
* Passivity of the site in Bensusan was key; site wasn’t interactive, people couldn’t contract to buy tickets on the site.

*World-Wide Volkswagen v. Woodson*

* Product entered forum state indirectly (through end user)
  + In Asahi, product was simply a component of another product that entered the state.
* Okla trial judge denied NY defendants’ motion to dismiss for lack of PJ
* NY Ds sought a Writ of prohibition (also called writ of mandamus)
  + If a district court judge is doing something really wrong, you request a writ of mandamus from the Court of Appeals to stop the judge (this is why Woodsen’s name (the trial judge) is styled in the case name).
  + What is problematic with appealing a decision by a trial court when the case is continuing? Trials would be stopped before they even came close to finishing.
    - Final judgment rule says that you can only appeal after the end of the trial
      * Exception: In federal court, you can immediately appeal specific things with an interlocutory appeal.
    - Oklahoma must use writs of prohibition as a means of interlocutory appeal.
* Injured drivers sued Audi and several other defendants (VW America is the regional distributor of Audis in the tri-state area (NY, CT, NJ)) for a defective gas tank that exploded in the car after an accident in OK
  + Robinsons (original plaintiffs) were driving to AZ via OK from NY
  + Seaway actually sold the car to the Robinsons
* Q: Why sue World-Wide and Seaway?
  + Joining these parties destroyed diversity Jurisdiction
  + The Robinsons must think that the OK state court will be more generous in respect to summary judgment than in federal court.
    - They still have to prove PJ over Seaway and World-Wide (which they did not prove)
    - After PJ found insufficient over Seaway and World-Wide → federal court gave summary judgment to Audi et al
* OK's long-arm statute
  + one way that state's assert their power over defendants
    - fact that state has constitutional power to assert PJ does not mean that it has asserted it
  + long arm statutes - allow a state to reaching out to defendants outside of the state and assert PJ over them
    - 2 flavors
      * Illinois style
    - enumerated - refer to categories of actions where the SCt has said PJ exists
      * + OK's is like this
      * California
        + general → we will assert this power as long as it's constitutional

up to the 14th amendment’s restrictions of due process

* Important aspect of case:
  + they take the language from McGee-factors
    - and state that they are insufficient on their own to create PJ
      * McGee factors were strong in this case
        + this is not enough → still need int'l shoe theory or presence (pennoyer) theory ← power of sovereign
        + “Volkswagen World Wide Court → even if defendant would suffer minimal or no inconvenience from being forced to litigate in forum state”...

the due process clause must still be satisfied

* PJ in OK (convenience)
  + Strong interest of OK in taking the case
    - there are explosion on their highways
    - OK tort law would probably apply
  + disadvantage of plaintiffs (robinsons) in bringing the case in an alternative forum
    - they are burnt and the alternative forums are far away (germany etc.)
  + disadvantage of defendants going to OK as forum
    - is it inconvenient for the defendant to go to OK for the case? (McGee factor) – they have insurance
  + disadvantage to witnesses to go to OK
    - Germans having to travel to OK is very inconvenient
    - But lots of witnesses would be in OK (few in NY)
  + weighing all these factors
    - it is convenient forum for litigation
* Stream of Commerce
  + usually refers to commerce (the process of people buying things and selling things) bringing the product into the forum state
  + Brennon refers to this case as a Stream of Commerce case
    - but this is not the typical use of the term, since it is an end use who bring it – the Robinsons were no engaged in commerce
* Brennen's opinion – deep seated view
  + wants to jettison the power argument completely
  + wants to rely completely on the McGee factors completely
  + thinks states are no longer sovereigns
    - the main concern is convenience of defendant
* Contacts with OK (Seaway and World-Wide)
  + no ads in OK
  + no attempt of sales in OK
  + argument made: it was foreseeable that a car sold by Seaway would go through OK
* Decision by SCOTUS: (foreseeability of future PJ)
  + foreseeability is still relevant
    - but not the foreseeability that the car would go through the state
    - foreseeability that a defendant's actions could be held as substantial in future lawsuits to submit you to PJ
      * court states that it was not foreseeable that the car would submit them to PJ in OK
      * common criticism of this: it is a circular argument and test
      * what you can reasonably anticipate depends upon what the law of PJ is, which is what the SC needs to decide
      * stilt in very traditional areas of PJ such as tagging, one might be able to argue that the D could have reasonably been able to anticipate that we would submit himself to tagging PJ by going to the state.
  + Brennen's mention of past cases:
    - distributor:
      * you don't bring the product to the forum state yourself but you know that it is going to end up there
      * get to this in class in the future
* Long-arm statutes
  + 2 flavors
    - Illinois style: enumerated statute that takes language from past USSC cases and puts it in the statute
      * OK had this kind of statute
    - California style: un-enumerated statute, asserts power as far as it is compliant with due process, “we will assert PJ up to constitutional limits”
* In this case, court declares McGee factors insufficient on their own to establish PJ
* “Minimum contacts” perform two functions
  + Protects defendant from having to litigate in a burdensome place
  + Ensures that states don’t go beyond their limits
* **McGee factors in this case**:
  + OK has strong interest in keeping products from exploding all over their roads
  + Burden on plaintiffs to go to alternative forums? Huge.
  + Burden on defendants to go to OK? Not comparably difficult for these businesses to send representatives.
  + Is OK a good place for witnesses? Certain people are in OK, but not all of them.
  + Green: very strong argument that OK is an appropriate place for the litigation, but that is why the USSC chose this case. We still need **power**, which is created by an affirmative act of reaching out by the defendant.
  + How do McGee factors come into play? If the court is on the fence about power, you can bring up McGee factors to push the case toward PJ. McGee factors on their own won’t be enough.
  + Brennan wants to get rid of the power requirement and just rely on the McGee factors. States are just administrative units and aren’t competing sovereigns anymore. The real question is whether certain requirements are burdensome on the parties.
* This isn’t a stream of commerce case in the way the term is often used. Commerce didn’t take the car to OK, the end user did. Different from Asahi, where commerce is what took the product from Japan to California.
* How to argue that Seaway reached out to OK?
  + It’s foreseeable that the cars could end up going through OK, but USSC says that isn’t enough of a reaching out to establish specific PJ
  + USSC notes that foreseeability isn’t completely irrelevant; if you can reasonably anticipate being subject to suit in a place, you should be prepared to defend yourself.
    - Is this a new theory of PJ? This criterion is arguably circular: if you can be subject to suit anywhere you can reasonably anticipate yourself to be subject, aren’t you subject to suit everywhere?
    - This theory might actually be used to save old methods of PJ (tagging, quasi in rem) when they don’t satisfy the Int’l Shoe theory (asking whether what you did really made it fair for you to be submitted to PJ).
      * You could reasonably anticipate being tagged if you visit a certain state. Via foreseeability, tagging isn’t void just because you didn’t reap any benefits from your presence in that state.

*Ohio v. Wyandotte Chemicals* (addressed in VW decision)

* Chemical co. dumps a bunch of pollutants that flow into Ohio and are sued. Ohio courts have PJ over defendant. – what’s the difference from VW?
* Natural processes brought the pollutants into the forum state.
  + In VW, the plaintiff’s actions brought the defective product into the forum state **(this is the big difference between this and VW)**
* differentiation between Wyandotte and World-Wide Volkswagen
  + Wyandotte is a more direct series of actions
  + Wyandotte is known to be harmful
    - defectiveness of product not necessarily knownin VW case
  + in World-Wide Volkswagen human agency is a factor in getting the product to the forum state
    - no human agency interlocking action in Wyandotte
  + **in WWV the defendant's actions could create PJ if their actions can be a causal factor in finding PJ substantial**

*Asahi*

* Asahi (Japan) makes valves used in Cheng Shin (Taiwan) tubes that go into tires sold in California (among other places).
* Zurcher, plaintiff, sues Cheng Shin, who cross-claims against Asahi for indemnification (Cheng Shin is liable to Zurcher, but they can then go after Asahi for the money they had to pay to Zurcher).
  + Cheng Shin settles with Zurcher.
* Asahi is Japanese company that makes valves and sells to manufacturers
  + valves then used to create tubes (component part of the tube)
  + tubes then make their way California
    - good amount make their way to California
* Specific jurisdiction case
  + incident happened in California
    - one of the products was defective in California
* Procedural:
  + P sues CS; CS brings in Asahi
  + CS is liable to P but then can go after Asahi for the money they had to pay to P
  + P settles with CS
  + Cause of action: get money for settlement with P
* II(b)
  + about McGee factors
    - McGee factors are so poorly satisfied that it is sufficient to throw the case out
      * conveniences
        + burdensome for both parties to come to California

californian already out of the case

* + - * + burden on witnesses

witnesses are far from California

* + - * + law applied to case

either Japanese or Taiwanese law

* + - * + California's interest in case

not interested in case

Californian already has his money

There is an argument that CA would be interested in deterring Asahi from producing bad valves and the success of Cheng Shin’s action would do that

* + - * + doesn't makes sense to have it in California
  + because the McGee factors are not satisfied California does not have PJ over the case
* II-A
  + McGee factors:
    - Burden on defendant: no argument. Would be easier for parties to go to either Taiwan or Japan than for them to go to CA. Why should parties litigate their dispute under Californian law?
    - California’s interest: this doesn’t address the compensation of their citizen; why should CA care about money being exchanged between Cheng Shin and Asahi?
      * Possible added deterrence in punishing Asahi for its contribution to the accident.
    - There is no PJ because of the extreme inconvenience. Even there is power (the CA state court could constitutionally take the case if the McGee factors didn’t matter), the McGee factors aren’t satisfied, and California state court would violate due process by taking the case.