Personal jurisdiction in state court -

Specific Jurisdiction

Typically specific jurisdiction is not a problem.

Generally (except Chung), if a company ships a product to a state, there is specific jurisdiction in that state for causes of action concerning that product

1. McIntyre Machinery, Ltd. v Nicastro - continued from 10/7

* McIntyre USA was serving as a shield in an attempt to prevent PJ over McIntyre UK
* Contacts between McIntyre UK and NJ
  + maybe 4 machines, only proof of the one in this case
  + McIntyre UK has a desire to serve US as a whole - go to trade shows in various states but not NJ

Kennedy - like O’Connor from Asahi

Even if there is a regular flow of product into a forum state through an intermediary, there must be some other act demonstrating express intent to serve forum state by the manufacturer in order to give forum state power of PJ.

McGee Factors -

* Kennedy does not care about McGee factors because there is no power for NJ to assert PJ; although, McGee factors are strong in this case.
  + Many witnesses are in NJ
  + Heavy burden on P to go to Great Britain for litigation
  + Not as heavy a burden on D to go to NJ
  + NJ interest (and probably NJ law will apply)

Breyer - like Stevens

In this case, there was not a regular flow and thus something more is necessary to show intent to serve NJ, but a regular flow into a forum state with knowledge that product will make its way into forum state would be sufficient for PJ

McGee Factors -

* Worried about small D’s who send product through intermediaries
  + One way of reading this is that he thinks there are instances with small D’s where even if there is a regular flow of product into a state, McGee factors will make burden on D so burdensome that PJ in a that state would be unreasonable

Ginsberg -

When there is a foreign D, the only requirement for PJ in a state where harm occurred, the only intent necessary is the intent for manufacturer to serve the US market as a whole.

* + Taking PJ over foreign D’s would take sovereignty from another state; however, if the issue is an interstate issue (as opposed to one with a foreign manufacturer) there is an issue of state sovereignty
    - Any situation with a foreign D interstate federalism issues do not arise, so it is sufficient that D intended to serve US as a whole

McGee Factors -

Because McGee factors are strong, they support NJ’s power to assert PJ

What law does McIntyre create?

* Breyer’s opinion is the holding in the case because it is the narrowest interpretation of why there is no PJ
  + Theory is that generally PJ exists when there is a regular flow of a product into a forum state with knowledge that the product will make its way into that state. If there is not a regular flow, something more showing an intent to serve the forum state would be required to establish PJ.

In McIntyre there is SMJ in federal court using diversity; however, federal court can only assert PJ over D if the state court does not have PJ, unless P is suing under federal law.

Quasi in rem

After International Shoe, what is the status of the old methods of PJ under Pennoyer Framework?

Schafer v. Heitner (1977)

* Shareholder’s derivative action - shareholder has a right to file a suit on behalf of the company if there is a cause of action the corp. should be bringing, but the officers and directors are not bringing the action (usually because the cause of action is against the officers and directors themselves)
* Wrongdoing occurred in Oregon, action is being brought in Delaware state court, officers and directors live mostly in Arizona and California
* The source of PJ is property (shares) considered (by Delaware law) to be located in Delaware
* Form of notice was through certified mail and newspaper publications which satisfies Mullane.
* D’s make special appearance to quash service (claiming no PJ) and contends that Delaware’s sequestration statute violates the 14th amendment. By freezing D’s ability to sell the property and it is an intrusion on the D’s property rights because there was no notice that property had been attached and there was no opportunity for D to respond to notice through an adequate hearing to find whether attaching property was appropriate. Court does not address this issue – it addresses only the PJ issue.
* This is a quasi in rem action because the source of PJ is property and yhe cause of action is unrelated to the property.
  + Under Delaware law, D must appear in personam or give up their shares in the corp. which Delaware attached
    - Delaware did not allow D to make a limited appearance

Court holds that this form of quasi in rem action is no longer permissible - all forms of personal jurisdiction need to meet the International Shoe standards

* + Supreme Court holds that P should go to the state where it has in personam jurisdiction over D, then go to state in which D’s property is located and sue on the judgment
  + Problems with this case being brought in Delaware:
    - Property is intangible and does not seem to really be located in Delaware so D probably did not reasonably know its property was located in Delaware
    - Delaware did not allow D to make a limited appearance
* Powell - In the case of real property, quasi in rem jurisdiction is still acceptable
* Opening a bank account or buying property in a state makes it foreseeable that one could be subject to PJ in that state for suits up to the value of the property in the forum state

Is this a specific jurisdiction case (setting aside the shares)?

The cause of action concerns the very contacts that the officers and directors have in Delaware because the officers and directors reached out to the state of Delaware by becoming officers of a Del corporation, and thereby received the benefits of Delaware law. The corporation itself exists because of Delaware law, so essentially Delaware gave them their job and the corporation is constantly being protected by Delaware law and Delaware law protects the officers and directors. The cause of action directly concerns the benefits the officers and directors receive from Delaware.

* + What is problematic is that there is no physical contacts with Delaware, but that should not matter because of the immense benefits the officers and directors received from Delaware law.

McGee Factors in Schafer:

Seem to be strong in favor of Delaware

* The violation of the officers fiduciary duty was a violation of Delaware law
* Delaware has a strong interest because they incorporated the company
* Witnesses not located in Del. however
* Need one place where all officers and directors of the company can be sued together
  + However, the Supreme Court claims the Delaware legislature failed to create a statute to assert its state interest in these cases; but it seems like the statute in the case was intended for the officers and directors of Delaware corps.