**Civil Procedure Class Notes**

**October 10, 2013**

**Exam tips**

* Exam is 240 points (1 point per minute)
* 170 points is an outstanding exam; 130 may be an A exam

**Personal Jurisdiction in State Court – Specific Jurisdiction**

1. *J. McIntyre Machinery, Ltd. v. Nicastro*
	1. Kennedy’s opinion (4)
		1. PJ only if extra O’Connor something indicating intent to serve forum state (regular anticipated flow into forum state not enough)
	2. Breyer’s concurrence (2)
		1. holding (narrowest reasoning for Court’s decision)
		2. PJ if regular anticipated flow into forum state or if flow is not regular (although anticipated) and extra O’Connor something there
	3. Ginsburg’s dissent (3)
		1. With respect to foreign defendants all you need is reaching out to US as whole
		2. Does not answer Kennedy/Breyer disagreement, because either is satisfied with respect to US
2. Don’t have to mention all PJ cases on PJ question
	* 1. McIntyre/Asahi relevant when D corp’s product:
			1. gets into forum state
			2. through independent intermediaries
			3. in stream of commerce
			4. in a manner that can be anticipated by D
			5. and causes harm to P there
3. *Shaffer v. Heitner*
	1. Facts
		1. PJ was through seizure of shares in Greyhound stock, considered in Delaware
		2. Ds challenge sequestration (attachment of property) because seized by court without opportunity to contest
			1. SCOTUS doesn’t get to this but when court issues preliminary relief—eg attachment or preliminary injunction—due process has to be satisfied
	2. Issues concerning PJ
		1. Question was viability of quasi in rem for causes of action unrelated to property
			1. Cause of action related to actions in Oregon, not purchase of shares
		2. Unusual because intangible property
			1. Shares were not clearly located in Delaware
		3. Limited appearances not allowed
			1. To argue on the merits, Ds would have to submit to *in personam* jurisdiction
	3. Holding
		1. All PJ must satisfy *International Shoe*
			1. Very broad
			2. Decision in *Burnham* contradicts
		2. Stevens and Powell in concurrences argue that quasi in rem for real property is still viable
			1. How does this satisfy *International Shoe*?
			2. Argument: Real property in forum state = receiving benefits from forum state?
				1. Even though cause of action is unrelated to property, Int’l Shoe is satisfied because PJ only up to value of property?
	4. Why isn’t there specific jurisdiction in Shaffer, setting aside the shares?
		1. Delaware law provided for incorporation and establishment of relationship with employer
			1. Cause of action related to that relationship
4. Hypos
	1. P brings a quiet title action concerning CA land in CA state court intended to bind the world. Any problem with this in rem action given Shaffer? CLEARLY NOT
		1. Property is in CA=anyone claiming an interest in the property is reaching out to forum state
		2. Cause of action relates to the property
	2. P brings a quiet title action concerning shares in a Del. Corporation current held by an Arizonan in Del. state court intended to bind the world. Any problem with this in rem action given Shaffer? PROBABLY NOT
		1. Cause of action relates to shares
		2. But same problem with intangible property – can dispute where they are located
			1. Best place might be state of incorporation (MSG opinion)
			2. Shares could be with the person who owns them
5. *Burnham v. Superior Court*
	1. Facts
		1. NJ couple separated by agreement; wife and 2 children moved to CA
		2. Husband visits CA for 3 days on business and to see children
		3. Wife serves husband for a CA suit seeking divorce and monetary relief
		4. Husband domiciled in NJ
	2. Issue - Is tagging sufficient for PJ?
		1. Scalia: Yes
			1. Accepted at time of the 14th Amendment’s adoption in 1868
			2. And still generally accepted by all states
		2. Brennan: Yes
			1. Everyone is on notice that entering into a state will be sufficient for PJ
			2. Are getting benefits from state while there
	3. Argument for PJ over D independent of tagging?
		1. CA may have PJ because kids are in CA
		2. CA is doing things for D’s kids; receiving benefits from CA
		3. cause of action concerns contact with state
		4. divorce may be related to contact with CA too
6. Five Theories of PJ
	1. *Pennoyer* – state has PJ over what is within its borders at the time of service
	2. *International Shoe* - Ds reaching out creates fair reciprocal obligation to submit to PJ
	3. *McGee* – practical considerations
		1. How burdensome it is on parties to go to forum state; where are witnesses; choice of law, etc.
		2. Cannot create PJ when no power but can incline court to take case if on the fence
	4. Reasonably able to anticipate PJ due to actions
		1. *Burnham* and *Worldwide Volkswagen* (missing)
		2. Traditional methods of PJ can be anticipated
	5. Scalia’s theory
		1. Comprehensive theory trying to explain all PJ law
		2. Ok if ok under *International Shoe* but also OK if OK under *Pennoyer* and still generally accepted by states
7. Hypos
	1. P (NE) v. D (NY) - brawl in IL, suit brought in NE, no special appearances allowed
		1. Would be ok under *Pennoyer* regime
		2. However, special appearances are allowed in all states (except NE in this hypo); Scalia would say it is unconstitutional because contradicts states’ practice; and
		3. May violate *International Shoe* standards; would force default and then collateral attack; D did not receive any benefits from forum state (NE)
	2. P (CA) v. D corp. (OR) – D used recruiting company to hire P; D corp. sends job offer letter to P; P accepts job and commutes to work in OR (thimble factory) from CA; P injured at D corp.’s factory in OR; P sues in CA under state law negligence concerning maintenance of machine, D corp. sends many thimbles to CA through intermediary
		1. No quasi in rem jurisdiction – no property in CA
		2. *McIntyre/Asahi* not relevant, because cause of action did not arise in CA – it arose in OR
			1. about machine in OR, not thimbles in CA
		3. No general jurisdiction –fact that thimbles in stream of commerce go to CA not enough to be “at home” in CA (see *Goodyear*)
		4. Argument for specific jurisdiction (MSG thinks this may work)
			1. Contract/offer letter to P=reaching out (*McGee*)
			2. Need to argue relationship between cause of action and contract
				1. Created employment relationship
				2. P injured because of employment
		5. Mention *McGee* factors (not strong)
			1. Equal burden to P and D to travel
			2. Both states have interest
			3. Witnesses in OR, not CA

**Personal Jurisdiction in Federal Court**

1. US Cont. Amendment V
	1. All Americans have contacts with US sufficient for PJ in federal court, only at issue is with foreigners having contacts with US
	2. Use same analysis that would use for state as for US asserting over foreigner
2. Federal Rules of Civil Procedure (FRCP)
	1. 4(k)(1)(A&C) – Summons
		1. Federal District Court has PJ where state court of general jurisdiction (not specific courts like family) would have PJ
	2. 4(k)(2) – if action is under *federal law*, no state has PJ & constitutional (Amen. V – contacts with US) then federal courts can assert PJ in state where D is served