**Class Notes 17 Oct 2013**

\*The optional midterm will come from old exam questions on the blog. The midterm will be approx. 1 hour long.

1. **PJ in state court** (review)
   1. Burnham v. Superior Court
      1. This case can be relevant to all old methods of PJ, not just tagging.
         1. Shaffer v. Heitner is also relevant.
      2. There is no majority opinion or theory resulting from this case.
         1. Scalia’s theory (good at accounting for law as it currently exists; analytically less persuasive)
         2. Brennan’s theory – tagging satisfied Int’l Shoe oin that case
            1. It would be nice to have a pure case (tagging w/o other International Shoe contacts with forum state) to see what Brennan would say
   2. PJ Roadmap
      1. When determining PJ, sometimes should try a number of different methods.
      2. More than one method may be applicable.
      3. Is there category jurisdiction? There are cases where it is questionable whether PJ is truly general, but there is no specific PJ because cause of action did not arise in forum state – it seems as if PJ is limited to a certain category of causes of action.
         1. But SCOTUS has never accepted and Goodyear may be contrary
2. **PJ in federal court**
   1. The emphasis in this course is on federal court.
   2. Federal courts can usually assert PJ only if the state court would (in the same state where the federal court is located)
      1. There are a few exceptions; some given in Federal statutes (anti-trust law, etc.). (Don’t worry about this for the final.)
   3. Federal PJ is restricted by Rule 4(k)(1)(A), not the constitution.
      1. This keeps plaintiffs from forum shopping or bringing a suit in an inconvenient place for the defendant.
   4. Actions that arise under fed law and where there is no PJ over the defendant in any state in the US (no sufficient contacts with an individual state, but sufficient contacts with US as a whole): apply Rule 4(k)(2)
      1. The suit can be brought in any jurisdiction as long as it is an action under federal law.
         1. If the action is under state law or foreign law, the plaintiff is out of luck.
      2. Example #1: P (Va.) brings suit in federal court in Virginia against D, a German domiciliary residing in Germany, for a battery that the German committed against him in New York.   
         The German has no other contacts with the United States besides the brief trip to NY during which the alleged battery occurred.   
         Is there PJ?
         * 1. No – the action does not arise under federal law and it could have been brought in NY under specific jurisdiction, therefore Rule 4(k)(2) does not apply
           2. Can’t rely on 4(k)(2) fall-back provision
         1. The defendant has to be outside the US, otherwise there would be state PJ.
         2. Example #2: Yasser Arafat is sued under a federal antiterrorism act allowing for American victims of foreign terrorism to sue for damages. (The alleged acts of terrorism in this case occurred in Israel.) The action is brought in federal court in New York. Is there PJ?
            1. Yes, Rule 4(k)(2) applies.
         3. The tendency is to read the 5th amendment generously when applied to foreign defendants sued in federal court for federal causes of action (a lower standard of sufficient contacts with US is required than typical for domestic defendants’ contacts with the forum state when sued in state court).
            1. This is not a statement about the law – just a claim about what tends to happen in practice
            2. For your purposes, when answering the question about whether a foreign defendant has sufficient contacts with the US for the court to assert PJ under the 5th Amendment, use the same standards for contact with the US that you have learned to look for concerning a state when answering whether there is PJ in the state court over an out-of-state defendant
3. **More PJ examples (all cases brought in the Southern District of NY)**
   1. A federal civil rights action concerning the defendant’s arrest of the plaintiff in Buffalo, NY. Defendant lives in Pennsylvania and is served there.
      1. PJ? Yes – the cause of action arose in the state.
   2. A product liability action brought by a California plaintiff against a corporation incorporated in Delaware with its principal place of business in Tennessee. The action concerns a product manufactured in Tennessee and purchased in CA, where it harmed the plaintiff. The defendant has a large factory and branch office in Buffalo, New York (with 10,000 employees) but the plaintiff at no time has this asset of the corporation attached by the federal court. The defendant corporation is served (through service on its Chief Legal Officer) in Tennessee.
      1. SMJ? Yes - diversity case (incorporated in Delaware, principal place of business is Tenn.)
      2. PJ? Probably “at home” in NY (Goodyear magic words) because of large factory (general personal jurisdiction)
         1. Some say the corporation can only be “at home” in two states (principal place of business and state of incorporation); Prof. Green feels corporation can be “at home” in multiple places (anywhere there is sufficient contact). In other words, there could be simultaneous PJ in the state of incorporation, in the state where the nerve center is located, in the state where the bulk of the activity takes place, etc.
         2. At home is fancy way of saying “substantial and continuous contacts.”
         3. Does % of employees apply? It might, but 1% of a big corporation is a lot of employees (sufficient contact). For a small corporation, it may be 1 employee, but that may be the entire workforce. (This is still an open question.)
         4. Category jurisdiction? Not really needed because general jurisdiction is a better options for PJ.
      3. Quasi in rem may apply here, but it is not the main source of PJ.
   3. A California state-law diversity action concerning a brawl between the plaintiff and the defendant in California. The plaintiff is a citizen of California and the defendant a citizen of New York. The defendant is served while on a business trip in California.
      1. PJ? Yes - domicile in NY
      2. Tagged in CA, so that doesn’t create PJ in NY.
   4. An action by a New York plaintiff against a German defendant for breach of German contract law concerning a contract signed in Germany with performance in Germany. At the initiation of the suit the American plaintiff had the federal court attach the assets of a trust that had been created by the German’s mother with the German as the beneficiary. The assets of the trust and the trustee are located in New York City. Defendant is served in Germany.
      1. PJ? Probably yes - quasi in rem.
         1. However, has the defendant taken possession of the trust yet? Is it really his yet? (This may be problematic.)
         2. Also – does it matter that the defendant himself did not choose where the trust was located?
      2. Different from Shaffer because the assets are more tangible and are clearly located in NY.
   5. An action by a New York citizen against a California citizen for violation of a federal antiterrorism act. The defendant’s alleged violations of the federal act were all committed in Iraq. The defendant has no contacts with the state of New York.
      1. Assuming there is no tagging and no consent…
      2. PJ? Not in NY – There is PJ in CA so Rule 4(k)(2) does not apply. The action can be brought in CA where defendant is domiciled.
4. **Venue in federal court (§1391)**
   1. Venue is statutory, not constitutional.
   2. **Isolate the concept of venue from PJ and SMJ**.
   3. Venue statue uses PJ terms, which can be confusing; but keep them **separate**.
   4. This only applies to federal districts; it is not relevant in state courts (which have their own venue statutes).
   5. The aim of venue is convenience – is this a good district for this action to be brought?
      1. For example, you could get PJ over a defendant almost anywhere with tagging, but that could be a very inconvenient place for the suit. Venue helps prevent that.
   6. Section 1391 is the general venue statute. There are many federal causes of action that have their own venue provisions.
   7. Section 1391
      1. §1391(b)(1): all defendants must reside in same state; at least one defendant must reside in the district (thus, it’s not too far for anyone to travel).
      2. §1391(b)(2): Property that is the subject matter of the suit is in the district or a substantial part of the actions or omissions that gave rise to the claim occurred in the district (makes it a logical place to bring action)
         1. This is not about reaching out to district. There can be venue without PJ (e.g., in World Wide Volkswagen, the car exploded in Okla. which would have created venue had the action been brought in federal court in Okla. but World Wide Volkswagen/Seaway never reached out to Okla., so there was no PJ).
         2. It only needs to be a substantial part of action – not **all** of action to create venue (e.g., in product liability: place of manufacture, where purchased, place of harm) (e.g., in contracts: where negotiated, where signed).
      3. For an individual natural person (including lawfully admitted aliens), residence means domicile (the does not apply to corporations).
      4. Use either §1391(b)(1) or §1391(b)(2); you don’t need both.
      5. §1391(c)(3): if the defendant lives abroad, ignore them for venue purposes (we aren’t worried about the venue being convenient in that case).
         1. If one defendant is an alien and the rest are US domiciliaries, ignore the alien; look only at the rest of the defendants.
   8. Examples:
      1. P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Buffalo – W.D.N.Y.)  
         Suit is under 42 U.S.C. § 1983 concerning an allegedly unlawful arrest that occurred in an airport in NJ (D.N.J.)
         1. SMJ? Yes – civil rights action (federal question) (also diversity)
         2. PJ in California? No
         3. PJ in NJ? Yes – cause of action took place in NJ (specific jurisdiction)
         4. PJ in NY? Yes – because of domicile
         5. Venue N.D. Cal.? – No
         6. Venue D. NJ? – Yes – cause of action took place there (transactional venue)
         7. Venue in S.D. NY? – Yes – both defendants reside in NY and one resides in the district (same for W.D. NY)
         8. Venue in E.D. NY? – no – neither resides in that district (but there is PJ if the action had been brought in that district, because PJ is about states anf there is PJ in NY)
      2. P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Conn. – D. Conn.)  
         Suit is under 42 U.S.C. § 1983 concerning an allegedly unlawful arrest that occurred in New Jersey (D.N.J.)
         1. SMJ? Yes (federal question and diversity)
         2. PJ in CA? No
         3. PJ in NY? No (one defendant domiciled in CT)
         4. Venue in NJ? Yes (transactional); No venue anywhere else. (It makes sense to litigate in NJ since the event took place there.)
      3. P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Conn. – D. Conn.)  
         - Suit is a Cal. state law breach of contract action concerning a contract signed in San Francisco for the construction of a hospital in Albany (N.D.N.Y.)  
         - P claims hospital is not according to plans
         1. SMJ? Yes – diversity
         2. PJ in CA? Yes; contract signed there (McGee) (therefore, there is PJ in any federal court in CA because PJ is different than venue)
         3. PJ in NY? Probably yes; work was done in NY (defendants reached out to NY)
         4. PJ in CT? – no – not over *both* defendants (assuming there was no tagging)
         5. Venue in N.D. CA? – yes, where the contract was signed (transactional)
         6. Venue in N.D. NY? – yes, performance of work
         7. Venue in S.D. NY? No – defendants not all domiciled in same state
         8. Venue in CT? No – defendants not all domiciled in same state
   9. Corporations and unincorporated association (§1391(c)(2))
      1. Venue statute is less solicitous of businesses than human beings (less worried about making things convenient for them)
      2. They reside in any district where they’d be subject to PJ. **DO NOT DO THIS FOR INDIVIDUALS**. We assume corporations can conveniently travel a lot.
         1. For individuals, only count domicile.
      3. §1391(d): In states with multiple districts: treat each district as if it were a state, do an “International Shoe” analysis. If the corporation would be subject to PJ in that district, then there is venue.
         1. Do state long arm statutes apply for determining residence of corporation? Prof. Green’s opinion: no (not logical to change venue rules for state law); therefore, only look to 14th amendment when determining “residence” of a corporation for venue. (This hasn’t been clarified by the courts, but it makes more sense and is easier.)
            1. On exams: when determining whether a corporation is subject to PJ in a district and thus “resides” in the district for the purposes of venue - don’t use state long-arm statute
            2. Note: When doing a Rule 4(k)(1)(A) PJ analysis, you must use state law/long arm statutes to determine whether there is PJ over the defendant, in addition to the 14th Amendment analysis
            3. Thus it is possible that there is no PJ in state b/c that PJ does not satisfy state long arm statute, but the defendant corporation resides in the district for the purposes of venue, because there is sufficient 14th Amendment contacts with the district
            4. There may be PJ without venue or venue without PJ.
      4. What if there is PJ over a corporate defendant in a state, but not in any of the districts (this is only a problem in multi-district states) - how does one answer the question of which district in the state the corporate defendant resides in?
         1. Examples:
            1. the corporation was incorporated in a state, but is not doing any business in the state;
            2. they are shipping products to the state as a whole in a way that is sufficient for PJ in the state, but do not ship enough to any district such that there would be PJ in any district if that district were a state
         2. In this case, consider the corporate defendant to reside in the district in the state with which it has the most significant contacts (such as, where the incorporation papers were sent).
      5. Corporate residence is inclusive; there can be venue in multiple districts for the same corporation based on residence. For an individual, they only have one venue based on domicile (but may have multiple venues based on transaction).
      6. Example: P (S.F. – N.D. Cal.) sues the D1 Corp. & the D2 Corp.   
         Suit is a Cal. state law breach of contract action concerning a contract signed in San Francisco for the construction of a hospital in Albany (N.D.N.Y.)  
         D1 Corp. built foundation; D2 Corp. built structure  
         D1 Corp. incorporated in Delaware (D. Del.); main office in NYC (S.D.N.Y.); large branch office in Philadelphia (E.D. Pa.)  
         D2 Corp. incorporated in Delaware (D. Del.); main office in Pittsburgh (W.D. Pa.); large branch office in Boston (D. Mass.)
         1. SMJ? Yes – diversity
         2. Venue N.D. CA? Yes – contract was signed there
         3. Venue in N.D.N.Y.? Yes – hospital built there
         4. Venue in S.D.N.Y.? Yes –
            1. D1 resides in S.D.N.Y. because subject to general PJ there if it were a state. Main office is in S.D.N.Y.
            2. D2 Corp (and D1 Corp.) reside in N.D.N.Y. because there would be specific PJ in N.D.NY over them there for building hospital
            3. Thus both defendants reside in NY and one defendant resides in S.D.N.Y, making venue in S.D.N.Y. under 1391(b)(1)
         5. Venue in E.D. Penn? Are both subj to PJ in a district in PA? Yes - D1 has an office there and D2 has main office in Pittsburgh; both have contacts with Pennsylvania for general PJ (would have to cite Goodyear)
         6. Venue in W.D. Penn? Yes – same answer as 5