Lect 15

* PJ over corps under Pennoyer framework
* Two methods
* 1) state passes statute to create legal fiction of in-state agent for service of process due to corp doing business in state
2) corporate “presence”

**Int’l Shoe**

What were Int’l Shoe’s activities in Washington?

 - 13 sales agents there

 - solicited orders, but transmitted them to corp, which sealed deal

 - rented rooms for displays

 - no office

- is this enough to be considered presence under Pennoyer framework?

 - it depends

 - if one is really thinking about whether Intl Shoe can be sued on any cause of action, probably not

 - if so, then the case really does turn out differently under the Int’l Shoe theory than it did under the Pennoyer theory – since one needs specific PJ to get PJ over Int’l Shoe

 - that said, lower courts were already in the habit of determining corporate “presence” with the nature of the cause of action in mind

 - more likely to find corp present if the cause of action was about in-state activities of the corp

 - so very likely that even w/o the changes in Int’l Shoe, a court would have found PJ

What is most important in Int’l Shoe is the creation of a new theory of PJ

quid pro quo, not about being able to grab what is in forum state

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue

Court also mentions *reasonableness* of PJ on the basis of inconvenience etc. We shall examine the role of this idea later – it does not consider how the D has reached out to the forum state, but only the extent to which it is burdensome on the D to go to the forum state, burdensome on the P to go to the D’s home, where the witnesses are etc.

The court then reinterprets past cases under the Pennoyer framework in the light of the new theory of minimum contacts

* Activities are continuous and systematic & give rise to liabilities sued upon
	+ Personal Jurisdiction
* Casual presence, single isolated activities & suit unconnected with activities in state
	+ No Personal Jurisdiction
* Substantial continuous activity & suit concerns activities entirely distinct from those in the state
	+ Personal Jurisdiction
* Single or occasional acts had nature and quality making corporation amenable to suit; suit is related to cause of action
	+ Personal Jurisdiction

The fourth category introduces the new idea of specific jurisdiction

*specific jurisdiction*
pj in state only for specific causes of action
the activities in state giving rise to pj include those giving rise to the cause of action

under Pennoyer framework at least in theory there was only general PJ:
pj in state for any cause of action, no matter where it arises

Green questions whether there might be something in between:

category jurisdiction:

PJ for a *category* *of* (not all) causes of action, even when nothing about the transaction giving rise to the cause of action occurred in the forum state

General in personam PJ over Corps

Perkins v. Benguet Consolidated Mining

- Perkins sued Phillipine corp in Oh for dividends claimed to be due to her as a shareholder of Benguet

- motion to quash service was granted and aff’d by state appellate courts

- attack on service? No – on PJ

 What were the activities supporting jurisd?

 - president maintained office, had 2 secretaries, bank accounts, director’s meetings, payroll

Why isn’t this a specific jurisd. case?

The activities giving rise to the cause of action (the failure to pay dividends) did not occur in Ohio

Why discussion of PJ being **required**?

 - even if PJ was permissible, the state court might at its discretion still dismiss, since this was an example of an out-of-state P suing and out-of-state D about something that occurred out of state

Perkins argued that the state court was required to take the case

- SCt concluded it was not required, although asserting PJ was permissible

Why permissible?

Court uses both the language of “continuous and systematic” and “substantial and continuous”

“The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business.”

“Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company.”

“It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio.”

Not a very hard case – the bulk of what little activities the corp engaged in were in Ohio

Helicopteros – not helpful because there was obviously no general PJ

* + Failed specific PJ case
	+ US Ps trying to get PJ over a Columbian corp in Texas state ct for wrongful death
	+ Helicopter accident in Peru
	+ A few things having to do with accident occurred in Texas
		- Training (but not action against trainer)
		- Helicopter bought there (but not accident against manufacturer or seller)
		- A bit of financial activities
	+ Really absurd that Columbian D could be sued on any cause of action in Texas on the basis of these activities

Goodyear Dunlap Tires (Just decided in June 2011) – Ginsburg’s opinion

Bus accident outside Paris

* Two NC boys killed
* Defective tires
* Sued parent – Goodyear USA (Ohio corp)
	+ It did not challenge PJ
* 3 subs
	+ Organized and operating in Turkey, France, Luxembourg
	+ For simplicity’s sake just speak of Turkey one
* Why not specific PJ?
	+ Bus accident in France
	+ Tires manufactured, bought and failed outside NC
	+ Why not enough that NCians harmed?
	+ Not something that the Turkish D did
* So need general PJ

Why not say general PJ over subs through general PJ over parent (Goodyear USA)?

* We will talk about this later in connection with Daimler

Setting aside parent, was there general PJ over Goodyear Turkey due to its activities directed toward NC?

Substantial and continuous under Int’l Shoe?

- not registered to do business in NC

* No employees bank accounts etc.
* No manufactering ads in NC
* Don’t they do business by selling products in NC?
* What are levels of tires making it in into NC through intermediaries?
* Tens of thousands of tires
* Out of tens of millions
* SCt - Not enough

test

“For an individual, the 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.”

* not enough to be at home

BUT the court seems to consider only general PJ

What about category PJ

Ex Parte Newco Mfg, 481 So.2d 867 (Ala. 1985)

Ala P (but was Tenn at time of accident) brings wrongful death action against Newco (Mo D) manufacturer of thimble clamps for grist blast machine

Manufactured in MD

sold in MD

caused accident in Tenn

still Ala SCt held sale of other thimble clamps in Ala are enough for “general” PJ

We agree with Newco that, because the allegedly defective clamps were not sold in Alabama and because the decedent's fatal accident did not occur in Alabama, the instant lawsuit does not relate to or arise from Newco's contacts with Alabama; therefore, Newco is not subject to “specific” jurisdiction in Alabama. We must determine, then, whether sufficient contacts exist between Alabama and Newco so that due process is not offended in subjecting Newco to Alabama's “general” jurisdiction. In other words, the nature of the contacts between the forum state and the party over whom jurisdiction is sought must be examined to determine whether those contacts constitute continuous and systematic general business contacts which would support a reasonable exercise of jurisdiction by the forum state.

We find that Newco engages in that continuous and systematic course of conduct in Alabama, albeit through an independent manufacturer's representative or the telephone and mail services, that will support a reasonable exercise of jurisdiction by the courts of Alabama. Newco's annual sales in Alabama during the period of January 1979 to December 1984 ranged from $65,000 to $85,000, with a total of 2,000 transactions. Newco's contacts with Alabama are deliberate rather than fortuitous and, therefore, it was reasonably foreseeable that Newco, in purposefully doing business in Alabama, would at some point both need the protection and invoke the jurisdiction of the courts of Alabama. Newco avails itself of the privilege of making sales (and profits) in Alabama in a continuous and systematic course of merchandising. For the privilege of conducting such activities, Newco must bear the burden commensurate with the benefits received from its sales in Alabama.

NOTE: this was probably a case of category, not general, jurisdiction: Not likely that Ala SCt thought Newco could be submitted to PJ in Ala for any cause of action, only causes of action concerning thimble clamps

* Any distinction between Newco and Goodyear?
* greater volume of sales in forum state in Newco? Greater percentage of corp’s sales in forum state?
* Same type of item that caused the accident was sold in the forum state in Newco – not so in Goodyear?

Let’s set up an even better case for category PJ

* The D Corp is incorporated and has all of its employees and factories in New York
	+ It makes skateboards
	+ However 90% of its product are sold (through Amazon) in California
	+ P (a domiciliary of California) was harmed by a defective skateboard owned by the NC event organizer in a competition in NC
	+ The skateboard was sold to the organizer in NC
	+ This type of skateboard is sold in CA
	+ P sues D in state court in CA – PJ?
	+ here we have lots of the same item sold in the forum state – especially good case for category jurisdiction
		- still not clear that even this would be permissible under Goodyear
		- and even less likely given Daimler

**Daimler**

**Ginsburg’s opinion**

Suit in federal court - ND Cal.

Ps are 22 Argentinians

* D is Daimler – Germany

Suit for torture and other atrocities during dirty war brought about by its agent - Mercedes Benz Argentina (MB-Arg)

* Vicarious liability

Why is there SMJ?

* Cause of action under Alien Tort Statute

28 U.S. Code § 1350 - Alien’s action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

* This gives jurisdiction in federal court – the relevant tport in Daimler was that the law of nations (in particular, customary international law) was violated by MB-Arg’s actions
* why is this tort an action that Congress can send to federal court
	+ Not alienage or diversity
	+ Must be arising under
* In fact, law of nations is considered federal common law
* NOTE a year before Daimler was decided (but after the Daimler case was filed), the SCt held in Kiobel v. Royal Dutch Petroleum that the Alien Tort Statute does not apply to activities in other countries – only in US or on high seas
	+ So even if there was PJ the action would have been dismissed
* There was also another federal law sued under - Torture Victim Protection Act of 1991
	+ But the SCt also held that it does not apply to corporations
* So in the end the plaintiffs would have lost
* But what about PJ?
* Why are we concerned with whether a Calif. court will have PJ under the 14th A?
* Because of FRCP 4(k)(1)(A)
* Federal court can assert PJ only if state court where federal court is located could