Lect 19

**McIntyre**

three opinions  
  
Kennedy’s (4)

Breyer (concurring) (2)

Ginsburg (dissenting) (3)

Was there power over the UK defendant?

* Kennedy’s opinion.
* Adopts O’Connor’s opinion in Asahi
* “The principal inquiry in cases of this sort is whether the defendant’s activities manifest an intention to submit to the power of a sovereign….Sometimes a defendant does so by sending its goods rather than its agents. The defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.”
* “These facts may reveal an intent to serve the U. S. market, but they do not show that J. McIntyre purposefully availed itself of the New Jersey market.”
  + **BREYER?**
* Breyer claims that there would be PJ if there was O’Connor’s extra something directed to the NJ OR there was a “regular flow” or “regular course” of sales in New Jersey.
* What does this sound like in Asahi? – stevens/brennan
* But there was neither an O’Connor extra something nor regular flow
* Here, the relevant facts found by the New Jersey Supreme Court show no “regular … flow” or “regular course” of sales in New Jersey; and there is no “something more,” such as special state-related design, advertising, advice, marketing, or anything else. Mr. Nicastro, who here bears the burden of proving jurisdiction, has shown no specific effort by the British Manufacturer to sell in New Jersey.
* What about Ginsburg’s approach?
  + D wants to distribute anywhere in US - she thinks that is enough for a foreign D to be subject to PJ in the state where the harm arises.
  + “In sum, McIntyre UK, by engaging McIntyre America to promote and sell its machines in the United States, “purposefully availed itself ” of the United States market nationwide, not a market in a single State or a discrete collection of States.”
* Different approach when you have a foreign manufacturer
* Question is only relationship to US as a whole

no issue of the fair and reasonable allocation of adjudicatory authority among States of the United States is present in this case. New Jersey’s exercise of personal jurisdiction over a foreign manufacturer whose dangerous product caused a workplace injury in New Jersey does not tread on the domain, or diminish the sovereignty, of any sister State.

* Since McIntyre has sufficient connections with US as a whole, there is PJ

McGee factors?

* Kennedy – doesn’t mention – not relevant because no power
* Breyer seems worried about the NJ SCt’s approach, which would see small Ds being subject to PJ when there is no regular flow of products to the forum state but they could reasonably foresee that their product would go to forum state
* A rule like the New Jersey Supreme Court’s would permit every State to assert jurisdiction in a products-liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) to a national distributor, no matter how large or small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue. What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an Appalachian potter) who sells his product (cups and saucers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii).
* But couldn’t the McGee factors solve such problems?
* As Ginsburg argues, the McGee factors are in favor of PJ in McIntyre itself

Is it not fair and reasonable, given the mode of trading of which this case is an example, to require the international seller to defend at the place its products cause injury? Do not litigational convenience and choice-of-law considerations point in that direction? On what measure of reason and fairness can it be considered undue to require McIntyre UK to defend in New Jersey as an incident of its efforts to develop a market for its industrial machines anywhere and everywhere in the United States? Is not the burden on McIntyre UK to defend in New Jersey fair, i.e. , a reasonable cost of transacting business internationally, in comparison to the burden on Nicastro to go to Nottingham, England to gain recompense for an injury he sustained using McIntyre’s product at his workplace in Saddle Brook, New Jersey?

* which opinion is binding on the power question?
* Breyer’s bc it is the narrowest grounds for the decision (namely, no PJ)

Intentional torts

* Does not fit the Intl Shoe quid pro quo theory very well
  + D is not really getting benefit of protection of forum state’s laws
* but still need some Int’l Shoe idea of D reaching out to forum state
* Calder v Jones
  + - Floridian Nat’l Enquirer writer and editor were sued, along with publisher and distributor, for defamation in CA state court by CA resident  
    - Writer and editor argued no PJ in CA because they had no control over where the distribution was  
    - SCt held unanimously there was PJ

Compare now Walden v Fiore

* Ps Gina Fiore and Keith Gipson went from Vegas to San Juan PR
* Returned via Atlanta
* In San Juan federal officers had found $97,000 in U.S. currency on Ds
* DEA Walden stopped them in Atlanta and seized money
* Also Walden allegedly made false probable cause affidavit later
* Ultimately returned money
* Ps sued Walden in D. Nev. For 4th Amendment violation
* Walden moved to dismiss for lack of PJ
* District Court granted the motion
* Ninth Circuit reversed, holding that the court did have personal jurisdiction because Walden intentionally caused foreseeable harm in Nevada by falsifying the probable cause affidavit
* SCt reversed

What’s the difference between Walden and Calder?

* Why isn’t it enough that the D performed actions that he knew would cause harm in NV
* Isn’t that the same thing that happened in Calder?
* NO – knowledge of causing harm in forum state not enough on its own
* In Calder, the reporter and editor didn’t just do things that they knew would cause CA harm
  + They wrote about events occurring in CA
  + some sources were based in CA
  + they wrote about a Californian

in Walden however, D just wanted the money –the activities were not directed to the forum state

- Foreign terrorist kills Americans abroad  
- He knows they are Americans  
- He is sued by the families in U.S. in a U.S. court   
- PJ?

- may depend on whether D killed them because they were Americans – that would probably be reaching out to the state – otherwise harder

Shaffer v. Heitner

Marshall 1977

- Heitner brought shareholder derivative suit against officers and directors of Greyhound in state ct in Del

What is a shareholder derivative action?

Action by shareholder brought on behalf of corporation

Brought when officers and directors of corporation have failed to pursue action

–Usually because they themselves are the defendants in the suit

Damages from action go to the corporation, not to the shareholder

P claimed D violated fiduciary duties to corp by acting (in Oregon) in manner to submit corp to antitrust liability

- P filed motion to sequester Del property of defendants

- property was shares of Greyhound

- by law Del was considered the situs of all Del stock

- quasi in rem action

* note that Del statute did not allow limited appearances

Notice?

- Ds notified by certified mail and through publication

- Ds made special appearance to quash service and vacate sequestration order

- arguing no PJ under Int’l Shoe

- and sequestration did not comport with due process

- Del state cts denied

- quasi in rem PJ satisfied Pennoyer

SCt reversed on PJ question

SCt holds that quasi in rem actions should be examined from the Int’l Shoe perspective

What about this argument for quasi in rem…?

The primary rationale for treating the presence of property as a sufficient basis for jurisdiction to adjudicate claims over which the State would not have jurisdiction if International Shoe applied is that a wrongdoer

"should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an in personam suit." Restatement 66, Comment a.

good argument?

- No could get judgment where there is in personam jurisdiction, then bring action on judgment in state where property is. Do not need possibility of quasi in rem.