Lect 17

Consider now the Int’l Shoe power theory in Contract cases

Californian calls Oregonian and offers him $100,000 if he performs work in Nevada. The Oregonian has made no advertisements encouraging offers. The Oregonian agrees. The Californian sends the Oregonian $50,000 as a deposit. The Oregonian performs the work. The Californian thinks the work is sub-standard and refuses to give the Oregonian the other $50,000.

Is there PJ in California state court for the Californian's suit against the Oregonian for return of the $50,000 deposit?

No – Oregonian did not reach out to CA

Is there PJ in Oregon state court for the Oregonian's suit against the Californian for the remaining $50,000 under the contract?

Yes – Californian reached out to Oreg.

Is there PJ in Nevada state court for the Californian's suit against the Oregonian?

Yes – the Oregonian reached out to Nevada by choosing to contract to work there

For the Oregonian's suit against the Californian? Yes – the Californian reached out to Nevada by sending the Oregonian to work there

NOTE tendency in *contracts* cases to look to initiator of relationship

* who was first to reach out? (including through advertisements)

Now move on to contracts to purchase goods

3) Chung v. NANA Development Corp.
783 F.2d 1124 (4th Cir. 1986)

Va. P goes to Alaska to buy reindeer horns from Alaska D. Wants them to remain frozen. Requests that the D ship some of them to him in Va. When they arrive in Va. they are melted. P sues D in federal court in Va. PJ?

- why did the court hold that there was NO pj? Some possibilities...

* D did not regularly ship products to the forum state
* It was the P’s idea to ship the reindeer horns to the forum state
* The P reached out to the D first, by going to Alaska
* No evidence that the D advertised or reached out to Virginia in any other way except by sending the reindeer horns at the P’s request

compare

 Thompson v. Chrysler Motors Corp.
755 F.2d 1162 (5th Cir. 1985)

Miss. P goes to Ala. D to buy car. Returns with car to Miss. Car has problems, P makes many phone calls to Ala. and returns a number of times to Ala. for repair. Finally D ships a master cylinder to P in Miss. for use in repair there. Cylinder is defective and accident occurs. P sues D in Miss. state court. PJ?

* Here the court found PJ
* Differences?
	+ Tort rather than contract?
	+ It was the D’s idea to send the product to the forum state

Finally, consider problems of websites

* Bensusan Restaurant Corp., v. King, 937 F.Supp. 295 (S.D.N.Y.1996) –
* Bensusan, the operator of a New York jazz club sued the operator of a Missouri jazz club for trademark infringement.
* The Internet Web site at issue contained general information about the defendant's club, a calendar of events and ticket information.
* However, the site was not interactive.
* If a user wanted to go to the club, she would have to call or visit a ticket outlet and then pick up tickets at the club on the night of the show.
* The court refused to exercise jurisdiction based on the Web site alone, reasoning that it did not rise to the level of purposeful availment of that jurisdiction's laws.
* Something like the Zippo test was relied upon in Bensusan
	+ looks to the level of interactivity of the web site
	+ Higher level of interactivity: one is able to purchase products through the website – more likely to find personal jurisdiction where the web site was viewed
	+ vs Passive website –unlikely to find personal jurisdiction

Note: very often personal jurisdiction problems are solved through choice of forum clauses that are accepted when one transacts with a web site

* Now: Particular problems with specific jurisdiction—out of state activities having in-state effects
* in particular products that make its way into the forum state through intermediaries
* three cases WWVW, Asahi, McIntyre

World-Wide Volkswagen v. Woodson (White)

- Harry & Kay Robinson bought an Audi from Seaway Volkswagen (NY)

- Driving to new job in AZ, car struck their Audi in rear in OK, fire

- Robinsons brought products liability action in state ct in OK

- claiming a defective gas tank

- sued Seaway, Worldwide Volkswagen (regional distributor), Volkswagen of America (importer) and Audi (manufacturer)

- Seaway and Worldwide made special appearances, claiming PJ over them was a violation of due process

- state ct rejected claim

- Worldwide & Seaway sought a writ of prohibition from OK SCt – denied

- What is writ of prohibition?

* Also known as writ of mandamus
* Order from an appellate court to a trial court
* Available when trial court is acting clearly without authority
* This is why Woodson (the judge) is mentioned in the case’s title
* why did they have to ask for this?
* Why not appeal?
* The problem is the final judgment rule for appellate jurisdiction
* The refusal to dismiss for lack of personal jurisdiction is not a final judgment, because the case continues on
* Nevertheless such a refusal is a good candidate for immediate appeal, because it is wasteful to allow the case to continue, come to judgment for the P, and then appeal the personal jurisdictional issue
	+ If the court of appeals concludes that there was no personal jurisdiction, the judgment will be void and all that time and money will have been wasted

- in Federal Court, this would be brought as an interlocutory appeal, but it appears that in Oklahoma a writ of prohibition is used instead

- in Federal Court, don’t try to use a writ of mandamus to circumvent the final judgment rule and get immediate appeal of the decision by the trial court you don’t like

- it is really only for egregious acts by the trial court

- SCt granted cert

-reversed

1) Why are they suing Worldwide and Seaway anyway? Blackmun’s question

- after all, deep pockets are importer and manufacturer

- Seaway and WW VW are New York citizens

- the Robinsons are also New York citizens

- Volkswagen of America and Audi are New Jersey and German citizens respectively

- the Robinsons joined New Yorkers as defendants in order to defeat removal of the case

- this is not fraudulent joinder as in the Pete Rose case, for the Robinsons really do have causes of action against the New York defendants

- but they have to be able to get personal jurisdiction over those defendants

- after the SCt’s decision, which removed the New York defendants, the remaining defendants removed to Federal Court, which ultimately granted summary judgment to the defendants

2) One relevant issue was the Oklahoma long-arm statute

 a) long-arm statute

Okla.Stat., Tit. 12, § 1701.03(a)(4) (1971)
A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state . . . .

* Just because a state has the power to assert personal jurisdiction over a defendant doesn’t mean that it has chosen to exercise that power
* In long arm statutes, states make their decision about when they want to assert personal jurisdiction over out-of-state defendants
	+ The Oklahoma long-arm statute is an enumerated one
		- It spells out particular types of actions where the state wants to assert personal jurisdiction
		- That means that there might be some actions where the state has the power to assert personal jurisdiction over the defendant but uses not choose to because it’s not enumerated in the long-arm statute
	+ California-style long arm statutes simply says that the court will assert personal jurisdiction up to the limits of due process
	+ NOTE: concerning some enumerated long arm statutes, the state supreme court has said that the statute should be read “up to limit of due process”
		- That does not mean that it turns the enumerated long-arm statute into a California-style long-arm statute
		- Usually means only that the particular provisions in the long-arm statute will be read generously, unless a reading goes beyond what is allowed under due process

In WWVW the SCt articulates two conceptions of PJ protection

* 1. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system. The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness."
* The considerations of reasonableness/fairness are the McGee factors
* But the court makes clear that the McGee factors alone cannot give the forum sovereign power over the defendant

 Retention of power conception

Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

 Is it reasonable to submit the dealer and distributor to suit in Oklahoma? – are the McGee factors satisfied?

 burden on defendant

* + not so great - will pass on to consumers
* forum state’s interest in adjudicating dispute
	+ Strong interest - accident in OK
* P’s interests in obtaining a convenient forum
	+ They are injured and so it is difficult for them to go to the defendant’s home
* interstate system’s interest in obtaining most convenient forum
	+ witnesses are in OK (not in NY) – though some would be in Germany
	+ litigation against Audi and Volkswagen of America will be going on in Oklahoma anyway
		- It is more efficient to join the New York defendants in the same suit

So let’s look to power. What are contacts between NY Ds and the forum?

- no sales in OK

- no advertisements

- no evidence that any car they ever sold ever entered OK before this case

Why isn’t it enough that the use of the car in OK was a foreseeable consequence of the sale in NY?

- purposefully availed themselves of the protection of OK in sense that they were sold on the assumption that the cars could be used in OK

- would turn every chattel into an agent for service of process...?

If foreseeability that car would end up in OK is not enough, what about...

Ohio v. Wyandotte Chemicals

* Pollutants dumped in Mich ended up in Ohio – PJ in Ohio

why?

How do we distinguish Wyandotte from WWVW?

* level of certainty?
* Human agency vs agency of natural processes?

Ct says foreseeability of being haled into ct, not foreseeability that product will enter state is what is important

This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.

- how does one determine whether being haled into court is foreseeable?

- isn’t this the question that needs to be answered?

- Green thinks is circular, though it can be meaningful in justifying PJ in cases where it is very foreseeable that there would be PJ on the basis of established law – eg tagging

Brennan’s dissent:

- basically emphasizes McGee fairness criteria

- should look to whether there is actual inconvenience to the defendant

- inconvenience on Ps to go to D’s home

- interest of forum state in providing plaintiff with forum for relief

* witnesses

**Asahi**

1) motorcycle accident in Cal - Zurcher loses control of his Honda and collides with tractor

- blow out on tire was cause

- he is severly injured

- wife is killed

2) sues in Cal state ct

- Cheng Shin Rubber is D (Taiwanese manufacturer of tube)

3) Cheng Shin brings cross-complaint against co-defendants for indemnification

* joins Asahi

4) other parties drop out due to settlement – left with only Cheng Shin against Asahi

5) Asahi moves to quash service of summons

- ct denies

- Ct App Cal issues peremptory writ of mandate (No PJ)

* SctCal reversed (PJ)
* USSCt reversed (No PJ)

6) What about Cal’s long-arm statute?

- up to limits of 14th A & Cal Const.

7) Asahi contacts w/ Cal?

Eg advertising, solicitations?

 Nothing except fact that component part valve assemblies go into products that it knows are sold in California

8) Level of products in Cal?

- must be in the thousands or even tens of thousands

Justice O'CONNOR announced the judgment of the Court and delivered the unanimous opinion of the Court with respect to Part I, the opinion of the Court with respect to Part II-B, in which THE CHIEF JUSTICE, Justice BRENNAN, Justice WHITE, Justice MARSHALL, Justice BLACKMUN, Justice POWELL, and Justice STEVENS join, and an opinion with respect to Parts II-A and III, in which THE CHIEF JUSTICE, Justice POWELL, and Justice SCALIA join.

start with opinion that has 8 justices in its favor

9) reasonableness? II.B

We have previously explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." (O'Connor)

Here McGee factors are strongly against PJ

- severe burden on D to got to Cal

- no benefit to P of litigating in Cal

- no Cal interest in compensation, Zurcher already has his money–

- except CA interest to extent that indemnification would deter Asahi and those similarly situated from creating products used in other products that are sold in CA and cause harm there

- what law applies?

- Taiwanese or Japanese...?

- no Cal witnesses (probably) concerning indemnification

 McGee factors are ground for decision

irony that reasonableness, which was used to expand pj in McGee can now be used to restrict it

This is new law that makes Asahi relevant