Lect. 19

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 US (so at least PJ in US, even if not in a particular 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.

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

* Quasi in rem is difficult to justify under International Shoe, because the contact with the forum state (the property) is unrelated to the cause of action.
* To argue that the contact is sufficient to allow the defendant to be sued on any cause of action, one would apparently have to argue that the contact is substantial and continuous under Int’l Shoe
* But it is hard to see how that is so
* For example, in Daimler, Mercedes Benz USA owned property in California and the SCt presumed (for the purpose of argument) that MBUSA’s contacts with California could be imputed to Daimler. So that means that, in effect, Daimler owned property in California. And yet it did not follow that Daimler could be sued on any cause of action in California.
* But perhaps it makes a difference that in a quasi in rem action the quantum of adjudicative power that the forum state possesses is limited by the value of the property?
  + In general in personam jurisdiction, the defendant can be sued on any amount
  + Quasi in rem is limited by the property
  + Maybe that makes it more compatible with international shoe?

How far does Shaffer go?

* The property at issue in Shaffer was not unambiguously within the state of Delaware
* What about more common cases of quasi in rem, for example when the property used is real property (land, houses) or a bank account?
* Powell’s arg.
* I would explicitly reserve judgment . . . on whether the ownership of some forms of property whose situs is indisputably and permanently located within a State may, without more, provide the contacts necessary to subject a defendant to jurisdiction within the State to the extent of the value of the property. In the case of real property, in particular, preservation of the common law concept of quasi in rem jurisdiction arguably would avoid the uncertainty of the general International Shoe standard without significant cost to “traditional notions of fair play and substantial justice.  
  Shaffer v. Heitner (Powell, J. concurring)

Stevens suggest the same thing

* How might one make an exception for real property and bank accounts
* Could one say that in those cases one could reasonably anticipate being subject to personal jurisdiction as a result of owning land or having the bank account in the state?
* Notice the difference between this argument and the Int’l Shoe quid pro quo theory
  + under Int’l Sh. there has to be an appropriate relationship between the level of benefit one is getting from the forum state and the forum state’s personal jurisdictional power
  + The personal jurisdictional power has to be a fair price for the benefits
  + Under this new theory it doesn’t matter whether the personal jurisdictional power is appropriate given the benefits one gets from the forum state
  + All that matters is whether one is on notice that one will be subject to the personal jurisdictional power by willingly establishing the contact with the forum state
  + Quasi in rem jurisdiction may be a very high price to pay for owning real property in the forum state, but at least one is on notice that that is the price
  + in Shaffer there was no notice however, because of how unusual the forum of quasi in rem was

Could one argue that there is specific personal jurisdiction in Delaware? In other words, if one sets aside the shares, could one argue that the defendants reached out in other ways to the state of Delaware and that these contacts with the state are related to the cause of action?

- no evidence the defendants ever set foot in Delaware, or send any piece of paper to the state

- but they willingly established a relationship with a Delaware corporation

- it is only due to the state of Delaware that they have a job at all, and the cause of action is related to that job

- furthermore Delaware law protects the defendants – if the corporation breached its duty to them the defendants might be able to sue the corporation under Delaware law

- Brennan thinks this is enough for personal jurisdiction

- Green thinks that the fact that the SCt didn’t find specific in personam jurisdiction is a result of the SCt’s fetishizing physical contact with the forum state

McGee factors also argue in favor personal jurisdiction in Shaffer

- strong interest by Del in supervising management of a Del corporation

- the plaintiff’s action against the defendants is under Delaware law

- one needs a forum where all if the officers and directors can be brought together as defendants

what about this argument by Marshall?

[T]he strong interest of Delaware in supervising the management of a Delaware corporation]…is said to derive from the role of Delaware law in establishing the corporation and defining the obligations owed to it by its officers and directors. In order to protect this interest, appellee concludes, Delaware's courts must have jurisdiction over corporate fiduciaries such as appellants.

This argument is undercut by the failure of the Delaware Legislature to assert the state interest appellee finds so compelling. Delaware law bases jurisdiction not on appellants' status as corporate fiduciaries, but rather on the presence of their property in the State. Although the sequestration procedure used here may be most frequently used in derivative suits against officers and directors, the authorizing statute evinces no specific concern with such actions.

Green: perhaps the Delaware legislature didn’t pass a statute directed at officers and directors, because the statute that allowed for quasi in rem actions on the basis of shares in Delaware corporations worked well enough to generate personal jurisdiction over officers and directors of Delaware corporations

* Such officers and directors usually had shares in their own corporation
* In any event, why is the SCt telling Delaware courts what Del’s interests are?
* Isn’t that a matter for Delaware officials to decide?

- notice that after Shaffer the Delaware legislature passes a statute under which those who become officers and directors of Delaware corporations consented to an agent for service of process within the state…

So the SCt was wrong about Del’s interests after all

**What about in rem actions?**

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?

No – assume someone out of state is adversely affected by the CA judgment

* that means they are claiming an interest in CA property  
  furthermore, the action concerns that very contact...
* so Int’l Shoe is satisfied

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?

* Shares are insufficient as a source of quasi in rem PJ
* - but probably would be OK if the matter was in rem