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**CIVIL PROCEDURE**

**PROFESSOR GREEN**

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**9/11/17 CLASS NOTES**

* Pennoyer Framework
	+ Timing - What is within forum at time of **litigation** (not at time of event being adjudicated)
	+ Unwilling defendants outside of the forum without property in the forum cannot be forced to appear
* *International Shoe v. Washington* (US 1945) (p179)
	+ If defendant receives benefits from forum state, those benefits create an obligation to return to jurisdiction
		- Background - privileges and immunities clause was making it difficult for states to use the fiction of an implied appointment of an agent for service of process to get PJ over individual defendants for all types of past actions in the state – this new theory avoids the reliance on the fiction
			* Could not forbid an individual from doing business or travelling in the state, so could not condition an individual’s doing those things on an appointment
			* Commerce Clause was making it difficult for states to use the fiction of an implied appointment of an agent for service of process to get PJ over corporations for all types of past actions in the state
				+ Could not forbid a corp from engaging in interstate commerce, so could not condition a corp’s doing that on an appointment
	+ Black’s concurring opinion – worried that vague moral standards are being read into Due Process Clause (certain theory being read into clause; will vary and nothing can restrain Justices from concluding that states have violated due process aside from Justices’ moral views)
* Two categories of in personam jurisdiction under Int’l Shoe
	+ (1) Substantial continuous activity in forum state leads to PJ for all causes of action, even those distinct from activities in forum state (general jurisdiction)
	+ (2) Single or occasional acts in forum state leads to PJ for causes of action arising out of or related to those activities (specific jurisdiction)
* *McGee v. International Life Insurance Co.* (US 1957) (p185)
	+ Learning Goal - How specific in personam jurisdiction works
	+ Case that was appealed to USSCt – TX state court refused to enforce judgment of CA court (a default judgment against TX life insurance company)
		- Beneficiary’s TX cause of action – suing insurance company for debt created by the California judgment
			* Judgment creates a debt
				+ AND collecting the debt requires new cause of action (debt collection action) brought where the judgment debtor has assets
				+ There are many defenses to the debt collection action that could not be brought up in the original action

E.g. bankruptcy

* + - Life insurance company argued there was no judgment debt because the CA judgment was void due to want of personal jurisdiction
	+ Original CA case – plaintiff, a beneficiary of the life insurance policy of her son, sued for breach of contract because company would not pay on policy - life insurance company defaulted (did not show up); company had argued that death was not covered by policy because it was due to suicide
		- By defaulting on first judgment, cannot challenge liability on contract action collaterally if judgment is determined to be valid because there was PJ
		- Ins Co was taking a big chance
		- But there was a benefit too – by defaulting and waiting for the plaintiff to sue on the judgment in TX (where the D had assets), TX courts would be determining the PJ of the CA ct – this is a collateral attack
		- If they had challenged PJ before the CA state ct (that is, made a direct attack), the CA ct would be determining its own PJ
		- Unfortunately for the D, the USSCt took the case on appeal from the TX courts and held there was PJ
	+ Only contact by Company in CA - mailed reinsurance certificate (contract) to CA
		- BUT despite small contact, the contract that P was suing on was that very document
		- Small contact but cause of action closely related to the contact
	+ Court’s rationale was problematic though
		- Contract had substantial connection to the state (contract delivered in CA, premiums were mailed there, insured resident there) BUT premiums and insured’s residence are things that insured had control over, not the D
		- SCt also said CA has interest in providing a forum (residents forced to travel far redress)
			* McGee factors don’t match International Shoe theory of power
		- They become an independent set of considerations besides Int’l Shoe power theory
	+ Hypotheticals
		- Original contract (insurance policy) with TX resident; insured then moves to CA, continues to mail premiums; PJ?
			* Probably not, because D did not make insured move – not something that D did to reach out to CA
				+ Does not satisfy Int’l Shoe power theory
			* Only argument is that D chose to keep relationship going with Californian by taking premiums
				+ Could disallow renewal of policy and possibly prevent PJ…
	+ Glannon suggests that there will always be PJ when a company ships a product to the forum state
		- Green – usually but not always -
		- *Chung v. NANA Development Corp.* 783 F.2d 1124 (4th Circ. 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 Va.
			* no PJ
			* here the D did not reach out sufficiently to VA
				+ it was the P’s idea to ship
				+ it was a one-off shipment (not regular course of conduct)
				+ maybe it also matters that this was a contract case and not tort
				+ shipping a dangerous product to VA might create PJ for an accident concerning the product in VA even if it was a one-off shipment that was the P’s idea
		- No hard and fast rules – have to focus on what defendant did to reach out intentionally to the forum state (creativity allowed)
			* Emails, letters, etc. mailed to forum state are helpful factors to consider
	+ TERMS: Petitioner / respondent – when SCt grants certiorari the person requesting cert (the appellant) will be called petitioner, the one opposing (the appellee) will be called respondent
* *World-Wide Volkswagen v. Woodson* (US 1980) (p
	+ Why is judge being mentioned (Woodson)? Defendants requesting writ of prohibition (or mandamus) from TX court of appeals against trial judge’s conduct
		- This is a way of getting immediate appeal of a trial court’s decision that there is PJ
	+ Facts – Robinsons suing four defendants (Audi, distributor – VW of America, local distributor Worldwide VW and Seaway) for product-liability stemming from car accident in OK; two defendants arguing against personal jurisdiction
	+ Procedural history – state court finds personal jurisdiction; two defendants request writ of prohibition / writ of mandamus (only possible in case where serious wrong in trial court)
		- Why didn’t they appeal instead of writ? No final judgment
	+ Why including Seaway and World-Wide VW? (plaintiffs still New Yorkers)
		- Joinder to prevent diversity (cannot be removed to federal court)
		- Worried about summary judgment for defendants in federal court (actual result later on after actions against New York Ds were dismissed and the case was removed)
		- Goal to join diversity destroying defendants (recall plaintiffs’ domicile is still NY)
	+ USSCt makes clear: McGee factors on their own cannot give rise to PJ (despite McGee factors’ strength in this case)
		- How do they apply?
			* Burdensome for defendant to appear in OK (not really)
			* Burdensome for plaintiffs to return to NY (yes - still injured)
			* OK has interest in providing a forum for litigation about exploding car accidents in its borders
				+ Usually product-liability actions apply law in state of purchase or place of harm
				+ So OK law would apply – another OK interest
			* Witnesses located in OK
	+ How did Seaway intentionally reach out to OK?
		- Plaintiffs’ rationale - sold an automobile (made to travel; no exclusion on travel) that they knew could go to OK and got economic benefit from this fact
			* But SCt holds too attenuated a relationship
	+ Compare: Ohio v. Wyandotte Chemicals (U.S. 1971) – pollutants dumped in Mich by D, but reached OH
		- Here there was PJ in OH
		- What is the difference? Why PJ in Wyandotte but not in WW VW?
		- Question of how certain one is that the product would end up in the forum state?
			* Problem with that theory – it would suggest that Seaway would be subject to PJ in NJ – it is certain that Seaway cars go to NJ
			* But SCt would still say that Seaway had not reached out to NJ
		- Question of natural process vs. human intervention?
			* plaintiffs drove to OK – if that is enough for PJ, then plaintiff controls PJ (which is supposed to be determined by defendant’s conduct NOT plaintiff)
	+ WW VW is NOT a stream of commerce case (ex. of stream of commerce is buying and selling is way product got to forum state; not movement by buyer)
	+ foreseeability that product would enter forum state is not the test – what it is relevant that D could foresee that as a result of its actions it would be subject to PJ and that was not satisfied in WW VW
		- Green: this is circular
			* How can you use what is foreseeable as PJ to determine the principles of PJ?
				+ Don’t you use the principles to determine what can be foreseen?
			* If the SCt had said that there was PJ in WW VW, after that companies would foresee PJ in OK whenever they sold a car in NY
	+ Brennan’s dissent – basically McGee factors on their own should be used
* Intentional torts
	+ *Keeton v. Hustler Magazine* (US 1984) (p201)
		- Easy case
		- PJ in NH for defamation action against Magazine that had thousands of sales monthly in NH
			* Real problem is that plaintiff had small connection with NH – SCt held that P’s connection was not relevant to PJ over D
	+ *Calder v. Jones* (US 1984) (p202)
		- Found PJ over FL writer/editor for plaintiff’s defamation action in CA state court
		- How did the Ds reach out to CA – they did not control where their employer sent the newspaper
		- Choosing to write about CA resident concerning events in CA (sources in CA, etc.); distinguishing factor from *Walden*
	+ *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (p203)
		- In GA, agent takes money from NV defendants; knows they are from NV so knows that his actions will cause harm to them there, but no PJ in NV
		- The agent’s actions were not directed to NV
			* not thinking about anything to do NV when he took the money and wrote the allegedly false affidavit justifying taking the money
	+ Hypothetical – terrorists killed Americans abroad; knows they are Americans; sued by families in US for wrongful death
		- PJ if intended to kill them because they were Americans, because would then direct actions to US
		- But maybe no PJ in US if he did not intend to kill them because they were Americans – even though he knew that by killing them it would cause harm to their families in US
* Hypothetical (slide 45) – intro to *Burger King*
* Next class 🡪 *Burger King!*