Personal Jurisdiction Review

Is there PJ?

Hypos:

All actions brought in federal court (Southern District of NY):

1.Fed civil rights action concerning defendant’s arrest of the plaintiff in Buffalo NY

* D lives in Pennsylvania and is served there
* Yes, there is PJ because there is a relevant connection between D and NY. He was in NY and arrested plaintiff there. Specific PJ.

2.State law product liability concerning a product P bought.

* P bought product in Cal, and was injured by product in Cal.
* Suit is against D corp. (incorporated in Delaware, with its principal place of business in Tennessee)
* D corp. has a large factory in Buffalo, NY and a branch there as well with 10,000 employees.
* D corp. was served through service on its chief legal officer in NYC
* No PJ because they aren’t at home in NYC (Daimler) and there is no specific PJ. Tagging of officer cannot create PJ for a corp.

3.State law battery action concerning brawl between P and D in Cal.

* Plaintiff is citizen of Cal. and Defendant a citizen of NY.
* Defendant is served while on a business trip in Cal.
* Yes, there is PJ because D is a citizen of NY. Domiciled there.

4.Action by P from NY against D from Germany for breach of German contract law concerning a contract signed in Germany with performance in Germany.

* Defendant is served in Germany
* At the initiation of the suit P had the federal court attach the assets of a trust that had been created by the German’s mother with the German as the beneficiary.
* Assets are located in NYC and the defendant is served in Germany
* There is arguably not PJ because it’s a quasi in rem action, and it doesn’t satisfy standards set forth in Int’l shoe, and Defendant couldn’t reasonably foresee being haled into court in NY, because the trust is controlled by D’s mother. This is more like Shaffer than it is like the classic cases of quasi in rem that are still brought, where the P uses real property or a bank account of the D in the forum state

5.Action by P (NY) against D from Cal. for violation of federal antiterrorism act

* Ds alleged violations all occurred in Iraq
* D is served in Cal.
* There is not PJ because a NY state court would not have jurisdiction. Def was not served in NY or domiciled there and although it was a federal action, there is no federal jurisdiction in Cal.
* Notice that FRCP 4(k)(2) won’t work. That says:

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a  
waiver of service establishes personal jurisdiction over a defendant if:  
  
(A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and  
  
(B) exercising jurisdiction is consistent with the United States Constitution and laws.

* + Here the D is subject to PJ in Cal., his domicile
* 4(k)(2) works with federal law actions against foreigners for actions abroad. No PJ in state court but there can be an argument that there is PJ connection to the US (Green: especially since 5th A. due process conceptions of PJ on foreigners tend to follow int’l law more than Int’l Shoe and int’l law is less defendant protective).

6.While WWVW is going on, the Robinsons are sued by P from Oklahoma for non-payment of medical fees sustained in OK.

PJ?

* You may argue that there is PJ because the Robinsons are still domiciled in NY. Domicile is a traditional form of jurisdiction under Pennoyer framework. You must argue that domicile of this sort (no longer a connection with NY, even though they are domiciled there) is sufficient for PJ post-Int’l Shoe

Prof. Green says that a court would likely say there is insufficient contact here for PJ.

They are domiciled in NY for SMJ (so this is a diversity case), but that does not mean that there is general PJ over them in NY

Just because language suggests that SMJ exists in this situation, you cannot assume that that language applies to PJ as well.

It seems to be a working theory of the Supreme court that everything that can be sued must be subject to general jurisdiction in some place, independent of tagging.

Prof. Green says that in the Robinson hypo this place would likely be Oklahoma because it is where the Robinsons are now residing (though not domiciled). According to Prof. Green, this would also be a nice Hypo to bring up the McGee factors in connection with general PJ.

**Three themes of Civil Procedure**.

FIRST – balancing…

1.Accuracy

2.Autonomy (and other interests, e.g. privacy)

and

3.Efficiency-Not making things too expensive to resolve.

SECOND Structure of American legal system

* Relationship between the state legal systems and the federal legal system.

THIRD Statutory interpretation.

* Green will use the term “statutory” broadly to refer to language created by lawmakers that is not in a case – eg FRCPs, constitutional provisions, in addition to statutes

**Notice and Service of Process**

**Due process restriction on notice**

* Whether the method of notice is constitutional or not.
* Whether the attempts made by the P to notify the D of the lawsuit that’s been filed.

If it’s not constitutional then the judgment will be void.

Hypothetical systems of notice:

System 1

* No service on defendant ever.

Very cheap, but creates many problems. It disregards interests of the Defendant. Results in many default judgments which is problematic because autonomy of the Defendant is violated. Defendant has no opportunity to participate in the lawsuit. Also, we’re always left with judgments for the Plaintiff, so the judgments are not accurate. The law is inadequately applied.

System 2

* No service on defendant ever.
* A guardian is appointed to represent the defendant’s interests.

This system is more accurate than the first system, but the autonomy interests of the defendant are still not respected under this system. D has no chance to participate

System 3.

* No judgment is binding on a party unless there is actual notice of the suit. So no binding judgment possible if D cannot be found.

This respects autonomy of the D but not the P. Also is not very accurate, b/c it essentially amounts to a judgment for the D, even though the P may have a right to relief. This system is not required by due process, and is arguably forbidden by Due process, based on its inaccuracy, and its being contrary to the autonomy interests of the P – P never gets his day in court if the D cannot be found

Mullane v. Central Hanover Bank

What happened in this case?

* Mullane is about a common trust created by the central Hannover bank. There were 113 smaller trusts consolidated into a common trust. There were around 5,000 people who had an interest of one kind or another in the common trust.
* A common trust is like a pension plan. A bank consolidates several smaller trusts in the interest of efficiency.
* There are beneficiaries who have varying interests in the trust. Some have a contingent interest. Some have a future interest.

Proceeding

* The proceeding involved in this case allowed all objections to the way the bank ran the trust for a certain time to be brought up – once it was over the beneficiaries lost their power to challenge bank’s actions as trustee. After judgment they were denied the ability to challenge the trustee’s actions because the beneficiaries were party to a lawsuit and they had a chance to challenge the proceedings. This is like an in-rem action, in the sense that it is a definitive determination with respect to all people in the world about whether or not the proceedings were proper.
* By determining that the proceedings regarding the trust were proper or not, it serves the purpose of ensuring efficiency due to its finality. Also, it means that the executors of the trust don’t have to worry that people will challenge the distribution of the trust to the beneficiaries. If people could challenge after the proceedings it would be problematic because the money in the trust would have already been distributed.
* There is a discussion about whether this is a proceeding in rem or in personam. Thinking in terms of Pennoyer v. Neff it seems like an in rem proceeding. The court says it simply doesn’t matter how you characterize this action because the Due process analysis concerning notice does not depend on which way you characterize it.
* “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

What conclusion does the court come to?

* For those with contingent and future interests, the publication of notice is sufficient.
* For those with beneficiaries whose whereabouts couldn’t be found through due diligence, publication is also sufficient.
* But notice through publication is not sufficient with respect to known beneficiaries. For known beneficiaries, mailed notice is sufficient notice.
* This process of determining sufficiency of notice is a very fact intensive process.

What do you take into account?

* The value of the interest the beneficiaries would lose out on if they were not notified.
* So, if it’s a large amount of money the due process clause requires a more accurate type of notice.
* If it’s small, publication is likely ok.
* The cost of finding a better method of notice is relevant.
* Also, if the beneficiaries have a common interest, it may be sufficient to notify some but not all beneficiaries because each beneficiary has a relatively small interest in the suit, and the interests of one defendant are shared by other beneficiaries, so the interests of those who are not actually notified, are still defended by those who have received notice.

**Fed Rules of Civil Procedure**

**Rule 3. Commencement of Action**

* Civil action is commenced by filing a complaint with the court.

**Rule 4. Summons**

* The summons is separate from the complaint, it shows that a court is claiming power over a defendant.

**Methods of service**

What if the method of service is improper?

* + If you default you can
  + go before that court and make a motion to set aside judgment
  + Or make a collateral attack
    - If you default, and the plaintiff sues on the judgment. The D can collaterally challenge the judgment in those second proceedings

If you find out about the suit despite the inadequate service?

* You can make a motion to dismiss for inadequate service

A court will usually allow challenges of insufficient service by those who got notice. This is sometimes considered a special appearance, although federal courts do not mention that term. If it is a special appearance, you only mention issues of service, not the merits of the case.

Why allow the D to challenge service if they received notice?

Because if you didn’t allow this, the plaintiff would not have much of an incentive to adhere to the rules of service.

**Questions about rules for service for actions filed in federal court concerning individuals, corporations and unincorporated associations when service is done in the US:**

P files action against D in Va. For violation of federal law.

* D resides in Mass.
* P drives to D’s home in Mass and delivers complaint
* D appears in fed court in Va. and makes a motion to dismiss for insufficiency of process.

What results?

Dismissed b/c plaintiff cannot serve process b/c he is a party to the suit.

* Also inadequate process because no summons

What if Mass. or Va. law had said that a party may serve notice?

After all, there is

4(e) Serving an Individual Within a Judicial District of the United States.   
Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by:

1. following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or…

BUT this concerns how to serve, not who may serve – who may serve is in

4(c) Service.  
…  
 (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

Does Mass. Law on how to serve actually apply in federal courts in Massachusetts?

In other words, what’s going on here with the state law in 4(e)(1)?

* Not applied to federal court state court does not have power over federal procedure - it is just incorporated into federal law.
* The language about state law in Federal rules of Civil Procedure is incorporating state laws to a federal rule, for federal purposes.

So why does rule 4(e)(1) make reference to state laws?

* So people aren’t confused about which set of rules to follow. In other words, the federal rules allow Plaintiffs to follow state laws to avoid confusion. This does not mean that state laws regulate federal procedure. The federal rules are simply allowing plaintiffs to follow state laws.

**Hypo:**

1.D is aware he’s being served but will not answer door, so process server lets the copy of Summons and complaint fall at the D’s feet. Server returns a little later to find that the papers are gone.

Is this ok?

The question is whether this satisfies:

4(e)(2)

doing any of the following:  
    (A) ***delivering*** a copy of the summons and of the complaint to the individual ***personally***;

Some courts say this is OK if the server knows that D is present. Server would have to say that this falls under provision of delivering summons and Complaint personally.

2.P files action against D in E.D. of Va. For violation of fed law.

* D resides in Boston. But has a summer home in Martha’s Vineyard.
* P waits 3 months after filing complaint to serve summons and complaint to D at his summer home.
* D appears in E.D. for Va. And makes a motion to dismiss for insufficiency of service of process.

What result?

Won’t be dismissed as long as the three months are no longer than 90 days.

4(m) Time Limit for Service.   
If a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.. . . .

It doesn’t matter if D is served at his summer home, because he was served personally.