* + Why Green hates PJ: main points
    - He doesn’t understand Supreme Court’s priorities
      * There’s emphasis on D’s intentions/protections regarding PJ, but not the same worries about D concerning choice of law
      * Two situations
        + (1) can California constitutionally assert personal jurisdiction over a Nevadan?
        + (2) can California constitutionally extend its law (which creates $1b in liability) to a Nevadan (no liability under Nevada law)?
        + Differences in law can make a difference if you pay money or not; but SCt does not care whether D reached out to state whose law is applied; Supreme Court is expansive on state’s constitutional power to extend its law to an event
        + Idea is when choice of law is so important, why not be solicitous of D as you are for PJ?
    - Also – why treat states like nations?
      * Brennan in WWVW says let’s forget about sovereignty for PJ and just decide if this is good forum – on the basis of the McGee factors
      * The way that the US treats issues of PJ among states is unique – other federal systems do not do the same thing
    - Furthermore, if it’s true that states, when entered into the Union, retained sovereignty, why not look to international law to figure out what sovereign interests there are between states?
      * If Due Process absorbs that, it should absorb international law
        + Like under Pennoyer, read into 14th amendment
        + Under Shoe and beyond, there’s not an attempt to look at international law

Now it’s just Justices’ view of what kind of makes sense under morality

* Shoe theory of power v. convenience/reasonableness (McGee factors)
  + Shoe power theory: All about D’s intentional acts—MUST focus on what D intentionally did with respect to the forum state in order to determine whether forum state has power
  + McGee factors (convenience/reasonableness)
    - Relevant, but won’t create PJ on own
  + In Worldwide Volkswagon
    - If you looked only at McGee you should have PJ, but Supreme Court said you must have power as well
  + Burger King: McGee factors sometimes serve to incline a court toward the conclusion that there is power if it is a borderline case – BUT you still need to have the D reach out to the forum state to some extent – WWVW shows that McGee factors are not enough on their own
  + Asahi: McGee factors on their own can knock a case out EVEN IF power exists
* Puzzling cases: out-of-state activities having in-state effects
  + McGee is like that; but it’s also easy case in sense that D has purposely intended activities to forum state and cause of action was directly related to those activities
* Contract cases
  + Burger King v. Rudzewicz
    - Michiganders want to set up BK (Burger King) franchise and their direct relationships are with Michigan BK office
      * Michigan office says in many cases they need to deal with main office in Florida
        + Send money to Florida
        + Send contract to Florida

Contract under Florida law

States that it was entered into in FL

* + - * relevant that BK is itself demanding connection to Florida
    - falling out and suit brought by BK in federal court in FL
    - SCt finds there is PJ
  + Compare: D (Mich) wishes to buy widget from the P Corp (Fla)  
    he learns about the widget from a P Corp website, which he views in Mich  
    in the ad, D is required to email an order form to the P Corp’s office in Fla  
    the order form says that the contract is entered into in Fla (when the D Corp ships the widget) and is governed by Fla law  
    upon receipt of the widget D is required to send $25 to Fla  
    D does not pay, so P Corp sues D in Fla state ct - PJ?
    - Real worry because contacts from Florida were compelled by P in this case. Is it fair that you would subject D to PJ in Florida?
      * This is what Burger King case is talking about
      * BUT two ways to distinguish this hypo from Burger King case
        + (1) One contact in this case versus ongoing contact with Fl in Burger King case
        + (2) sophistication of business men

you might want to take into consideration of how sophisticated and aware that D is about contact

* + case was in federal court in Florida; why do we care about 14th Amendment?
    - Is it constitutional for federal court in Alaska to assert PJ over you for something that happens in Virginia?
    - Yes it is constitutional because United States is the relevant sovereign.
      * As far as constitution is concerned, it is 5th amendment that matters (about relationships between D and sovereign, the United States)
    - Why talking about 14th amendment?
      * Just because of federal rule of civil procedure (Rule 4(k)(1)(A)
        + About summons and territorial limits
        + You can’t submit someone to jurisdiction in federal ct in that state if they wouldn’t be subject to state court PJ
        + Why have this rule?
* Stream of commerce
  + Out of state actions (putting product into stream) that have forum state effects (by commercial activity)
  + Product gets into forum state where it harms P from commercial activity, not from the actions of ultimate buyer
    - Component part examples
    - Distributor examples
* Asahi Metal Industry Co. v. Superior Court (U.S. 1987)
  + Cause of action
    - Zurcher lost control of motorcycle. He was injured and wife died. He alleges it was on his back tire that lost air unexpectedly and blew up.
    - He sues Cheng Shin (Taiwan) who makes the tires in Cal state ct
      * Cheng Shin brings Asahi (Japan) into case via indemnification
        + Asahi manufactures the tire valve (a component of entire wheel)
        + Indemnification: 3rd party will compensate D for all or part of the $ D paid to P
    - Zurcher’s claim against Cheng Shin/others get dismissed because of settlement, but indemnification action still exists
    - Action is Cheng Shin against Asahi
    - Thousands of Asahi valves make their way into CA and Asahi knows this
  + Supreme Court says no PJ
    - Part II-B of O’Connor’s opinion is law with more 8 justices agreeing
      * Based on McGee factors there is no PJ
        + Burden on D to go to forum

Definitely so here - burden on Asahi to come across Pacific to CA;

* + - * + P’s interest in obtaining relief – esp burden on P to go to D’s home (or place where suit would otherwise be brought)

Here no burden at all – Japan is closer to Taiwan than CA is

* + - * + Interests of forum state

CA would be interested in providing a forum for compensation of Californian harmed in accident in California, but that’s not this case - case only about indemnification now

* + - * + Interstate/international judicial system interest:

Choice of law

Action would probably be under Taiwanese or Japanese law and it is better to have such matters decided by a Taiwanese or Japanese court

Witnesses

Not clear CA witnesses to accident are relevant to indemnification

* + - * McGee factors are so poorly satisfied that there is no PJ
    - Part II-A only had 4 Justices behind it
      * About power in stream of commerce cases
      * Opinion that there is not power in Asahi
      * They knew that their products made their way into CA by the thousands through stream of commerce but O’Connor says not enough
        + D’s awareness does not convert “mere act” of placing product into stream into an act “purposefully directed” toward the forum State
        + Need something more showing intent to serve market in forum state

“Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.”

* + - * Hypo
        + Asahi sells all of its valves to Cheng Shin  
          Cheng Shin just happens to sell all its products in CA and Asahi knows this  
          power over Asahi in CA under O’Connor approach?

No, they know stream of commerce is taking it to California, but still didn’t show intent to serve California market

* + - Brennan’s concurrence
      * He thinks California has power over Asahi (but McGee factors kick it out)
      * Not “eddies of commerce,” it’s a stream (lots of product) and you benefit financially
        + You get protection and benefits from selling of products in California and should be subject to PJ.
      * Green: Brennan’s point of view is driving thought that there is PJ in example where all Asahi’s products end up in CA
    - Steven’s concurrence
      * Not just that you’re aware it’ll end up in forum state, you ramp up production to serve need (which includes those that you know go to CA)
        + This isn’t passive business, you’re creating products knowing they’ll be sold and you’ll benefit
      * Furthermore, concurrence in II-B solves case. Court doesn’t even need to talk about power
    - Glannon thinks there’s no law here; Green thinks that Brennan/Stevens approach is what one should take if it is justified in accepting dicta
      * We have 5 justices in favor and thought there was power; there’s similarity between Brennan and Stevens and can be seen as unified theory
      * You have more lower courts going with Brennan theory
      * If you take the idea of dicta seriously (as non-binding), you won’t have to follow any of the opinions about stream of commerce because they aren’t binding
* J. McIntyre Machinery Ltd v. Nicastro
  + Involved product liability suit in New Jersey state court
  + Guy working in New Jersey lost fingers; McIntyre (an English company that made machine) had US distributor (located in Ohio)
  + P goes after UK company and distributor but distributor is bankrupt
  + No PJ in NJ accd to 6 Justices
  + Kennedy’s opinion
    - O’Connor all over again from Asahi
      * They didn’t intentionally reach out to New Jersey; they had distributor in Ohio but it was for US (not just New Jersey)
      * They reached out to US but not to New Jersey specifically