Lect. 13

1. J. McIntyre Machinery Ltd v. Nicastro
   1. Involved product liability suit in New Jersey state court
   2. Guy working in New Jersey lost fingers; McIntyre (an English company that made machine) had US distributor (located in Ohio)
   3. P goes after UK company and distributor but distributor is bankrupt
   4. No PJ in NJ accd to 6 Justices
   5. Kennedy’s opinion
      1. O’Connor all over again from Asahi
         1. They didn’t intentionally reach out to New Jersey; they had distributor in Ohio but it was for US (not just New Jersey)
         2. They reached out to US but not to New Jersey specifically
   6. 2 justices signed on to Breyer’s concurrence, which is like Brennan/Stevens approach to power in stream-of-commerce cases
      * 1. Breyer thought it wasn’t satisfied in McIntyre because there was not a regular flow of products into NJ
   7. 3 justices signed on to Ginsburg’s dissent
      1. - in cases in which a state court asserts PJ over a foreign defendant (at least in stream of commerce cases) the appropriate contacts only need to be between the foreign defendant and the united states, not the specific forum state
      2. that was satisfied in McIntyre no matter what standard one used for power (O’Connor or Brennan/Stevens)
      3. In international cases no US state is having its sovereignty violated when the forum state accepts the case
2. For specific in personam jurisdiction a cause of action has **to arise from or be related to** the contact in the forum state
   1. there are a couple tests
      1. the broad “but for” test, where a cause of action would not have occurred if the contact had not happened
      2. the narrower “evidence” test requires that the contact be useful evidence of (or more likely constitutes an element of the cause of action).
      3. Green often prefers the “but for” test
      4. Hotel (UK) offer to Mass. Co. for discounted rates on UK hotel  
         Mass. Co. makes reservations for employees to stay at Hotel for a business trip  
         while staying at Hotel, Employee drowns in Hotel pool.   
         PJ over Hotel in Massachusetts?  
         Yes under but for – no under evidence
      5. But sometimes but-for seems too broad-syas there is PJ when there shouldn’t be
      6. Driver, a citizen of New York, is on his way to his summer home in Massachusetts  
         after driving through Connecticut, he hits Pedestrian, a citizen of Connecticut in Massachusetts  
         is Driver subject to specific personal jurisdiction in *Connecticut*?
      7. But for driving through CT would not have cause of action in Mass….
      8. But does not seem like there should be PJ
      9. Say a NY company ships widgets to every state. It sends a defective widget into Pennsylvania where P buys it. P takes it home to Ohio, where P is injured by it. PJ in Ohio state ct?
      10. NY company did not reach out to *Ohio* in a way that was related to P’s cause of action under either but for or evidence test, even though other widgets were sent to Ohio.
      11. But perhaps one can use an even broader understanding of “related to”…?
          1. P’s cause of action is related to the company’s Ohio contacts in the sense that it send the same type of widgets to Ohio that harmed P
             1. Green previously called this “category jurisdiction”
             2. since the same kind of widgets were sold in Ohio, some courts used to be pretty aggressive about ruling that there was Specific In Personam Jurisdiction.
          2. Last year SCOTUS killed category jurisdiction.
             1. Bristol-Meyers Squib v. Superior Court of California
             2. Even if there is a nationwide course of conduct of selling product, incl in Cal, that's not enough to give California specific in personal jurisdiction over out of state claims concerning the product
      12. If our Ohio plaintiff is a co plaintiff with another Ohio plaintiff who bought their widget in Ohio, there still is no PJ.
          1. The court must have PJ over every cause of action (this is assumed, but has not been litigated before SCOTUS)
             1. Constitutionally, just appearing before the court allows general personal
3. The Internet
   1. Zippo Manufacturing Co. v. Zippo Dot com Inc. (W.D. Pa. 1997)
   2. in Zippo, the courts ruled that PJ was available in PA against a CA website for a trademark action on the basis of internet contacts if the website was active, but not if the website was “passive” – interactive, sometimes yes sometimes no depending upon level of interactivity
      1. An active site sends products to the forum state electronically
      2. a passive site is just information – reader cannot interact
      3. an interactive site is sorta in-between
   3. Zippo dot com was active (gave many PA subscribers access to usenet services) so there was PJ in PA
   4. Green: this works here but it should not be used across the board
4. Jackson v. California Newspapers Partnership
   1. Defamation Case
   2. CNP operated a website which alleged that Bo Jackson was abusing steroids
   3. Bo Jackson sued in Illinois for defamation
   4. CNP's website was operated in California, and the court thought it was passive (with respect with to Illinoisians).
   5. Green thinks that the interactivity of a website is a bad heuristic for determining PJ
   6. The court also looked to *Calder* to determine PJ
   7. In Calder there had been contact to witnesses in the forum state, the story was about an event in the forum state, and it was important to the court that the magazine was intended for publication in the forum state.
   8. In this case there was no contact with people in Illinois, the story was not about anything Illinois related (didn’t described the steroid use in Ill) and the website was primarily intended for Californians, especially because No Illinoisians subscribed to the website.
   9. We've basically dealt with a lot of problems in PJ that are similar to internet problems before, don't panic, it's a lot more like old law than you might think.
5. General In Personam Jurisdiction over Corporations
   1. With human beings Tagging and Domicile both allow General PJ
   2. Int'l Shoe also allows general PJ over corporations (and unincorporated associations)
   3. The standard in Int'l Shoe is substantial, continuous activity in the forum state (e.g. General Motors or Wal-Mart would be subject to GPJ almost everywhere), although at least some of the contacts would have to be current
   4. This gets initially addressed by *Goodyear Dunlop Tires Operations v. Brown*
   5. A bus accident outside Paris kills two boys, and their parents sue Goodyear Turkey in NC state court
   6. The court held no PJ
      1. No specific PJ because Goodyear Turkey did not reach out to North Carolina in a way that was related to the cause of action
         1. The tire was made in Turkey and malfunctioned in France
         2. Green: maybe category jurisdiction (or using a very broad understanding of “related to”)? Goodyear Turkey shipped (via a distributor) tires to NC but they were not the same type as the one that caused the accident
      2. Most important: no general PJ
         1. The Supreme court changed the standard to where a Corporation can be “fairly regarded as “at home””
         2. Now Wal-Mart is arguably only “at home” in Arkansas (its PPB) and Del (its state of incorporation)
   7. In Daimler Ag v. Bauman the “other shoe drops”
6. Daimler Ag v. Bauman
   1. During the Argentinian Dirty war, a subsidiary of Daimler (MB Arg) kidnapped and killed Argentinian workers in collaboration with Arg government
   2. Bauman sues Daimler in California federal court many years later
   3. Daimler (Owner of Mercedes-Benz) is based out of Germany
   4. Plaintiff probably failed to state a claim
      1. The main action was the Alien Tort Statute
         1. Probably inapplicable to corporations, probably does not create derivative liability (of parent for sub), probably does not apply to torture etc.
   5. nevertheless, the court had to consider Personal Jurisdiction
   6. why is connection with Cal and the 14th Amendment relevant, given that we are in federal court?
      1. Because of FRCP 4(k)(1)(A) – with a few exceptions, a federal district court cannot assert PJ unless a state court in the state where the federal court is located could
   7. No Specific Jurisdiction because Daimler (or MB Arg) is not torturing these people in California
   8. general jurisdiction?
      1. Obviously a bad forum for action
         1. Forum non conveniens: a court can refuse to take a case even though it has PJ because it thinks it is a bad forum (will discuss later)
      2. But why not simply claim (like in Asahi) that whether or not there is power, PJ does not exist because it is unreasonable
         1. *McGee* factors. (Although those have never been brought up in the context of General Jurisdiction)
         2. Sotomayor says that rather than erecting a new theory of general jurisdiction of corps, they should reject this case on the basis of reasonableness