**State long arm statutes**

* Remember long arm statutes: Cannot go beyond the 14th Amend. They can be less though. In fact, many states do less.
* California and other states have state longarm statutes that goes up to the limits of the 14th Amendment.
* Illinois style – specifies certain cases where PJ over out of state D will be asserted However, this still leaves out a lot of different areas of possible PJ that would be constitutional
* Some courts have said about their Illinois-style long arm statute - “Read up to the limit of Due Process/” This means, read the language as generously as possible. But this still doesn’t mean the state has a Cal. version of incorporating everything allowed in the Constitution.

***Tagging Practice Examples:***

P sues D in state court in New York  
D defaults  
P sues on the default judgment in state court in CA  
D argues that NY state court did not have PJ under the 14th Amendment  
should D offer any other arguments?

He should argue that there was no PJ under NY long arm statutes! Also should say that there is no PJ under NY Constitution. NY Constitution and limits on Due Process might be more restrictive than the U.S. Constitution.

(Sometimes state judges like to make it more restrictive to show their Constitution matters)

***PJ in Federal Court***

* We’ve been saying federal court has PJ whenever the state court in which it is located has PJ. That is because of FRCP 4(k)(1)(A)
* As a constitutional matter all that matters in federal court is 5th Amendment Due Process contacts with US – matters only when you have D who is abroad
  + Furthermore, there is a tendency in federal courts to set aside International Shoe and use International Law standards when trying to bring in international defendants.
* 4K1A exists to keep people from suing in really inconvenient places.
* Rule 4K1C – some federal statutes have their own personal jurisdiction provisions that override 4K1A

***A few exceptions* to the 4k1A rule**

-Claim that arises under federal law when no state court can have personal jurisdiction. Almost always over something that happened abroad, BUT the United States has personal jurisdiction.

4(k)(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.

P (Va.) brings suit in federal court in Virginia against D, a German domiciliary residing in Germany, for a battery that the German committed against him in New York  
- D has no other contacts with the United States besides the brief trip to NY during which the alleged battery occurred  
- D is served in Germany  
Is there PJ?

Will 4K1A work here? No! No connections under any theory to VA

Could 4K2? No! Not under federal law AND there IS PJ in NY

Saudi terrorist is sued under a federal antiterrorism act allowing for American victims of foreign terrorism to sue for damages  
- the alleged acts of terrorism in this case occurred in Saudi Arabia  
- the action is brought in federal court in New York. Is there PJ?

This is an example where 4K2 might be used. Hard to find a story where a state would have PJ.

What about 4(k)(2) and Daimler?

Ps only brought it up on appeal and so waived it

Would it have worked

* Federal action
* No PJ in any state court
  + No specific because cause of action arose abroad
  + No general because Daimler s not at home in any state
* But is there PJ with respect to the US under the 5th A?
  + Arguably no –
    - No specific because cause of action arose abroad
    - No general because Daimler is not at home in US
* Green: BUT it is common in 4k2 cases for the court to use international law principles of PJ, which are more generous, in order to determine whether there is PJ under the 5th A

Is there PJ?

All actions brought in SDNY

A federal civil rights action concerning the defendant’s arrest of the plaintiff in Buffalo, NY. Defendant lives in Pennsylvania and is served there.

Yes – specific PJ in NY for 4k1A satisfied

- a California state-law product liability action concerning a product P bought in Cal that harmed him in Cal  
- suit is against C Corp, incorporated in Delaware with its principal place of business in Tennessee  
- D Corp has a large factory and branch office in Buffalo, New York (with 10,000 employees)   
- the D Corp is served (through service on its Chief Legal Officer) in NYC

-NO – no specific PJ and not at home in NY

- a California state-law diversity action concerning a brawl between the plaintiff and the defendant in California  
- the plaintiff is a citizen of California and the defendant a citizen of New York  
- the defendant is served while on a business trip in California

- Yes – general PJ in NY because D is a citizen of NY and so domiciled there

- an action by P (NY) against D (Germany) for breach of German contract law concerning a contract signed in Germany with performance 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  
- the assets of the trust and the trustee are located in New York City  
- defendant is served in Germany

Hard case – no specific PJ and D not tagged in NY and not domiciled there

* Could property be source of PJ in quasi in rem action?
* Would have been OK under Pennoyer
* But OK now?
* Depends upon approach you use from Burnham/Shaffer

- an action by P (NY) against D (Cal) for violation of a federal antiterrorism act  
- D’s alleged violations of the federal act were all committed in Iraq  
- D is served in Cal

- NO PJ in SDNY - 4k1A not satisfied because no PJ in NY

- 4k2 not applicable because there would be PJ in CA

while WWVW is going on, the Robinsons are sued by P (OK) for non-payment of medical fees sustained in OK

* No specific PJ in NY
* Could one use their domicile?
* Still domiciled in NY for purposes of diversity
* But what about general PJ
* Hard case – would have to look at it from perspective of Burnham/Shaffer again

**Three themes of Civil Procedure**.

FIRST Structure of American legal system

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

SECOND Statutory interpretation.

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

THIRD – in rules for procedure, balancing…

1.Accuracy – find out what actually happened and accurately apply law

2.Autonomy – respect parties right to have their say

and

3.Efficiency-Not making things too expensive

See this balancing in rules governing service

**Notice and Service of Process**

**Due process restriction on notice**

* is the method of notice is constitutional under 14th A (in state court) or 5th A (in fed ct)
* 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 in many cases P won’t get his say because D cannot be informed. 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.
* “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.