

CIV PRO SEC 4

Weeks 7-8

- I. Unit F continued, Personal Jurisdiction
 - a. Specific in personam jurisdiction continued
 - i. Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102 (1987)
 1. A California citizen sues Cheng Shin Rubber Industrial Co, Ltd. For products liability on a tire that exploded on his motorcycle, causing injury. Defendant cross claimed an indemnity action against Asahi, a company that manufactures the valve on the tire.
 2. plaintiff and Cheng Shin settle, leaving only the indemnity action from Cheng Shin to Asahi. Asahi contests California's jurisdiction over it. California decides it has jurisdiction, and the case is appealed to SCOTUS. (28 USC 1257, the final judgment rendered by the highest court of a state may be reviewed by the Supreme Court by writ of cert).
 3. SCOTUS decides there is not jurisdiction over Asahi.
 - a. Putting a product into a stream of commerce that flows through a state is not enough to establish "minimum contacts" with the states.
 - b. There needs to be something more than a "stream of commerce."
 4. This decision is all over the board
 - a. Unanimous opinion of the court to part 1: no jurisdiction, no dispute over the facts.
 - b. Part II-B had majority support and is therefore the "opinion of the court" (8 out of 9 justices agree). Traditional notions of fair play and justice
 - i. Both parties were foreign corporations based outside of the United States and not in the same companies themselves.
 - ii. The indemnity action has nothing to do with the citizens of the state, and probably shouldn't be controlled by the laws of the state.
 - c. Part II-A and Part III (no minimum contacts, dismissing stream of commerce) has 4 judges agreement.
 - i. A consumer's act of bringing an item to another state is not enough to establish contact (WWW)
 - ii. Similarly, having your metal piece installed on a tire manufactured by another, which is then attached to a motorcycle and sold as a package, is not really an intentional or deliberate contact in any case.
 - iii. Even though it could certainly be foreseen that the tire valves would end up in California, it could not be foreseeable that they would be sued there.

- iv. If they set up a market, warehouse, whatever in the forum to sell it there, this would be an active contact with the forum upon which jurisdiction could be based. "substantial connection" must be purposefully directed towards the forum state.
 - v. In Part III, justice Brennan (as he does) makes a case for jurisdiction based on stream of commerce, but agrees it wouldn't be fair or just in this case. Sending thousands of products into a place should notify you that you are subject to that places' jurisdiction. If you have a big enough profit/presence, your purposeful contact shouldn't be relevant. Distinguishable from WWWV. Asahi got its tire valve into California. WWWV did not get its car into Oklahoma, the customer did.
- 5. CF Gray and Asahi: are they inconsistent?
 - a. Asahi's stream of commerce writing is not law because there was not a majority. CF Gray involved a valve that was sold a few states over...
 - b. Even if Asahi was law, the connection between CF Gray and Illinois was much stronger/more intentional than Asahi. It's a little easier to establish jurisdiction over "state-foreign" corporations than international foreign corporations.
 - c. Gray wasn't settled like Zurcher, you still have a plaintiff pushing at the process to keep it in the courts.
- 6. McIntyre: a sheer press was sold to an importer in Ohio (from England), which was sold to a company in New Jersey, where a plaintiff lost his hand when the press malfunctioned. Does this get jurisdiction under Asahi?
 - a. Maybe. It is a discrete product rather than a tiny piece of metal on a tire on another product
 - b. But maybe not. It is an international company that does include a domestic company in the dealing as well.
 - c. Jurisdiction was granted based in part on fairness and justice: you expect to get sued when you send a 50,000 dollar machine to America.
 - d. Other cases where there was warning of where the single problematic problem would be taken have led to jurisdiction (and others have not, depends on how enthusiastically jurisdiction is disputed).
- ii. The "arises out of" element
 - 1. Evidence test: a claim arises out of the defendant's in-state contacts only if the defendant's forum contact provides evidence of one or more elements of the underlying claims
 - 2. The "but for test:" but for the defendant's intentional contacts with the forum state, there would be no claim.

- iii. Jackson v. California Newspapers Partnership, 406 F. Supp. 2d 893 (N.D. Ill. 2005)
 - 1. Jackson sues CA Newspaper for libel in Illinois, where he lives/works (he is a multi-sport professional athlete...)
 - a. the libelous article was published online only
 - b. the facts the article was based on all took place in California, and it was a California based and focused website.
 - c. There was one subscriber to the website in the state of Illinois.
 - 2. Court decides no jurisdiction
 - a. Different from Keaton and Calder in scope of the magazine
 - b. The relationship between the defendant, the forum state, and the claim are all much closer in the earlier libel cases we looked at.
- II. Other constitutional basis for jurisdiction Plaintiff's claim is unrelated to the defendant's conduct.
- a. F3: general jurisdiction. Allows courts to exercise personal jurisdiction over a defendant for claims having nothing to do with the defendant's contacts in the state.
 - i. Daimler AG. v. Bauman, 571 U.S. ____ (2014)
 - 1. Plaintiffs or their predecessors in interest were kidnapped and tortured during Argentina's dirty war. They bring suit against Daimler.
 - a. under the Alien Tort Statute, which allows the court jurisdiction over human rights violations connected to corporations/persons which the court has personal jurisdiction over.
 - b. Daimler is a German stock company that manufactures Mercedes. Their subsidiary, MB Argentina, helped fund the human rights violations (allegedly)
 - c. Daimler has another subsidiary, MB USA which distributes Mercedes products across America, including in California. Incorporated in Delaware, principal place of New Jersey.
 - d. Personal jurisdiction is based on the contacts of MB USA with California, plaintiffs argue that MB USA is both (1) at home enough in the state of California to give general jurisdiction, and (2) not an agent for the purpose of maintaining a suit against Daimler
 - 2. California does not have general personal jurisdiction over MB USA, they are not "at home" enough for this.
 - 3. The claim doesn't arise out of MB USA's contacts with the state, so no specific in personam jurisdiction
 - 4. MB USA is not an agent of Daimler for the service of process. MB USA's ability to defend a suit is ultimately irrelevant...
 - a. For example, if plaintiffs brought suit against MB USA in New Jersey, there would be specific in personam jurisdiction over MB USA, and the outcome of the case would probably be the same
 - b. MB USA would very easily be able to show that they can't be held liable for the actions of another one of their parent's subsidiaries