* what does it mean for a cause of action to arise out of or be related to contact with the forum state, which is required for specific PJ?
  + Glannon spoke of evidence and but-for tests
  + But there is something even broader (Green calls category jurisdiction)
* NY Co. distributes its widgets in every state in the country  
  it sends a defective product into Pennsylvania where Consumer, a citizen of Ohio, purchases it  
  Consumer takes the product to his home in Ohio where he suffers serious injuries caused by the defect  
  PJ over NY Co. in Ohio?
  + argument is that the shipments of products to Ohio are the same sort as the shipment to PA that gave rise the Consumer’s action – this is sometimes called a sliding scale understanding of “arising out of or related to”
* This form of PJ was rejected in Bristol-Myers Squibb Company v. Superior Court (US, June 19, 2017)
  + Deviant form of general PJ
* BUT assume…
  + NY Co. distributes its widgets in every state in the country  
    it sends a defective product into Pennsylvania where Consumer, a citizen of Ohio, purchases it  
    Consumer takes the product to his home in Ohio where he suffers serious injuries caused by the defect  
    Consumer sues as *co-plaintiff with P*, an Ohioan who bought his widget in Ohio  
    PJ over NY Co. in Ohio for both actions?
  + the usual view is that there must be PJ for each cause of action
  + but why can’t appearance in the action for which there is PJ (P’s) create PJ for the one for which there isn’t (Consumer’s)?
    - appearance was a recognized source of PJ under Pennoyer
      * eg York v Texas
        + Texas could take appearance to challenge PJ as creating PJ
  + If the ∆ do not appear and defaulted, then there would be a way of avoiding creating PJ for the action for which there is no independent source of PJ (Consumer’s), although that would mean losing the action for which there was an independent source (P’s)
  + true, this form of PJ could be abused
    - but perhaps its use could be reined in by the McGee factors
  + Wait for the SCOTUS to decide whether York v Texas is overruled
* general in personam jurisdiction over corporations
  + PJ for any cause of action even if unrelated to forum contacts
  + the old standard under Intl Shoe was substantial continuous contacts
* but…GOODYEAR DUNLOP TIRES OPERATIONS, S. A., v. EDGAR D. BROWN
  + The standard for general personal jurisdiction should be if the company can be considered at home, analogous to domicile
* Daimler AG v. Bauman (US 2014)
  + Only in “Exceptional” cases will there be a general in personam jurisdiction over a corporation beyond a corporations or nation of information and that state or nation of its principal place of business
* Daimler had many side issues…
  + do the plaintiffs state a claim under federal law?
    - In Daimler, they did probably did not state a claim under federal law
    - Was set aside by the court to decide PJ
  + when can a subsidiary’s contacts be imputed to the parent to create general in personam jurisdiction?
    - We do not know the answer yet, SCOTUS did not decide
      * Does not like the agency test
      * Leaning towards alter ego test
      * A lot of room between the two tests
  + can a case with sufficient contacts for general in personam jurisdiction still be knocked out by the McGee factors?
    - Maybe general personal jurisdiction could knock out the case based off the McGee factors,
    - must be extremely bad mcgee factors
    - this was Sotomayor’s reasoning in her concurrence
* How to read Daimler - should we conclude, citing Hertz, that there is general in personam jurisdiction over a corporation only in its state (or nation) of incorporation and the state (or nation) where its nerve center is located…?
  + NO
    - Maybe the nerve center is equivalent to its home but Prof. doubts it
    - Maybe where the bulk of the activity is
    - Maybe both
  + We don’t know,
  + HERTZ IS ABOUT SMJ, not PJ
  + Prof. has not been able to find a PJ case post-Daimler case where the nerve center is one place and the bulk of activity is elsewhere
    - District courts mess this up and accidentally reference hertz, saying that there is general PJ only in the nerve center
  + Hypothetical: US Steel
    - * Nerve center in NYC
      * Bulk of work in Pennsylvania
      * Wouldn’t make sense not to have general personal jurisdiction in PA
* - the D Corp (incorporated in France with its PPB in France) owns hotels  
  - it puts a new flooring in all of its hotels  
  - P (NY), goes to D Corp hotel in in France, where he slips on the floor and is injured  
  - P sues the D Corp. in federal court in NY  
  - the D Corp. has 10 hotels in NY  
  - there is already litigation in NY concerning accidents on the floors of the NY hotels
  + no general PJ in NY (or anywhere in US) under daimler
    - The only way you’d be able to sue them in NY would be if they advertised in NY and that gave rise to the foreign action, because the P chose the French hotel due to the NY ad
      * that is a specific PJ argument
  + Green: this is hard on the P, who must go to France
  + doesn’t really make sense, when there is litigation on the same matter in NY
  + Makes it difficult to sue foreign companies on foreign actions in the US
    - Will be forced to sue them in foreign court
    - Does not get rid of liability, just gets rid of PJ in USA
  + on the other hand, too broad an understanding of general PJ would give rise to too much forum shopping
    - The problem with being able to sue walmart on any cause of action wherever there’s a state with a store

Quasi in Rem

* Glannon distinguishes between three kinds of “attachment”
  + attachment that involves only a filing at registry of deeds that gives notice to potential buyers – ct does not take control of property (the D could sell it)
  + post judgment attachment (basically ct taking property and selling it to satisfy judgment)
  + attachment as a form of preliminary relief – ct takes control of property at beginning of suit – D cannot sell it – ensures that property will still be there to satisfy judgment if D loses
* Green: the first form is not “attachment” at all – only the last two are
  + why does Glannon say this?
  + probably because it is clear that even though Pennoyer said (at times) that attachment in the third sense (attachment as preliminary relief) is necessary for quasi in rem, courts post-Pennoyer allowed quasi in rem without such attachment
  + BUT in fact courts even allowed quasi in rem without the first form of “attachment” that Glannon describes
* Why?
* what did Pennoyer really say was necessary for quasi in rem?
  + the problem in Mitchell v. Neff was that the property was “not attached nor in any way brought under the jurisdiction of the court”
    - how can you bring property under jurisdiction
    - courts have concluded that all you need is to identify the property
      * You do NOT need to attach the property
        + Attachment is a very big burden on the defendant
      * Closson v. Chase, 158 Wis. 346 (1914) (quasi in rem judgment is valid in absence of any attachment, provided that the property that is the source of jurisdiction is identified at the initiation of the suit)
* General lesson – be skeptical of dicta
  + Look at what was actually necessary for the court to decide as it did
  + the problem in Mitchell v Neff was that there was not even identification of property at the beginning of the suit
* are quasi in rem actions still constitutional? they are problematic under an Int’l Shoe theory
* P (NY) and D (NY) get into a brawl in New York  
  D’s only connection with California is owning a small piece of property in the state  
  P sues D in state court in California using the property as the source of jurisdiction
  + To create PJ under Int’l Shoe theory
    - ∆ has contact with forum state due to the property
    - To fit this under international shoe it needs to fit the requirement for General PJ
    - Gets benefits from owning the property
      * Gets california protections
      * Creates reciprocal obligations to CA
  + Does not seem to work because the benefits from CA are not anywhere near the large benefits (akin to domicile) necessary to create an obligation to appear in CA in connection with ANY cause of action
    - can only create specific PJ – PJ for causes of action related to the property

so quasi in rem does not seem to satisfy Intl Shoe

some examples of quasi in rem accepted under Pennoyer were even worse

* Harris v. Balk (US 1905)
  + P (NY) and D (NY) get into a brawl in New York  
    D’s only connection with California is that X, someone who owes D money, is in California  
    P sues D in state court in California using the debt X owes D as the source of jurisdiction
    - D gets no benefit from X being in california
    - also problem of expectations
      * D has no idea where X is and where he could be subject to PJ
      * Debt follows the debtor

Shaffer v. Heitner  
(US 1977)

* + ∆s (officers of Greyhound – a Del Corp with PPB in AZ) violated fiduciary duties to company
    - due to their actions Company had to pay out damages for antitrust case that concerned activities in OR
    - suit brought in DE state court against ∆s
    - Using ∆’s stocks (considered under DE law to be located in DE) to create PJ over ∆
  + shareholder’s derivative action
    - Case on behalf of the company brought by a shareholder
    - if successful, $ goes to company
    - Action on behalf of greyhound through Heitner π
      * ∆s is in control of the business, they are not going to okay a lawsuit against themselves (because they are the officers of the company)
    - Often worry about frivolous suit with Shareholder Derivative action
* Shares used as source of PJ over the defendants
  + Notice was certified mail and through publication
  + Case brought in DE state court
    - Officers (∆) live in Arizona and California
  + Jurisdiction based on Quasi in Rem (Shares of the company)
    - Shares considered to be in delaware
* there were other objections by the ∆s besides PJ
  + Attachment
    - ∆ claims that it violates due process
  + and notice
  + we can ignore these
* was a limited appearance allowed?
  + a limited appearance is when the source of PJ is property but the state allows the D to appear and argue the merits, with jurisdiction limited just to the value of the property
    - Showing up is not creating in personam PJ with a limited appearance, even though traditionally appearance did allow the court to assert in personam PJ
  + DE does not allow Limited Appearance
    - Once they showed up they were liable for everything
    - Footnote 12
      * Page 275 of the textbook
  + Indeed, the express purpose of the Delaware sequestration procedure is to compel the defendant to enter a personal appearance
* The important dicta is this: “We therefore conclude that all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny.”
  + This is saying pennoyer is obsolete and only focus on International shoe
  + Prof. does not think this is accurate
    - Pennoyer is still good law to some extent
* Concurring opinions
  + Reserve judgement on the canonical forms of quasi in rem such as cases where real property is used
    - the problem with quasi in rem in Shaffer was the stock being used for quasi in rem
  + Real property are physically in the location
  + Shares do not have a physical location – cannot foresee PJ
* Feder v. Turkish Airlines (S.D.N.Y. 1977) example of how quasi in rem still occurs
  + Using bank account in NY as a way to get quasi in rem action
  + bank account satisfies foreseeability requirement that is real issue in Shaffer
  + A non resident owner has taken acts which places them on notice of PJ
* is there specific in personam jurisdiction on the basis of other contacts with Delaware? – this is Brennan’s dissent
  + The company was incorporated in DE
  + ∆s did not have a physical connection with DE
  + but they reached out to DE by becoming officers of a DE corp
    - this gives them benefits of DE laws
    - DE created their jobs – gave them rights with respect to their employer
    - and this cause of action concerns that very act of reaching out
    - so specific PJ
  + Green – why are physical acts of reaching out necessary? you ca reach out in other ways
* Shaffer and In Rem
  + in rem actions are unproblematic because they clearly satisfy Int’l Shoe
  + anyone claiming ownership of property in forum state is reaching out to that state
  + and the cause of action is directly related to that act of reaching out because an in rem action is about who owns the property
  + When dealing with shares or copyrights - intangible property without a physical location it is slightly more problematic

Burnham v. Superior Court  
(U.S. 1990)

* + Divorce
  + Married in WV, Moved to NJ
  + Wife moved to CA, Husband stayed in NJ
  + Conflict over how to justify the divorce
  + Husband visited in CA for business and to visit kids
  + When visiting kids Wife tagged husband in CA, even though he was just visiting CA
  + tagging seems problematic given Intl Shoe
    - Visiting Hawaii on vacation, get tagged and sued for unrelated (non-Hawaii) cause of action
      * You get benefits from the state
      * Protection from police and roads, state resources
    - Does not seem to work because the benefits from HI while you are there are not anywhere near the large benefits (akin to domicile) necessary to create an obligation to appear in HI in connection with ANY cause of action
      * Only could create specific PJ
        + If you get into an accident in HI
        + Not subject to PJ for something occurred out of state
* Scalia’s opinion (with Rehnquist, Kennedy and White)? \*Originalist opinion\*
* what is Scalia’s position?
  + Is it?
    - PJ exists only if it was the shared understanding at the time of the ratification of the Constitution in 1787?
    - NO cannot be 1787 because it’s from the 14th amendment
    - Should be what people thought in 1868, when 14th amendment was caused
    - Green: 5th A due process would look to time of ratification of 5th A
  + so is it?
    - PJ exists only if it was the shared understanding at the time of the ratification of the 14th Amendment in 1868?
    - NO because Scalia does not want to say that Int’l Shoe is not good law
  + so is it?
    - PJ exists only if it was the shared understanding at the time of the ratification of the 14th Amendment in 1868 OR it satisfies Int’l Shoe?
    - NO because that can’t make sense of Shaffer
* how to distinguish Shaffer?
  + - will do next time