* + 1. Back to Daimler and general PJ over corps
    2. Daimler's connections with California
       1. Daimler has nothing in California, except...
       2. a contract with Mercedes-Benz USA (MBUSA), an independent US based distributor
       3. MBUSA is a New Jersey company, but has a lot of facilities in California, and does a lot of business there
       4. can MBUSA's contacts be imputed to Daimler for the purpose of PJ?
       5. Two theories discussed
          1. Only if the corporations are “alter egos” of each other. (The corporate form is being ignored, the subsidiary is the same company as the larger corporation) (Very hard to satisfy)
          2. agency theory – this is the one used by the 9th Circuit

If the subsidiary acts as the parent's agent then imputation works

In fact the “agency relation” here is broader even than normal agency law - the test appeared to be whether the parent would do what the subsidiary is doing if the subsidiary didn’t

SCOTUS clearly does not like agency test

But does not decide matter

* + - 1. SCOTUS assumes that even if MBUSA’s contacts can be imputed to Daimler, the court still doesn't have PJ,
      2. Daimler still isn't at home in California, because its sub isn’t either
      3. Daimler is only really “at home” in Germany.
      4. The court meant what they said in Goodyear
      5. Basically general PJ in state of incorporation and principal place of business
      6. Int'l Shoe is not good law anymore w/r/t/ substantial, continuous activity giving a state GPJ over a corporation.
      7. Relevance of Hertz?
         1. Hertz talked about what a corporation’s principal place of business is…
         2. it held the ppb was the nerve center
         3. BUT Hertz is not relevant w/r/t/ “at home” test, because Hertz is only speaking of what a corps PPB is for *SMJ* - 28 USC 1332.
         4. we just look to a corporation’s “home” – that may be a corp’s nerve center or may be its bulk of activity – we just don’t know
    1. “at home” is relative. Even if a corporation has overwhelming presence in a state, if it is more present in another state, no general PJ..
    2. The court was probably worried about forum shopping against e.g. Walmart.
    3. This could be legitimate. Imagine being allowed to sue Walmart in basically any state. That would be a lot of procedural power!
    4. Green contends that this is still somewhat problematic
    5. A human can be subject to general PJ wherever he is tagged but a corp cannot be tagged so there is PJ only in its home
       1. It’s better to be a corp
* - 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

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: even the weakest form of attachment that Glannon mentions is probably not necessary for quasi in rem
* 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)

A few other issues about quasi in rem

1st…

P (NY) and D (NY) get into a brawl in New York  
P sues D in state court in California even though Cal. has no PJ  
D appears to challenge PJ  
can the court assert in personam PJ over D?

Yes (York v. Texas)

We discussed this earlier

A state court constitutionally does not have to allow a special appearance (where the D appears to challenge PJ) – even though they all now do

Now…

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 worth $5000 in the state  
P sues D in state court in California using the property as the source of jurisdiction  
D appears to litigate the merits (but only up to the value of the property attached)  
can the court assert in personam PJ over D?

Yes – but state courts generally allowed Ds to make limited appearances only up to the value of the property

* 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 actions
* 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
  + Green does not think this is accurate
  + Burnham on tagging is an example
* 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
  + Also bank accounts
* 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