Shaffer  
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?
* 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

P brings a quiet title action concerning shares in a Del. corporation current held by an Arizonan  
the suit is brought in Del. state court and is intended to bind the world  
any problem with this in rem action given Shaffer?

Arguably not

* Here the connection with DE is problematic, as it was in Shaffer
* BUT the cause of action is related to the contract, unlike in Shaffer
* Also, where else can an in rem action concerning shares be brought?
* What if people in various states claim that they own the shares – where are the shares for the purpose of an in rem action?
* Makes sense to be able to bring it in the state of incorp

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

* + Divorce
  + Married in WV, Moved to NJ
  + Wife moved to CA, Husband stayed in NJ
  + 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
  + Suit in CA state court for divorce
  + 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

BUT in this case there are other connections with CA besides tagging

* His kids are there receiving protection of CA laws – this cause of action concerns that connection
* But he did not choose that they are in CA?
  + So doesn’t fit Int’l Shoe quid pro quo…?
* Scalia’s opinion (with Rehnquist, Kennedy and White)?
* 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 1788? [sorry – not 1787 – that was the date of the presentation to the states and of the first ratification]
    - NO cannot be 1788 because it’s from the 14th amendment
  + 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?

Scalia says a number of things…

1. *Shaffer,* like *International Shoe,* involved jurisdiction over an *absent defendant,*
   1. Does not cast doubt upon tagging at all (but does cast doubt on all quasi in rem…?)
2. Delaware's sequestration procedure was simply a mechanism to compel the absent defendants to appear in a suit to determine their personal rights and obligations,
   1. So the problem was that there was no limited appearance allowed – that the property was used to compel an in personam appearance? (suggests Shaffer would have been OK if there had been a limited appearance allowed…)
3. Where, however, as in the present case, a jurisdictional principle is ***both firmly approved by tradition and still favored***, it is impossible to imagine what standard we could appeal to for the judgment that it is "no longer justified."
   1. So the problem was that states no longer generally do what DE did in Shaffer (suggests that quasi in rem using real property or a bank account would be OK, even if no limited appearance were allowed…?)

Brennan?

1. Suggests that all forms of PJ must satisfy Int’l Shoe – including tagging
2. But also says
3. The transient rule is consistent with reasonable expectations, and is entitled to a strong presumption that it comports with due process. “If I visit another State, . . . I knowingly assume some risk that the State will exercise its power over my property or my person while there. My contact with the State, though minimal, gives rise to predictable risks.” *Shaffer* (STEVENS, J., concurring in judgment);

Alterative theory (slightly different from Int’l Shoe): There is PJ if a defendant can reasonably anticipate being subject to PJ on the basis of his actions.

BUT there were also other connections, so it isn’t clear what Brennan would say if the only connection with the state was tagging

D is lured into a state and tagged  
PJ?

OK under Pennoyer, but now we have to look at it in the light of Int’l Shoe/Burnham

* Scalia might say no PJ
* Why? Traditional but not still affirmed by states – they don’t generally assert PJ in such cases

***Overview of Personal Jurisdiction:***

1. PJ cases that can be answered within the Int’l Shoe framework, without considering the relationship to the Pennoyer framework:
   1. Specific personal jurisdiction (with the addition of the McGee factors. (E.g. McGee, Burger King, Worldwide VW, Asahi, McIntyre)
   2. General personal jurisdiction over corporations (E.g. Goodyear, Daimler)
2. PJ under the Pennoyer framework that is unproblematic under Int’l Shoe
   1. Domicile as a source of general in personam jurisdiction over individuals
   2. In rem jurisdiction/quasi in rem of first type
      1. Although problems can arise when it’s unclear where the property is located (i.e. stocks, copyrights) but there has to be some place where a determination of the ownership of the property can be brought
         1. (If Shaffer were only about ownership of the shares it would probably have been okay.)
3. The problematic cases are when PJ exists under the Pennoyer framework but does not satisfy Int’l Shoe
   1. Some we know are unconstitutional. For example certain types of quasi in rem of second type - Shaffer
      1. Shaffer has a double problem– don’t know where the stocks are located *and* not related to the cause of action
      2. Shaffer upends the order because it strikes down PJ good under Pennoyer bc it is not good under International Shoe
         1. How far does this go?
   2. Quasi in rem (second type)- we don’t know definitively if it’s unconstitutional - examples of quasi in rem 2nd type where property is clearly in forum state, eg real property or bank accounts still go on to some extent

*Note: Work out in your own mind about the current state of PJ under Constitutional law and be able to justify it based on what we’ve read. The big problem is figuring out the extent to which old Pennoyer forms of PJ are still good law – the opinions to look to are those in Burnham and Shaffer*

The CEO of the D. Corp is tagged in CA (Corp is the one being sued.)  
PJ in CA?

No! Tagging a human being is not a source of PJ over corporations (unless they’re an agent for service of process, which is generally created only through state statutes – and whether they create PJ is itself a constitutional issue post-Int’l Shoe)

Remember for PJ it’s much better to be a corporation than a human. Humans can be subject to PJ for any cause of action wherever they are tagged (probably, given Burnham) – but a a corp can be subject to general PJ only where it is “at home” under Daimler

***Waiver/Consent***

Consent: Choice of forum clauses in a contract (like hitting okay on internet contracts) – this is consent to PJ before litigation arises – tends to be enforced

Can also consent to PJH in litigation by waiver - by failing to mention lack of PJ

* + - Generally lack of PJ be brought up *immediately*.

**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.

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.