1. Daimler Ag v. Bauman
   1. During the Argentinian Dirty war, a subsidiary of Daimler (MB Arg) kidnapped and killed Argentinian workers in collaboration with Arg government
   2. Argentinians sues Daimler in California federal court many years later
   3. Daimler (Owner of Mercedes-Benz) is German corp
   4. Why SMJ (federal question) action is under Alien Tort Statute which allows actions in federal court for violation of law of nations (understood as federal common law)
   5. Plaintiffs probably failed to state a claim
      1. Alien Tort Statute is probably inapplicable to corporations, probably does not create derivative liability (of parent for sub), probably does not apply to torture etc.
   6. nevertheless, the court had to consider Personal Jurisdiction
   7. why is connection with Cal and the 14th Amendment relevant, given that we are in federal court?
      1. Because of FRCP 4(k)(1)(A) – with a few exceptions, a federal district court cannot assert PJ unless a state court in the state where the federal court is located could
   8. No Specific Jurisdiction because Daimler (or MB Arg) is not torturing these people in California
   9. general jurisdiction?
      1. Obviously a bad forum for action
         1. Forum non conveniens: a court can refuse to take a case even though it has PJ because it thinks it is a bad forum (will discuss later)
      2. But why not simply claim (like in Asahi) that whether or not there is power, PJ does not exist because it is unreasonable
         1. *McGee* factors. (Although those have never been brought up in the context of General Jurisdiction)
         2. Sotomayor says that rather than erecting a new theory of general jurisdiction of corps, they should reject this case on the basis of reasonableness
            1. But no one else accepts this approach – McGee factors probably irrelevant in general PJ case
      3. Daimler's connections with California
         1. Daimler has nothing in California, except...
         2. a relationship to Mercedes-Benz USA (MBUSA), an independent US based distributor
         3. MBUSA is a Del corp with PPB in New Jersey, 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 and even if MBUSA is at home in CA, the court still doesn't have PJ, because Daimler isn’t at home
      2. at home is a comparative test
      3. Daimler is only really “at home” in Germany.
      4. Basically general PJ in state of incorporation and principal place of business
      5. Int'l Shoe is not good law anymore w/r/t/ substantial, continuous activity giving a state general PJ over a corporation.
      6. 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. Problem…
* - 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
  + 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
  + 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 a number of 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)
* 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) – at least this was good law and the USSCt has never overruled it

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

Notice that for a special appearance, technically, one must appear only to challenge jurisdiction – one cannot mention the merits or one consents to PJ

But federal courts have an even more generous approach, where one can bring a motion to dismiss for lack of PJ and mention merits too (eg failure to state a claim)

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

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
* Allowed

are quasi in rem actions still constitutional?

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
* 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 for these actions
    - 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