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
* The important language 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  + This is saying pennoyer is obsolete and only focus on International shoe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

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 and child support
  + tagging seems problematic given Intl Shoe
    - Does not seem to work because the benefits from state while you are there are not anywhere near the large benefits (akin to domicile) necessary to create an obligation to appear in state in connection with ANY cause of action

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 by fraud 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. 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*