Case Notes

JURISDICTION—PLAINTIFF INVOKING QUASI IN REM JURISDICTION MUST DEMONSTRATE THAT NONRESIDENT DEFENDANT HAS HAD SUCH MINIMUM CONTRACTS WITH THE FORUM AS NOT TO OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.—*Shaffer v. Heitner* (U.S. Sup. Ct. 1977).

Plaintiff Heitner, a nonresident of Delaware, owned one share of stock in the Greyhound Corporation, a Delaware corporation with its principal place of business in Arizona. Plaintiff filed a shareholder's derivative suit in Delaware state court naming the Greyhound Corporation, its wholly owned subsidiary,[1] and twenty-eight present or former officers or directors of the corporations as defendants.[2] Plaintiff filed this action following judgment in a private antitrust suit[3] and a related criminal contempt action[4] involving activities of defendants in Oregon.[5]

Plaintiff filed a motion for and obtained an order of sequestration[6] for all property of the individual defendants located in Delaware. Twenty-one of the individual defendants had stock and options in Greyhound Corporation seized.[7] Under state law, Delaware is deemed to be the situs of all stock in Delaware corporations.[8] Defendants made a special appearance to

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1. Greyhound Lines, Inc. is a California corporation with its principal place of business in Arizona. Shaffer v. Heitner, 433 U.S. 186, 189 n.1 (1977).

2. Plaintiff alleged that the individual defendants breached their fiduciary duties by conducting the corporations' operations in such a manner that damages were assessed against the corporations in the antitrust suit and the contempt action. *Id.* at 189-90.

3. Mt. Hood Stages, Inc. v. Greyhound Corp., 1973-2 TRADE CAS. (CCH) ¶74,824 (D. Ore. Nov. 29, 1973), *aff'd*, 555 F.2d 687 (9th Cir. 1977), *cert. granted*, 46 U.S.L.W. 3425 (Jan. 10, 1978) (No. 77-598).

4. United States v. Greyhound Corp., 363 F. Supp. 525 (N.D. Ill. 1973), *aff'd*, 508 F.2d 529 (7th Cir. 1974).

5. Shaffer v. Heitner, 433 U.S. 186, 190 (1977). A judgment of $13,146,090 plus attorney's fees was entered against defendants in the private antitrust action. *Id.* at 433 U.S. 186, 190 n.2. Greyhound Lines, Inc. was fined $500,000 and Greyhound Corp. $100,000 in the contempt action. *Id.* at 190 n.3.

6. DEL. CODE ANN. tit. 10 § 366 (1975).

7. The stock and options were seized by placing "stop transfer" orders on the books of the Greyhound Corporation. Shaffer v. Heitner, 433 U.S. 186, 191-92 (1977).

8. DEL. CODE ANN. tit. 8 § 169 (1975). In an opinion subsequent to the Delaware Supreme Court's holding in *Shaffer*, the Third Circuit held that quasi in rem jurisdiction could not be asserted where the sole contact with the forum was the fictional situs of the stock under § 169:

quash service of process and vacate the sequestration order, arguing that they did not have sufficient minimum contacts with Delaware to allow assertion of jurisdiction by the state court and that the ex parte sequestration procedure was violative of due process.[9]

The Delaware Court of Chancery rejected both of the defendants' arguments, holding that the state sequestration statute did not involve a procedure for adjudicating title to the retained property, but rather was a process used to compel the personal appearance of a nonresident defendant in a state equity court.[10] Additionally, the court held that the statute declaring Delaware to be the situs of the stock of Delaware corporations was not violative of state or federal constitutional provisions and that this provided an adequate basis for the exercise of quasi in rem jurisdiction.[11] The Delaware Supreme Court affirmed,[12] holding that the property present in the forum provided adequate contacts by the defendants for quasi in rem jurisdiction.[13]

On certiorari, the Supreme Court *held*, reversed.[14] Plaintiff invoking quasi in rem jurisdiction must demonstrate that nonresident defendant has had such minimum contacts with the forum as not to offend traditional notions of fair play and substantial justice. *Shaffer v. Heitner*, 433 U.S. 186, 190 (1977).

In *Shaffer*, the Court announced a new standard to be applied to in rem actions which had previously been applied only to in personam actions. There are two categories of in rem actions. The first, often labeled

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> It is our view that, under these circumstances, the fictional § 169 situs of the stock in Delaware [the state of incorporation] does not pass constitutional muster as a predicate for jurisdiction in an action admittedly seeking to obtain personal liability of a nonresident in connection with transactions unrelated to the forum.

U.S. Indus., Inc. v. Gregg, 540 F.2d 142, 155 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2972 (1977). The Third Circuit characterized the purpose of § 169 as "to coerce the nonresident to submit to in personam jurisdiction." *Id.* at 156. The court concluded that jurisdiction in this type of action must be predicated on the showing of sufficient minimum contacts consistent with the Supreme Court's holding in International Shoe Co. v. Washington, 326 U.S. 310 (1945). U.S. Indus., Inc. v. Gregg, 540 F.2d 142, 154 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2972 (1977).

No other state has a provision allowing attachment without effecting an actual seizure of the stock certificates. *Id.* at 143.

9. Shaffer v. Heitner, 433 U.S. 186, 193 (1977).
10. *Id.*
11. *Id.* at 193-94.
12. Greyhound Corp. v. Heitner, 361 A.2d 225 (Del. Sup. Ct. 1976).
13. *Id.* at 229.
14. Mr. Justice Marshall wrote the majority opinion. Mr. Justice Powell concurred stating that when the situs of property is indisputable and permanently within the forum, this alone may be a sufficient minimum contact to allow assertion of jurisdiction. Mr. Justice Stevens concurred stating that when real estate is involved and where the defendant has adequate notice of the particular controversy and of the contacts relating to the forum, that suit would be permissible. Mr. Justice Brennan concurred, but dissented from part IV of the majority's opinion which examined the actual forum contacts in *Shaffer*, characterizing such an inquiry as an advisory opinion. Mr. Justice Rehnquist did not participate in the decision.

true in rem, involves a judgment which affects the interests of all persons in a particular piece of property.[15] The second, commonly referred to as quasi in rem, is comprised of two sub-categories. Cases arising under the first sub-category involve a plaintiff with a preexisting claim to a piece of property who seeks to extinguish or disprove any claims which particular individuals may have as to that property. Under the second sub-category of quasi in rem jurisdiction, the plaintiff seeks to apply the defendant's property to satisfy a claim unrelated to the property itself.[16]

The early case of *Pennoyer v. Neff*[17] established two basic rules of jurisdiction. First, every state has exclusive jurisdiction and sovereignty over persons and property within its territorial boundaries; second, states cannot exercise direct jurisdiction or authority over persons or property located beyond its boundaries.[18] Although *Pennoyer* did not create the categories of in rem and in personam jurisdiction,[19] its holding did raise their distinctions to a constitutional level. Under this analysis, a state had "power" to allow its citizens to invoke in personam jurisdiction only if the defendant was personally served within the forum or if a nonresident defendant had voluntarily appeared in the forum state.[20] On the other hand, in rem jurisdiction could be invoked merely upon a finding that the defendant had property located within the forum and that this property had been attached.[21] While any in rem judgment was limited to the value of the particular property attached, this would not preclude the plaintiff from instituting successive in rem actions in other forums where the defendant had property in order to satisfy the full amount of his original claim.[22]

In *Harris v. Balk*,[23] the Supreme Court expanded the scope of in rem jurisdiction allowable under *Pennoyer*. There, the Court held that once the situs of an intangible debt was ascertained, it was subject to attachment if found to be within the forum. In *Harris*, Epstein, a Maryland resident, was a creditor of Balk, a North Carolina resident. Harris, also a

15. Shaffer v. Heitner, 433 U.S. 186, 199 n.17 (1977), *citing* Hanson v. Denckla, 357 U.S. 235, 246 n.21 (1958).

16. *Id.*

17. 95 U.S. 714 (1877). There are numerous law review articles which give a detailed analysis of the theoretical underpinnings of *Pennoyer*. *See generally*, Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241 [hereinafter cited as Hazard]; Folk & Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 COLUM. L. REV. 749 (1973) [hereinafter cited as Folk & Moyer]; Zammit, *Quasi In Rem Jurisdiction: Outmoded and Unconstitutional?*, 49 ST. JOHN'S L. REV. 668 (1975) [hereinafter cited as Zammit].

18. Pennoyer v. Neff, 95 U.S. 715, 722 (1877).

19. *See* Hazard, *supra* note 17, at 258-60.

20. Pennoyer v. Neff, 95 U.S. 715, 733 (1877).

21. *Id.* at 727-28.

22. Clearly, however, the plaintiff seeking relief through this method could not be awarded damages in excess of the actual debt owed and would receive full satisfaction when this amount is obtained.

23. 198 U.S. 215 (1905).

North Carolina resident, owed money to Balk and had this debt attached by Epstein when Harris ventured into Maryland. Harris paid the money he owed Balk to Epstein. When Balk instituted an action in North Carolina to recover the money Harris owed him, the Supreme Court held that the Maryland judgment discharged the debt Harris owed Balk under the full faith and credit clause of the Constitution.[24] The Court reasoned that the intangible debt was Balk's property, the situs of which followed the debtor, Harris.[25]

In *Seider v. Roth*[26] and subsequent cases,[27] the New York courts have held that the rationale of *Harris* allows a forum resident to attach a nonresident's automobile insurance policy to obtain quasi in rem jurisdiction if the insurer does business within New York. Under the *Seider* approach, quasi in rem jurisdiction is permissible even though the accident need not take place within the forum and under the insurance contract there is no "debt" owed to the insured since it is the attachment and subsequent suit which initiates the insurer's obligation to defend and indemnify. The result in *Seider* has been the subject of much commentary[28] and has been rejected by most other jurisdictions.[29]

In the instant action, the Delaware sequestration statute[30] did not differentiate between resident and nonresident plaintiffs thereby distinguishing the issue presented in *Harris*. The Court could have nar-

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24. *See* U.S. CONST. art. IV, § 1; Harris v. Balk, 198 U.S. 215, 221 (1905). The Court apparently held that the Maryland action was enforceable in North Carolina because Balk could have attached the debt Harris owed him if both were in Maryland, even if present temporarily, under the laws of that state: "We can see no reason why the attachment could not be thus laid, provided the creditor of the garnishee could himself sue in that State and its laws permitted the attachment." *Id.* at 223.

25. Harris v. Balk, 198 U.S. 215, 222-23 (1905).

26. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

27. Farrell v. Peidmont Aviation, Inc., 411 F.2d 812 (2d Cir.), *cert. denied*, 396 U.S. 840 (1969); Minichiello v. Rosenberg, 410 F.2d 106 (2d Cir. 1968), *aff'd on rehearing en banc*, 410 F.2d 117, *cert. denied*, 396 U.S 844 (1969); O'Connor v. Lee-Hy Paving Corp., 437 F. Supp. 994 (E.D.N.Y. 1977) (holding *Seider* not overruled by *Shaffer*); Simpson v. Loehmann, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967), *motion for reargument denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1968); Katz v. Umansky, ___ Misc. ___, 399 N.Y.S.2d 412 (1977) (state trial court holding *Seider* inconsistent with *Shaffer*).

28. *See generally* Reese, *The Expanding Scope of Jurisdiction Over Nonresidents—New York Goes Wild*, 35 INS. COUNSEL J. 118 (1968); Stein, *Jurisdiction By Attachment of Liability Insurance*, 43 N.Y.U.L. REV. 1075 (1968); Comment, *Garnishment of Intangibles: Contingent Obligations and the Interstate Corporation*, 67 COLUM. L. REV. 550 (1967); Comment, *Jurisdiction In Rem and the Attachment of Intangibles—Erosion of the Power Theory*, 1968 DUKE L.J. 725.

29. Robinson v. O.F. Shearer & Sons, Inc., 429 F.2d 83 (3d Cir. 1970); Javorek v. Superior Court, 17 Cal. 3d 629, 552 P.2d 728, 131 Cal. Rptr. 786 (1976); State, Gov't Employees Ins. Co. v. Lasky, 454 S.W.2d 942 (Mo. App. 1970); De Rentiis v. Lewis, 106 R.I. 240, 258 A.2d 464 (1969); Howard v. Allen, 254 S.C. 455, 176 S.E.2d 127 (1970). *Accord*, Camire v. Scieszka, 116 N.H. 281, 358 A.2d 397 (1976).

30. *See* note 6 *supra*.

rowly held that this type of action, typifying the second sub-category of quasi in rem jurisdiction,[31] was constitutionally permissible only if the plaintiff was a resident of the forum. Such a construction, in fact, had been placed on *Seider* in a subsequent action.[32] Since the Court chose not to take this narrow approach, *Shaffer* provided an opportunity for the Court to reexamine the theoretical foundations of its prior holdings in *Pennoyer* and *Harris*.

While the *Pennoyer* framework provided a readily available forum for a plaintiff in an in rem action, the exercise of this jurisdiction frequently had a harsh impact on nonresident defendants.[33] However, even under *Pennoyer's* "power" analysis, procedural due process requirements affected the exercise of quasi in rem jurisdiction. In *Wuchter v. Pizzutti*,[34] the Court construed a state nonresident motorist statute which provided that process be served on the Secretary of State for civil actions arising out of use of that state's highways. The statutes did not require that notice of the service on the Secretary be sent to the nonresident motorist being sued.[35] The Court in *Wuchter* held that due process required that the statute specify a method of reasonable notice to be given to the defendant.[36]

That aspect of *Pennoyer* which differentiated in rem and in personam jurisdiction on the type of notice required was abolished by the Court's decision in *Mullane v. Central Hanover Bank & Trust Co.*[37] The Court in *Mullane* held that the type of notice required to satisfy due process transcended mere categorization of an action as in personam or in rem.[38] Notice must be given which is reasonably calculated to apprise those in-

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31. In this type of quasi in rem jurisdiction, the property attached is not the subject matter of the legal action nor does it have any contact with the alleged claim. Shaffer v. Heitner, 433 U.S. 186, 199 n.17, 213 (1977).

32. Farrell v. Peidmont Aviation, Inc., 411 F.2d 812 (2d Cir.), *cert. denied*, 396 U.S. 840 (1969).

33. *See* note 21 *supra* and accompanying text. Shaffer v. Heitner, 433 U.S. 186, 199-200 (1977) (recognizing the availability of in rem jurisdiction).

34. 276 U.S. 13 (1928). The nonresident motorist statutes were a fiction used to reach nonresidents and yet stay within the *Pennoyer* framework. A nonresident motorist was deemed by statute to have impliedly consented to service of process, usually on a government official, for any claims arising from the nonresident's driving activities within the state. *See* Hess v. Pawloski, 274 U.S. 352 (1927) (upholding the procedure against a constitutional attack).

35. Wuchter v. Pizzutti, 276 U.S. 13, 18-19 (1928).

36. *Id.* at 19. In *Wuchter*, the Court found that such a provision would not place an unfair burden on the plaintiff. *Id.* at 20.

37. 339 U.S. 306 (1950).

38. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 312-13 (1950). The Court in its discussion noted that: "Distinctions between actions *in rem* and those *in personam* are ancient and originally expressed in procedural terms what seems really to have been a distinction in the substantive law of property under a system quite unlike our own." *Id.* at 312.

dividuals who may have their legal interests directly and adversely affected by an impending judicial decision.[39] Subsequent decisions have reinforced the requirement that notice consistent with *Mullane* must be given in in rem actions.[40]

The Court's holding in *International Shoe Co. v. Washington*[41] seriously eroded that part of the *Pennoyer* decision which held that a state could not exercise direct jurisdiction or authority over persons or property located beyond its boundaries. The *Pennoyer* decision was based entirely on notions of territoriality and subsequent decisions expanding its holding relied on legal fictions to remain consistent with this framework.[42] The Court in *International Shoe* recognized the irrationality in continued reliance on fictions in order to be consistent with *Pennoyer*.[43] After *International Shoe*, the concern was no longer on quantitative, mechanistic tests to determine presence or consent; rather, the focus became a subjective one,[44] seeking to determine whether it would be fair to subject a particular defendant to the jurisdiction of a particular forum.[45]

The majority in *Shaffer* reached its result by looking beyond the in rem label and determining that it was actually a proceeding directly against the nonresident property owner and that the exercise of quasi in rem jurisdiction must satisfy the requirements of *International Shoe*. Even prior to *Shaffer*, there had been a steady abandonment by the Court of the "territoriality" and "power" framework of *Pennoyer*.[46] Addi-

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39. *Id.* at 314-15. The Supreme Court in *Mullane* held that:

> The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance . . . . But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied.

Id. (citations omitted).

40. Schroeder v. City of New York, 371 U.S. 208, 213 (1962); Walker v. City of Hutchinson, 352 U.S. 112, 116 (1956).

41. 326 U.S. 310 (1945).

42. Henry L. Doherty & Co. v. Goodman, 294 U.S. 623, 628 (1935); Hess v. Pawloski, 274 U.S. 352, 356 (1927).

43. International Shoe Co. v. Washington, 326 U.S. 310, 316-18 (1945).

44. *Id.* at 319. *See* United States Dental Inst. v. American Ass'n of Orthodontists, 396 F. Supp. 565, 570 (N.D. Ill. 1975).

45. International Shoe Co. v. Washington, 326 U.S. 310 (1945). The Court stated that: "[w]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Id.*

46. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); International Shoe Co. v. Washington, 326 U.S. 310 (1945); Wuchter v. Pizzutti, 276 U.S. 13 (1928). *See* note 77 *infra*.

tionally, many lower court decisions[47] and many commentators[48] had suggested the need for renovation of jurisdictional theory.

Mr. Justice Field in *Pennoyer* recognized that the discrete categories of jurisdictional theory enunciated were not all-inclusive.[49] Exceptions to the application of the *Pennoyer* principles were made for status proceedings and nonresident partnerships and corporations "doing business" within the forum state. Although these exceptions have been criticized as being inconsistent with the theory of state court jurisdiction asserted in *Pennoyer*,[50] *Shaffer* continued the exception of status proceedings from the minimum contacts requirements otherwise mandated.[51] Apparently, the basis for the Court's reasoning was that a separate jurisdictional doctrine is applicable to ex parte divorce proceedings and that such a doctrine by judicial definition would be inherently fair.[52] Perhaps a better approach, possibly one which the Court was implicitly stating, is that the state interest in determining the status of its residents is so paramount as to override any considerations of fairness to the nonresident defendant under minimum contacts analysis.

The impact of *Shaffer* on the *Pennoyer* jurisdictional framework is most pronounced on the principle enunciated in *Pennoyer* whereby a state is deemed to have exclusive jurisdiction and sovereignty over persons and property within the territorial limits of the forum.[53] The *Shaffer* decision will now preclude states from exercising jurisdiction over cases which involve tangible property found within the state or intangible property defined by statute or court decree to be within the state unless the defendant has sufficient minimum contacts with the forum to allow assertion of jurisdiction.[54] In *Shaffer*, the majority opinion suggested that the insistence on the same due process requisites in in rem as in in personam actions would only substantially affect the second sub-category of quasi in rem actions.[55]

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47. U.S. Industries, Inc. v. Gregg, 540 F.2d 142, 153-55 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2972 (1977); Jonnet v. Dollar Savings Bank, 530 F.2d 1123, 1136-38 (3d Cir. 1976) (Gibons, J., concurring); Atkinson v. Superior Court, 49 Cal. 2d 338, ___ , 316 P.2d 960, 964-65 (1957), *appeal dismissed and cert. denied sub. nom.* Columbia Broadcasting Sys. v. Atkinson, 357 U.S. 569 (1958); Camire v. Scieszka, 116 N.H. 281, ___ , 358 A.2d 397, 399 (1976).

48. Carrington, *The Modern Utility of Quasi In Rem Jurisdiction*, 76 HARV. L. REV. 303 (1962); Hazard, *supra* note 17; Zammit, *supra* note 17; Folk & Moyer, *supra* note 17.

49. Pennoyer v. Neff, 95 U.S. 715, 734-35 (1877).

50. Hazard, *supra* note 17, at 271.

51. Shaffer v. Heitner, 433 U.S. 186, 208 n.30 (1977). *See* In re Rinderknecht, 367 N.E.2d 1182 (Ind. Ct. App. 1977) (marital dissolution).

52. Shaffer v. Heitner, 433 U.S. 186, 208 n.30 (1977).

53. Pennoyer v. Neff, 95 U.S. 715, 722 (1877).

54. Shaffer v. Heitner, 433 U.S. 186, 207 (1977).

55. *Id.* at 208-09.

It is the second sub-category of quasi in rem jurisdiction, where the property attached has no relation to the underlying action, that has been criticized as providing a windfall gain to some plaintiffs because of the fortuitous location of the defendant's property within the forum. The majority in *Shaffer* reasoned that this criticism would not be applicable to true in rem and to the first sub-category of quasi in rem actions where the title to property is at issue and the defendant, contesting another's claim to the property, is expecting the state to protect that interest.[56] This rationale coupled with the state's interests in assuring that property within the state be given clear title and the fact that dispositions as to ownership will invariably require witnesses and records located within the forum state tend to show the existence of minimum contacts sufficient to comport with due process requirements.[57] Due to these considerations, the Court's holding in *Shaffer* will only preclude actions based on the second sub-category of quasi in rem jurisdiction.

However, the *Shaffer* decision failed to consider the further requirements on in personam jurisdiction mandated by the Court in *Hanson v. Denckla*.[58] *Hanson* modified the *International Shoe* due process requirements by further requiring that the defendant's contacts with the forum be purposeful.[59] Although this purposeful availment can usually be demonstrated, it is not difficult to imagine a fact situation where that element would be missing. For example, defendants in in rem actions that have inherited the subject res could not be said to have purposefully availed themselves of the benefits and protections of the forum's laws. In such a case, there would have to be a showing of purposeful contacts independent of the claim to the res. In the absence of this type of claim, the *Shaffer* analysis indicating that the brunt of the decision will fall on the second sub-category of quasi in rem jurisdiction may well be expected to hold true.

Buttressing this conclusion is the fact that numerous state legislatures have enacted long arm statutes providing for the assertion of in personam jurisdiction over nonresidents for any cause of action arising out of the ownership, use or possession of property within the forum.[60] True in rem jurisdiction and the first sub-category of quasi in rem jurisdiction would fall within this framework as the defendant in both types of actions is involved in a cause of action arising out of the claimed ownership of the property or an interest therein. While the Supreme Court has

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56. *Id.* at 207-08.
57. *Id.* at 207-08 and n.28.
58. 357 U.S. 235 (1958).
59. Hanson v. Denckla, 357 U.S. 235, 253 (1958).
60. *See, e.g.*, ARK. STAT. ANN. § 27-2502 (Supp. 1975); IDAHO CODE § 5-513 (Supp. 1977); ILL. STAT. ANN. ch. 110 § 17 (Smith-Hurd 1968); IOWA CODE § 617.3 (1977); OKLA. STAT. ANN. tit. 12 § 1701.03 (Supp. 1977).

never directly passed on the validity of these statutes, every state court has upheld them as a valid exercise of in personam jurisdiction over a nonresident defendant.[61]

In *International Shoe*, the Court, with its emphasis on fairness to nonresident defendants, alluded to the fact that the casual presence of a nonresident within the forum state may not, without more, comprise sufficient contact with the forum to allow the assertion of jurisdiction.[62] Under this theory, it would not be dispositive that the defendant was personally served within the forum.[63] While only dicta in *International Shoe*, the qualification by *Shaffer* of the first principle of state court jurisdiction enunciated in *Pennoyer* suggests that this conclusion is sound. States simply no longer can be said to have exclusive jurisdiction and sovereignty over persons and property located within their territorial limits. Given the equitable considerations which *International Shoe*, *Hanson* and *Shaffer* impart to jurisdictional theory, aberrational decisions allowing the assertion of jurisdiction over nonresident defendants only casually or fortuitously within the forum should now be overruled.[64]

In assessing the full impact which *Shaffer* can be expected to generate, some initial inquiries must be made. First, it is necessary to determine whether the minimum contacts standard for in rem actions will differ from that presently required in in personam actions. Secondly, it is necessary to determine if decisions in quasi in rem actions will be entitled to full faith and credit in other forums.

The majority opinion in *Shaffer* seems to suggest that the minimum contacts required will be the same for in personam and quasi in rem jurisdiction. The Court, relying on *Mullane*, states that the requirements of due process could not turn on the characterization of an action as in rem or in personam.[65] The majority in *Shaffer* reasons that the fairness of subjecting a defendant to the jurisdiction of the forum could not be dependent on the plaintiff's judgment being limited to the value of the

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61. Bowsher v. Digby, 243 Ark. 799, 422 S.W.2d 671 (1968); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Miller v. Vitalife Corp. of Amer., 173 N.W.2d 91 (Iowa 1969) (contract actions); Tice v. Wilmington Chem. Corp., 259 Iowa 27, 141 N.W.2d 616, *supp. op.*, 259 Iowa 47, 143 N.W.2d 86 (1966) (tort actions); Beck v. Spindler, 256 Minn. 543, 99 N.W.2d 670 (1959); Associates Fin. Serv. of Okla., Inc. v. Kregel, 550 P.2d 992 (Okla. App. 1976).

See generally Note, *The Iowa "Long-Arm" Statute—Ten Years After*, 23 DRAKE L. REV. 423 (1974).

62. International Shoe Co. v. Washington, 326 U.S. 310, 315-16 (1945).

63. *Id.* This result is in direct contravention to the *Pennoyer* principles.

64. Grace v. MacArthur, 170 F. Supp. 442 (E.D. Ark. 1959) (held service of process on a nonresident flying over the jurisdiction on a non-stop flight conferred in personam jurisdiction).

65. Shaffer v. Heitner, 433 U.S. 186, 206 (1977).

property attached.[66] Such a consideration, the size of the claim, is not controlling under the minimum contacts calculus of *International Shoe*. When invoking in personam jurisdiction under *International Shoe*, sufficient minimum contacts cannot be shown by the mere value of defendant's property within the forum.

The Court did not decide whether due process requirements would differ for the assertion of quasi in rem jurisdiction where the plaintiff has only one available forum in which to assert his claim.[67] This suggests that the present considerations used in determining the existence of sufficient minimum contacts[68] may have to be supplemented when dealing with fact situations peculiar to the exercise of quasi in rem jurisdiction.[69]

The second major uncertainty which must be resolved in determining *Shaffer's* impact is whether a quasi in rem judgment is entitled to full faith and credit in other jurisdictions.[70] Although *Shaffer* did not address this issue, full faith and credit should be accorded quasi in rem judgments obtained where the exercise of jurisdiction is predicated on the finding of sufficient minimum contacts with the forum. Prior to *Shaffer*, a judgment obtained under quasi in rem jurisdiction in one forum generally was not given collateral estoppel effect in subsequent actions in other forums since that jurisdiction was justified by a different standard of due process.[71] However, *Shaffer* has specifically abrogated the distinction between due process requirements for in personam and in rem jurisdiction.[72]

66. *Id.* at 207 n.23. This reality is illustrated in *Shaffer* since the property seized had a value of approximately $1.2 million. *Id.* at 192 n.7.

67. *Id.* at 211 n.37.

68. Sporcam, Inc. v. Greenman Bros., Inc., 340 F. Supp. 1168 (S.D. Iowa 1972). The court listed five relevent considerations:

> (1) the nature and quality of the contacts of forum state; (2) the quantity of contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties.

Id. at 1176. *See* Electro-Craft Corp. v. Maxwell Elec. Corp., 417 F.2d 365, 368 (8th Cir. 1969); Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965).

69. An example of such a case would be where an American citizen is involved in an automobile accident abroad because of an American expatriate's negligence. Should the defendant happen to own property in some state, the fact that the plaintiff only has one available forum may provide sufficient justification to waive the minimum contacts requirement.

70. U.S. CONST. art. IV, § 1. *See* Williams v. North Carolina, 325 U.S. 226 (1945). The Court stated circumstances under which full faith and credit was permitted:

> It can be made a judgment there only if the court purporting to render the original judgment had the power to render such a judgment. A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.

Id. at 229.

71. Minichiello v. Rosenberg, 410 F.2d 106, 112 (2d Cir. 1968), *aff'd on rehearing en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1969). *See* note 73 *infra*.

72. Shaffer v. Heitner, 433 U.S. 186, 207 (1977).

Since most prior cases dealt with the requirements for according in personam judgments full faith and credit, the pre-*Shaffer* case law is not dispositive. These cases indicate, however, that full faith and credit is only available where a sufficient basis existed to exercise the state's "power" over the defendant and that a hearing and notice had been provided.[73] Although personal jurisdiction is not being exercised under the *Shaffer* holding, since the minimum contacts requirements are ostensibly the same in in rem and, in in personam actions, there would exist a sufficient basis for requiring that full faith and credit be given.

On the other hand, states need not exercise all permissible power consistent with the due process clause by enacting long arm statutes.[74] By a state failing to enact a long arm statute or by not exercising the full extent of its power, it could be inferred that the legislature intended to limit the liability of nonresidents by only allowing the exercise of quasi in rem jurisdiction against them. In fact, this could be interpreted as an inducement for nonresidents to invest in that state. As such, to give a quasi in rem judgment full faith and credit would be in contravention of the clear intent of the legislature.

It has been asserted that the purpose of the full faith and credit clause is to unify the individual states into a cohesive nation by giving the judgments of one forum the same faith and credit in sister states.[75] Under this rationale, it could be argued that since the forum state in a quasi in rem proceeding could only render judgment to the extent of the property attached, sister states could not grant additional relief. The necessary implication of this rationale is that the same issues must be relitigated in another forum should the property originally attached prove insufficient. However, relitigation results simply because the property attached does not satisfy the claim and not because of due process considerations.

Prior to *Shaffer*, the Court in a series of cases considered the procedural due process implications of prejudgment attachment and se-

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73. Williams v. North Carolina, 325 U.S. 226, 228-29 (1945); Milliken v. Meyer, 311 U.S. 457, 462 (1940); Comprehensive Merchandising Catalogs, Inc. v. Madison Sales Corp., 521 F.2d 1210, 1212 (7th Cir. 1975). *See* Barnes v. Buck, 346 A.2d 778 (Pa. 1975); Hansen v. McAndrews, 49 Wis. 2d 625, 183 N.W.2d 1 (1971).

74. McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, ____ , 229 N.E.2d 604, 607-08, 283 N.Y.S.2d 34, 37-38 (1967) (state long arm statute did not reach alleged conduct). *See* Szantay v. Beech Aircraft Corp., 349 F.2d 60 (4th Cir. 1965) (state door closing statute).

However, some jurisdictions enacting long arm statutes have done so with the intent of exercising the maximum amount of jurisdiction that is constitutionally permissible. Martin v. Kelley Elec. Co., 371 F. Supp. 1225 (E.D. Ark. 1974); Jonz v. Garrett Airesearch Corp., 490 P.2d 1197 (Alaska 1971); Doggett v. Electronics Corp. of Amer., 93 Idaho 26, 454 P.2d 63 (1969); Colony Press, Inc. v. Fleeman, 17 Ill. App. 3d 14, 308 N.E.2d 78 (1974).

75. Johnson v. Muelberger, 340 U.S. 581, 584 (1951); Morris v. Jones, 329 U.S. 545, 553 (1947).

questration statutes.[76] However, in *Shaffer*, the exception to the requirement which applied to attachment and sequestration[77] for the purpose of securing in rem jurisdiction was not reviewed.[78] The rationale for this exception was that the state had an overriding interest in securing a judgment for its citizens. By not requiring a hearing, it was unlikely that a defendant could remove the property from the forum before seizure of that property could confer in rem jurisdiction. Arguably, however, since in personam due process considerations are now mandated by *Shaffer* when quasi in rem jurisdiction is asserted, it is doubtful that the "exceptional circumstances"[79] permitting attachment or sequestration without a hearing or any controls on the procedure survive after *Shaffer*.

The impact *Shaffer* will have ultimately depends on whether the same minimum contacts will be required of in rem and in personam actions and whether quasi in rem judgments will be given full faith and credit. The application of *International Shoe* due process requirements to in rem jurisdiction over nonresidents delimits the power of state courts under the *Pennoyer* principles. It is nearly certain that intangible property will no longer be used as a basis for quasi in rem jurisdiction where the attached property has no relation to the claim itself. *Shaffer* alleviates the theoretical difficulties in attempting to use the *Pennoyer* framework for such a purpose. Attachment and sequestration statutes will serve a limited function by providing security for a plaintiff while awaiting final disposition of the action.[80]

This shift in emphasis does not mark a retreat to defendant oriented jurisdictional theories; rather, it symbolizes the beginning of an approach founded on fair play and realism. The Court in *Shaffer* reached the only equitable and possible conclusion by abandoning the outdated *Pennoyer* "power" analysis. Resort to the fiction of *Harris* does not justify an exercise of quasi in rem jurisdiction when there concededly are insufficient local contacts to justify in personam jurisdiction.

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76. North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Fuentes v. Shevin, 407 U.S. 67 (1972); Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

77. Mitchell v. W.T. Grant Co., 416 U.S. 600, 616-18 (1974) (held that although no presequestration hearing was afforded under the statute in question, it was nonetheless valid as it prescribed conditions of sequestration which protected the defendant from groundless claims).

78. Shaffer v. Heitner, 433 U.S. 186, 189 (1977).

79. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 677 (1974); Fuentes v. Shevin, 407 U.S. 67, 90-92 (1972).

80. von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1178 (1966).