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SYMPOSIUM: THE IMPACT OF *SHAFFER V. HEITNER*

SINGLE-FACTOR BASES OF IN PERSONAM JURISDICTION—A SPECULATION ON THE IMPACT OF *SHAFFER V.* *HEITNER*

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I. INTRODUCTION

During the period between *Pennoyer v. Neff* (1877)¹ and *Shaffer v. Heitner* (1977),² the Supreme Court authorized state courts to assert in personam jurisdiction over any person served with process in the forum and in rem and quasi in rem jurisdiction over any properly attached property in the forum. The analytical framework developed in *Pennoyer*³ and its progeny,⁴ rather than the holdings of the cases,⁵ pro-

1. 95 U.S. 714 (1877).

2. 433 U.S. 186 (1977).

3. "From our perspective, the importance of *Pennoyer* is not its result, but the fact that its principles and corollaries derived from them became the basic elements of the constitutional doctrine governing state-court jurisdiction." *Id.* at 198-99. See also Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241.

4. *Harris v. Balk*, 198 U.S. 215 (1905), a quasi in rem case applying the presence-power doctrine of *Pennoyer*, was considered in detail by the Court in *Shaffer*, 433 U.S. at 200-01, 208-09. Other in rem and quasi in rem progeny of *Pennoyer* cited by the Court in *Shaffer* were: *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183 (1941); *Ownbey v. Morgan*, 256 U.S. 94 (1921); *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917); *Baltimore & O.R.R. v. Hostetter*, 240 U.S. 620 (1916); *Ballard v. Hunter*, 204 U.S. 241 (1907); *Louisville & N.R.R. v. Deer*, 200 U.S. 176 (1906); *Arndt v. Griggs*, 134 U.S. 316 (1890); *Huling v. Kaw Valley Ry.*, 130 U.S. 559 (1889); *Freeman v. Alderson*, 119 U.S. 185 (1886); *Steele v. G.D. Searle & Co.*, 483 F.2d 339 (5th Cir. 1973), *cert. denied*, 415 U.S. 958 (1974); *U.S. Indus., Inc. v. Gregg*, 348 F.Supp. 1004 (D. Del. 1972), *rev'd*, 540 F.2d 142 (3d Cir. 1976), *cert. denied*, 433 U.S. 908 (1977).

5. In *Pennoyer v. Neff*, 95 U.S. 714 (1877), Neff, a Californian, filed suit in Oregon against Pennoyer seeking recovery of a tract of land in Oregon. Neff based his prevailing claim on a patent issued to him by the United States. Pennoyer claimed superior title by virtue of a later purchase of the property at a sheriff's sale in execution on a judgment a third person, Mitchell, had obtained several years earlier in a quasi in rem proceeding against Neff. In sustaining Neff's claim to the property, the Court held that the judgment Mitchell had obtained, the basis of the

vided the foundation for a presence-power doctrine of state judicial jurisdiction. In essence, *Pennoyer* stood for the proposition that physical presence of a defendant in a state gave that state's courts the power to adjudicate a claim against the defendant even though the asserted claim was unrelated to the state.⁶ *Pennoyer* also came to mean that presence of property in the state gave that state's courts the power to adjudicate claims against the property's absent owner even though the asserted claim was unrelated to the state or to the property itself.⁷ In suits based on the presence of property, courts limited recovery to the value of the property.⁸

State courts found the requirement of physical presence as a condi-

sheriff's sale, was rendered by the Oregon court without jurisdiction. Since the court lacked personal jurisdiction over Neff, the only basis of its power in the proceeding brought by Mitchell was the property Neff owned in Oregon. Mitchell, who followed the directions of the existing Oregon statutes, had failed to attach the property in question at the time he commenced his action against Neff. That failure was deemed fatal because, with neither Neff nor his property before it, the Oregon court had no basis for asserting jurisdiction over Mitchell's claim against Neff. *Id.* at 720. Had Mitchell attached the property when he filed his suit, the earlier proceeding in Oregon would have been proper and Neff would have failed in his effort to reclaim the property. Further, Neff would have to have been given proper notice of the earlier Oregon proceeding. *See, e.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

6. "[U]nder *Pennoyer* state authority to adjudicate was based on the jurisdiction's power over either persons or property." *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977). *See, e.g.*, *Grace v. MacArthur*, 170 F. Supp. 442, 447 (E.D. Ark. 1959) (service made in airspace over Arkansas on a nonstop flight from Memphis, Tennessee to Dallas, Texas); *Fisher v. Fielding*, 67 Conn. 91, 34 A. 714 (1895) (suit on an English judgment based on service on an American defendant temporarily in England; jurisdiction of English court sustained); *Rawstorne v. Maguire*, 265 N.Y. 204, 192 N.E. 294 (1934).

The foundation of jurisdiction is physical power. *McDonald v. Mabee*, 243 U.S. 90, 91. . . . The sovereignty of the state extends only as far as its territorial boundaries. Where there is "bodily presence" within the boundaries of the state there is opportunity for the exercise of the state's sovereignty, even though bodily presence is not accompanied by any intention to remain there permanently.

Id. at 208, 192 N.E. at 295-96. *See generally* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 28 (1971).

7. *E.g.*, *Steele v. G.D. Searle & Co.*, 483 F.2d 339 (5th Cir. 1973), *cert. denied*, 415 U.S. 958 (1974); *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). The presence-power doctrine did not go unchallenged in the courts. In his concurring opinion in *Jonnet v. Dollar Sav. Bank of New York*, 530 F.2d 1123 (3d Cir. 1976), Judge Gibbons said that *Hanson v. Denckla*, 357 U.S. 235, 250-55 (1958), "strongly suggests" that "it would be fundamentally unfair to subject a defendant who has no connection with the state to jurisdiction at the place of plaintiff's residence." 530 F.2d at 1142. The *Jonnet* case involved a successful due process attack on Pennsylvania's foreign attachment procedures. *See also* *Shaffer v. Heitner*, 433 U.S. 186, 205 (1977) (citing diverse authorities critical of "the proposition that the presence of property in a State gives that State jurisdiction to adjudicate rights to the property regardless of the relationship of the underlying dispute and the property owner to the forum").

8. If jurisdiction is based on the court's power over property within its territory, the action is called "*in rem*" or "*quasi in rem*." The effect of a judgment in such a case is

tion precedent to assertion of in personam jurisdiction too narrow. Thus, although physical presence of the defendant remained one basis for in personam jurisdiction,⁹ a substantial number of other relationships supported it as well. Distinctions were made between the "broad" power of state courts to adjudicate claims unrelated to the forum¹⁰ and their "limited" authority to adjudicate claims having some nexus with the forum.¹¹ Courts had "broad" jurisdiction over defendants who were domiciliaries of the forum¹² or engaged in continuing activities there.¹³ Corporate defendants were subjected to "broad" ju-

limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court.

Shaffer v. Heitner, 433 U.S. 186, 199 (1977). See, e.g., Martin v. Better Taste Popcorn Co., 89 F.Supp. 754 (S.D. Iowa 1950); Simpson v. Loehmann, 21 N.Y.2d 305, 310, 234 N.E.2d 669, 671, 287 N.Y.S.2d 633, 637 (1967).

9. See note 6 *supra*.

10. E.g., Perkins v. Benguet Mining Co., 342 U.S. 437 (1952) (suit in Ohio against a foreign corporation on a claim that arose from activities entirely distinct from the corporation's activities in Ohio); Lee v. Walworth Valve Co., 482 F.2d 297 (4th Cir. 1973). In Cornelison v. Chaney, 16 Cal.3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976), the court found the relationship the defendant trucker had with the forum—20 trips a year into the state, an independent contractor relationship with a California broker, and a Public Utilities Commission license—was insufficient to support the assertion of "broad" jurisdiction over defendant for injuries plaintiff's decedent received in a highway accident in Nevada. The fact that at the time of the accident, defendant was en route to California with a load and was to pick up a load upon arrival was sufficient to support "limited" jurisdiction for injuries received during the trip, even though the injuries to the California decedent occurred in Nevada.

11. E.g., Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 38 Cal. Rptr. 586 (1977) (asserting "limited" jurisdiction to determine an absent defendant's obligation to support his children as the result of his having honored his minor daughter's request that she be permitted to live with her mother in California), *rev'd*, 98 S. Ct. 1690 (1978); Longines-Wittnauer v. Barnes & Reinecke, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 4 (1965).

12. E.g., Milliken v. Meyer, 311 U.S. 457 (1940); Allen v. Superior Court, 41 Cal.2d 306, 259 P.2d 905 (1953); Mounts v. Mounts, 181 Neb. 542, 149 N.W.2d 435 (1967); Rawstorne v. Maguire, 265 N.Y. 204, 192 N.E. 294 (1934) (dictum).

The RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 30 (1971) states that a person is subject to the jurisdiction of the courts of the state in which he or she resides. To the extent that residence is a single-factor sufficient to permit assertions of state-court jurisdiction, the comments about single-factor bases of jurisdiction in this article are intended to apply. *Id.*, Reporter's Note; see State *ex rel.* Merritt v. Heffernan, 142 Fla. 496, 501, 195 So. 145, 147-48 (1940); Lebel v. Reagan, 159 Me. 300, 302, 192 A.2d 28, 30 (1963).

Federal jurisdiction may be asserted over citizens of the United States who are nonresidents. *Blackmer v. United States*, 284 U.S. 421 (1932). While the present article deals only with state-court jurisdiction, the due process requirements discussed as they relate to single-factor bases of jurisdiction would seem to question the citizenship rule of *Blackmer* to the extent that citizenship, in and of itself, permits the assertion of "broad" jurisdiction over absent defendants. For instance, may the federal courts assert jurisdiction over an American citizen involved in an automobile accident in France in which a French citizen was injured?

13. E.g., Perkins v. Benguet Mining Co., 342 U.S. 437 (1952); Lee v. Walworth Valve Co.,

risdiction in their state of incorporation¹⁴ and in states in which they had appointed agents for service.¹⁵ In each of these situations, a single factor closely related to presence in the forum was the touchstone of state judicial jurisdiction. If the single factor existed, the propriety of exercising state judicial power followed automatically. In addition, a defendant could consent to the assertion of jurisdiction.¹⁶

When the various single-factor bases of jurisdiction proved too restrictive, courts developed a multiple-factor foundation for in personam jurisdiction over absent defendants. "Limited" jurisdiction became available on claims stemming from defendant's isolated acts in the forum state¹⁷ and on claims arising from acts outside the forum if

482 F.2d 297 (4th Cir. 1973); *Bryant v. Finnish Nat'l Airline*, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1968); *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 231 S.E.2d 629 (1977); *Hill v. Zale Corp.*, 25 Utah 2d 357, 482 P.2d 332 (1971) (suit in Utah against a Texas corporation for breach of an Alaska employment contract).

It may be that continuing activities, rather than being classified as a single-factor basis of jurisdiction, should be viewed as being founded on minimum contacts. The *Perkins* Court stated that the basic issue was one of "general fairness to the corporation" and that the "[a]ppropriate tests for that are discussed in *International Shoe . . .*" 342 U.S. at 445. The continuing activities doctrine is treated as a single-factor basis of jurisdiction here because of the similarity between "continuing activities" and the "presence" required by *Pennoyer*. Additionally, "broad" jurisdiction is conferred as it is when "presence" is the basis of jurisdiction. It is interesting to note that *Perkins* was not cited by the Court in *Shaffer*.

14. *E.g.*, *Pennoyer v. Neff*, 95 U.S. 714, 735 (1877) (dictum). See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 41 (1971); *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909, 919 (1960).

15. *E.g.*, *Pennsylvania Fire Ins. Co. v. Gold Issue Mining Co.*, 243 U.S. 93 (1917) (in obtaining a license to do business in Missouri, defendant insurance company filed a power of attorney with a Missouri state official consenting that service on the official would be deemed service on the company; the Court held that such service conferred jurisdiction on the Missouri courts to adjudicate a claim arising out of an insurance policy which the out-of-state company had issued to an Arizona corporation on a building in Colorado). *Cf.* *Doherty & Co. v. Goodman*, 294 U.S. 623 (1935) (sustaining the jurisdiction of the Iowa courts on the basis of service on an agent of the individual defendant, a New Yorker, who, through agents, carried on the business of selling securities in Iowa; the agent's only express power was to sell securities and the claim sued on arose out of the business activities in Iowa). See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 44 (1971).

16. *E.g.*, *National Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315-16 (1964); *Hess v. Pawloski*, 274 U.S. 352 (1927); *Joseph L. Wilmotte & Co. v. Rosenman Bros.*, 258 N.W.2d 317, 329 (Iowa 1977); *Gilbert v. Burnstine*, 225 N.Y. 348, 174 N.E. 706 (1931). See also *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972) (holding that confession of judgment clauses are not per se violative of due process); *Atlas Credit Corp. v. Erzine*, 25 N.Y.2d 219, 250 N.E.2d 474, 303 N.Y.S.2d 382 (1969) (holding that jurisdiction based on consent in a cognovit note requires that a "given" court be designated and that the judgment be rendered in a judicial proceeding).

17. *E.g.*, *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *A. F. Briggs Co. v. Starrett Corp.*, 329 A.2d 177, 181-84 (Me. 1974); *Smith v. Tempco, Inc.*, 252 So.2d 212 (Miss. 1971); *Jarstad v. National Farmers Union*

defendant purposefully¹⁸ caused an effect in the forum.¹⁹ The multiple-factor basis of jurisdiction derived from the Supreme Court's decisions in *International Shoe Co. v. Washington*²⁰ and *McGee v. International Life Insurance Co.*²¹ In tandem, these cases established a basic due process requirement that state court assertions of in personam jurisdiction over absent defendants must accord defendants fair play and substantial justice;²² to meet the fairness-justice standard, the events and parties involved in the litigation must have at least minimum contacts with the forum.²³ Until the decision in *Shaffer v. Heitner*,²⁴ the substantial justice and minimum contacts requirement had almost no impact on the presence-power doctrine of *Pennoyer* or on other single-factor bases of jurisdiction developed after *Pennoyer*.

II. THE HOLDING IN *SHAFFER*

With its decision in *Shaffer*, the Court eliminated one-half of the

Prop. & Cas. Co., 92 Nev. 380, 387-88, 552 P.2d 49, 53-54 (1976); *Commonwealth v. National Fed'n of the Blind*, 471 Pa. 529, 370 A.2d 732 (1977) (mail solicitation of funds in Pennsylvania held sufficient contact to sustain jurisdiction); *Sheppard & Enoch Pratt Hosp. v. Smith*, 114 R.I. 181, 330 A.2d 804 (1975); *Booth v. Magee Carpet Co.*, 548 P.2d 1252 (Wyo. 1976).

18. *E.g.*, *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (to obtain jurisdiction over a nonresident defendant, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.").

19. *E.g.*, *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969); *Reilly v. Phil Tolkan Pontiac, Inc.*, 372 F.Supp. 1205 (D.N.J. 1974) (plaintiff purchased a General Motors car from a dealer in Wisconsin, the car containing a defective jack sold by General Motors to the Wisconsin dealer; plaintiff was injured while using the jack in New Jersey; the court held that the Wisconsin dealer was subject to the jurisdiction of the courts in New Jersey on the theory that the use of the jack in New Jersey was reasonably foreseeable); *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *Edmundson v. Miley Trailer Co.*, 211 N.W.2d 269 (Iowa 1973); *Engineering Assoc. of New England v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900 (1975); *Parke-Bernet Galleries v. Franklyn*, 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970); *State ex rel. White Lumber Sales, Inc. v. Sulmonetti*, 252 Ore. 121, 448 P.2d 571 (1968); *Jasper Aviation, Inc. v. McCollum Aviation, Inc.*, 497 S.W.2d 240 (Tenn. 1972); *Werner v. Werner*, 84 Wash. 2d 360, 526 P.2d 370 (1974).

20. 326 U.S. 310 (1945).

21. 355 U.S. 220 (1957). The Court in *Shaffer* referred to *McGee* as the "culmination of [the *International Shoe*] trend toward expanding state jurisdiction over 'foreign corporations and other nonresidents.'" 433 U.S. 186, 204 n.19 (1977).

22. [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. at 316.

23. *Id.*; see 355 U.S. at 222.

24. 433 U.S. 186 (1977).

presence-power doctrine.²⁵ It held the presence of property in the forum insufficient, as a single factor, to permit the assertion of quasi in rem jurisdiction over a claim unrelated to the forum.²⁶ For a court to assert such jurisdiction, *Shaffer* required a multiple-factor analysis. In addition to the presence of the property, the litigation and the defendant now must have sufficient contact with the forum to permit it to assert personal jurisdiction over the absent property owner.

Shaffer involved a quasi in rem proceeding in which the state used sequestered shares of stock in a Delaware corporation²⁷ as the jurisdictional base for a claim against the nonresident owners of the shares—officers and members of the board of directors of the corporation. The plaintiffs alleged that defendants, in their status as officers and directors, had violated their duties to the corporation by taking action outside of Delaware that resulted in corporate liability in a private antitrust action. The Court held that the single factor of the presence of the absent defendants' property in Delaware was insufficient to sustain the assertion of quasi in rem jurisdiction; to assert such jurisdiction, a state must have sufficient contact with the litigation and the defendant to permit it to assert personal jurisdiction over the absent defendant.²⁸

The specific impact of *Shaffer* is relatively clear. In states that extend judicial jurisdiction as far as the Constitution permits,²⁹ a plaintiff

25. The Court noted two exceptions to its holding abolishing the property half of the presence-power doctrine: (1) Attachments are permissible in a state in which the owner is not subject to personal jurisdiction "as security for a judgment being sought in a forum where the litigation can be maintained consistently with *International Shoe*." *Id.* at 210. The attachment, of course, must satisfy the requirements of due process as established in *North Georgia 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). 433 U.S. at 210 n.36. Such an attachment process was used in *Carolina Power & Light Co. v. Uranex*, 46 U.S.L.W. 2914 (N.D. Cal. 1977), a post-*Shaffer* case. (2) "Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter." 433 U.S. at 210 n.38. For a discussion of the "judgment" rule of *Shaffer*, see Vernon, *State-Court Jurisdiction: A Preliminary Inquiry into the Impact of Shaffer v. Heitner*, 63 IOWA L. REV. 997, 1007-08 (1978).

26. 433 U.S. at 209.

27. DEL. CODE ANN. tit. 10, § 366 (1975).

28. The judgment in the private antitrust action was for \$13,146,090 plus attorneys' fees. 433 U.S. at 190 n.2. The fines totalled \$600,000. *Id.* at n.3.

29. In California and Rhode Island, the long-arm statutes specifically extend the jurisdiction of the courts as far as permitted by the United States Constitution. CAL. CIV. PROC. CODE § 410.10 (Deering 1972); R.I. GEN. LAWS § 9-5-33 (1970). Utah's long-arm statute states that it

who is unable to obtain personal jurisdiction over an absent defendant will be unable to obtain quasi in rem jurisdiction by virtue of the presence of the defendant's property in the forum.³⁰ In such states, the utility of quasi in rem jurisdiction will be curtailed substantially.³¹ In other states, quasi in rem jurisdiction may be asserted despite an inability to obtain personal jurisdiction over the absent owner if it is the forum's limited long-arm statute³² rather than a constitutional inhibition

"should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the . . . United States Constitution." UTAH CODE ANN. § 78-27-22 (Supp. 1975). Further, the long-arm statutes in several states have been interpreted by courts as extending their jurisdiction to its constitutional limit. *E.g.*, *Schoel v. Sikes Corp.*, 533 F.2d 930, 933 (5th Cir. 1976) (discussing Alabama's long-arm statute); *Interstate Paper Corp. v. Air-O-Flex Equip. Co.*, 426 F. Supp. 1323, 1324-25 (S.D. Ga. 1977) ("The Georgia Long Arm statute is coterminous with the due process clause of the Fourteenth Amendment and the policy of the courts of this State is to exercise jurisdiction thereunder 'to the maximum extent permitted by procedural due process.'"); *Jarstad v. National Farmers Union Prop. & Cas. Co.*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976); *Olmstead v. American Granby Co.*, 565 P.2d 108, 114 (Wyo. 1977).

30. *See, e.g.*, *DeMateos v. Texaco, Inc.*, 562 F.2d 895, 898 (3d Cir. 1977) (referring to *Shaffer's* endorsement of the view "that quasi in rem jurisdiction to adjudicate is subject to the same due process limitations as is in personam jurisdiction."); *Inland Credit Corp. v. M/T Bow Egret*, 556 F.2d 756, 757 (5th Cir. 1977) (stating the holding in *Shaffer* as being "that states' assertion of *in rem* jurisdiction must satisfy the same 'minimum contacts standard' applied to *in personam* jurisdiction"). *See also* *Pavlo v. James*, 437 F. Supp. 125, 129 (S.D.N.Y. 1977) (in holding that on the facts presented it would not exercise jurisdiction under New York's long-arm statute, the court indicated that it was exercising restraint "in light of the new caution currently being portrayed in measuring the constitutionality of assertions of extraterritorial jurisdiction in general," and cited *Shaffer*).

The pre-*Shaffer* practice of some states of asserting quasi in rem jurisdiction by permitting residents to attach a nonresident's property right in a liability insurance policy when the claim asserted had no contact with the forum, *e.g.*, *Savchuk v. Rush*, 245 N.W.2d 624 (Minn. 1976); *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966), is no longer permissible after *Shaffer*. *E.g.*, *Attanasio v. Ferre*, 401 N.Y.S.2d 685 (Sup. Ct. 1977); *Wallace v. Target Store, Inc.*, 92 Misc. 2d 454, 400 N.Y.S.2d 478 (Sup. Ct. 1977); *Katz v. Umansky*, 92 Misc. 2d 285, 399 N.Y.S.2d 412 (Sup. Ct. 1977); *Kennedy v. Deroker*, 91 Misc. 2d 648, 398 N.Y.S.2d 628 (Sup. Ct. 1977). *Contra*, *O'Connor v. Lee-Hy Paving Corp.*, 437 F. Supp. 994 (E.D.N.Y. 1977). *Savchuk* was remanded by the United States Supreme Court "for further consideration in light of *Shaffer v. Heitner* . . ." 433 U.S. 902, 902 (1977).

31. Because the constitutional ability to obtain in personam jurisdiction appears to be a condition precedent to assertions of quasi in rem jurisdiction, and because quasi in rem recoveries are limited by the value of the property attached, *see* note 8 *supra*, it is difficult to understand what, if anything, plaintiffs would gain by proceeding quasi in rem in a state with the broadest form of long-arm statute. For a discussion of a possible problem of proceeding quasi in rem when in personam jurisdiction is available, *see* text accompanying notes 63-70 *infra*.

32. *E.g.*, *George v. Strick Corp.*, 496 F.2d 10, 12-13 (10th Cir. 1974) (indicating that Oklahoma's long-arm statute extends judicial jurisdiction to the outer limits of due process "*when and only when the asserted cause of action arises from defendant's activities within the state*") (emphasis in original); *Whisenant v. Whisenant*, 219 Kan. 387, 548 P.2d 470 (1976). *Cf.* *Worland v. Worland*, 89 N.M. 291, 551 P.2d 981 (1976) (statutory grant of jurisdiction does not include power to issue final order regarding child custody); KAN. STAT. ANN. § 60-308(10) (1976) (an act of

that prevents the assertion of in personam jurisdiction.³³

III. BEYOND THE SPECIFIC HOLDING

The Court's language was much broader than its holding. It said: "We . . . conclude that all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."³⁴ If the Court's "all" language is taken literally, the *Shaffer* case will have an impact on state-court jurisdiction far beyond its abolition of the property half of the presence-power doctrine.

The present article focuses on *Shaffer's* potential impact on single-factor rules that permit courts to assert in personam jurisdiction. The impact *Shaffer* may have on such rules cannot be understood without a close examination of the Court's analysis of quasi in rem jurisdiction. As necessary background for the discussion of post-*Shaffer* assertions of in personam jurisdiction, therefore, the article examines *Shaffer's* impact on the jurisdictional aspects of two earlier quasi in rem cases—*Harris v. Balk*³⁵ and *Home Insurance Co. v. Dick*.³⁶ It urges that *Shaffer* makes suspect all assertions of in personam jurisdiction based solely on a single-factor analysis and that in the future "all" assertions of in personam jurisdiction by state courts will be tested against the multiple-factor requirements of *International Shoe*³⁷ and *McGee v. International Life Insurance Co.*³⁸

IV. THE MULTIPLE-FACTOR STANDARDS—*INTERNATIONAL SHOE* AND ITS PROGENY

Under the standards developed in *International Shoe* and its progeny assertions of state-court jurisdiction based on single-factor rules had to

1. Satisfy due process;
2. Be consistent with concepts of fair play and substantial justice;
3. Meet minimum contacts requirements;

sexual intercourse within the state resulting in the conception of a child allows the state to assert jurisdiction over the parents for the purpose of determining parenthood or obtaining support payments as long as the child or the other parent continues to reside in the state).

33. Because it is the constitutional limitation on personal jurisdiction over the absent owner that conditions a state's ability to assert quasi in rem jurisdiction, such actions will remain a useful device in states with limited long-arm statutes.

34. 433 U.S. at 212.

35. 198 U.S. 215 (1905).

36. 281 U.S. 397 (1930).

37. 326 U.S. 310 (1945).

38. 355 U.S. 220 (1957).

4. Involve a nexus among the forum, the litigation, and the defendant.

Until the decision in *Shaffer*, however, courts did not measure assertions of jurisdiction under the presence-power doctrine—in rem, quasi in rem, in personam—against the fair play-substantial justice standard. They were assumed to satisfy due process.

Shaffer clearly requires that assertions of jurisdiction in rem and quasi in rem be measured against the fairness-justice standard. That standard, however, although narrower than due process, helps very little in deciding individual cases. It is a visceral standard by which one's sense of injustice³⁹ is brought into play. If the Court in *Shaffer* simply held that all assertions of state-court jurisdiction must meet the test of fair play and substantial justice, its conclusion, while modifying the presence-power doctrine, would be so general as to lack utility. A fair reading of the Court's opinion in *Shaffer*, however, leads to the conclusion that in asserting jurisdiction—in personam, in rem, and quasi in rem—state courts in most cases must satisfy the minimum contacts standard of *McGee*,⁴⁰ and to meet that standard, there must be a nexus among the forum, the litigation, and the defendant.⁴¹ The tripartite nexus is at the heart of the *Shaffer* analysis,⁴² and the Court seems to have intended that a forum-litigation-defendant nexus exists as a condition precedent to most assertions of jurisdiction by state courts. The Court indicated some areas in which the tripartite nexus need not be present⁴³ and took a neutral position in two situations.⁴⁴

39. In his dissent in *International Shoe*, Justice Black objected to the adoption of the fair play-substantial justice standard, saying: "for application of this natural law concept, whether under the terms 'reasonableness,' 'justice,' or 'fair play,' makes judges the supreme arbiters of the country's laws and practices. . . . This result, I believe, alters the form of government our Constitution provides." 326 U.S. at 326. See also CAHN, *THE SENSE OF INJUSTICE* (1949).

40. 355 U.S. at 226.

41. "[T]he relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction." *Shaffer v. Heitner*, 433 U.S. at 204. In discussing Type 2b quasi in rem actions in which the property in the state "is completely unrelated to the plaintiff's cause of action," the Court said: "[A]lthough the presence of the defendant's property in a State might suggest the existence of other ties among the defendant, the State, and the litigation, the presence of the property alone would not support the State's jurisdiction." *Id.* at 209. See also the quotation from Justice Brennan's opinion, note 94 *infra*.

42. 433 U.S. at 209.

43. See note 25 *supra*.

44. The Court said that the *Shaffer* "case does not raise, and we therefore do not consider, the question whether the presence of a defendant's property in a State is a sufficient basis for jurisdiction when no other forum is available to the plaintiff." 433 U.S. at 211 n.37. For a discussion of the jurisdiction-by-necessity issue raised, see Vernon, *supra* note 25, at 1008-09. In commenting on cases involving status questions, e.g., ex parte divorce/dissolutions, the Court

Nevertheless, it left several important questions unanswered.

V. EQUATING QUASI IN REM AND IN PERSONAM JURISDICTION

In its analysis, the *Shaffer* Court sharply distinguished among various types of quasi in rem jurisdiction. An understanding of these distinctions is necessary for an appreciation of the possible impact the case will have on single-factor bases of in personam jurisdiction. The Court established two categories of quasi in rem proceedings:

- Type 1. '[T]he plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons.'⁴⁵
- Type 2. '[T]he plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him.'⁴⁶

For analytical purposes, it is clear from the Court's discussion that Type 2 quasi in rem cases should be divided into two classes:

- Type 2a. Involving claims arising from defendant's ownership of or interest in the property attached, *e.g.*, a slip-and-fall accident on the property attached.⁴⁷
- Type 2b. Involving claims arising independently of defendant's ownership of or interest in the property attached.⁴⁸

For true in rem⁴⁹ and Types 1 and 2a quasi in rem cases, the Court

said: "We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standard of fairness." 433 U.S. at 208 n.30. For a discussion of the status question, see *Vernon*, *supra* note 25, at 1005-07.

45. 433 U.S. at 199 n.17 (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958)).

46. *Id.*

47. *Id.* at 207-08. See, *e.g.*, *Bowsher v. Digby*, 243 Ark. 799, 422 S.W.2d 671 (1968) (deciding that ownership of Arkansas land was a constitutionally sufficient contact, without other contacts, to permit the assertion of personal jurisdiction over the absent owner on a claim arising out of that ownership—an alleged breach of a contract with a broker for the sale of the land); *Chadbourn v. Katz*, 285 N.C. 700, 208 S.E.2d 676 (1974); *Associates Fin. Servs. of Okla. v. Kregel*, 550 P.2d 992 (Okla.Ct.App. 1976) (sustaining the assertion of personal jurisdiction over an absent owner of land in a suit to foreclose a mortgage and obtain a deficiency judgment); *Dubin v. City of Philadelphia*, 34 Pa. D. & C. 61 (Philadelphia County Ct. 1938) (sustaining the assertion of personal jurisdiction over the absent owner of land in a "slip and fall" case allegedly caused by a broken sidewalk in front of the property).

48. 433 U.S. at 207-08.

49. "'A judgment *in rem* affects the interests of all persons in designated property.'" *Id.* at 199 n.17 (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958)). While the facts in *Shaffer* presented a quasi in rem problem, the Court's analysis dealt with true in rem cases as well. *Id.* at 207-08. For a discussion of in rem jurisdiction under *Shaffer*, see *Vernon*, *supra* note 25, at 1002-05. See also *Hazard, A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 287-88.

recognized that its overturning of the presence-power doctrine, while changing the analytical framework, rarely would deny a state court jurisdiction it could have asserted prior to the *Shaffer* decision.⁵⁰ The Court recognized that it had substantially altered the results in Type 2b cases.⁵¹ Two Type 2b cases are examined in depth here. In each case, the question presented is the same: As a matter of constitutional law, could personal jurisdiction have been asserted successfully over the absent property-owning defendant? If so, Type 2b quasi in rem jurisdiction would be proper. Otherwise, the asserted quasi in rem jurisdiction would fail.

A. *Harris v. Balk*

Despite the statement in *Shaffer* that “[f]or the type of *quasi in rem* action typified by *Harris v. Balk*”⁵² the application of the *International Shoe* standard “would result in significant change,”⁵³ the record in *Harris* is such that had the case been decided after *Shaffer*, the assertion of quasi in rem jurisdiction might still have been sustained. As with *Pennoyer*,⁵⁴ the quasi in rem jurisdiction under attack occurred in a prior proceeding. The case before the Court involved a writ of error to the North Carolina Supreme Court in an in personam action filed there by Balk, a North Carolina merchant,⁵⁵ against Harris, also a North Carolinian, on a debt resulting from the alleged nonpayment of a loan Balk had made to Harris in North Carolina.⁵⁶ Harris defended the North Carolina suit by claiming that, as directed by a valid Maryland quasi in rem judgment against Balk, he had satisfied his debt to Balk by paying it to Epstein, a Maryland merchant and Balk’s judgment creditor. The issue in *Harris* involved the validity of the judgment Epstein had obtained against Balk in Maryland. Epstein commenced that action while Harris was temporarily in Maryland. He had a writ of attachment served on Harris, attaching the debt Harris owed Balk. Epstein, thus, proceeded quasi in rem on the theory that Balk’s property—the debt Harris owed Balk—was present in Maryland. After having been served in Maryland, Harris left the State

50. 433 U.S. at 207-08.

51. *Id.* at 208.

52. *Id.*; *Harris v. Balk*, 198 U.S. 215 (1905).

53. 433 U.S. at 208.

54. See note 5 *supra*.

55. Record, at 56, *Harris v. Balk*, 198 U.S. 215 (1905) (indicating that Balk had purchased goods in commercial quantities from Epstein, a Baltimore merchant).

56. Record, at 22 (cross-examination of Harris).

without contesting the garnishee process and paid the judgment. The *Harris* Court rejected Balk's claim that he was not bound by the Maryland judgment because the Maryland court lacked jurisdiction. It applied the presence-power doctrine of *Pennoyer* and held that since Balk's property was present and properly attached in Maryland, the court had jurisdiction to issue a judgment that would bind Balk up to the value of the property before the court.⁵⁷

Although a post-*Shaffer* analysis would be different from that used by the *Harris* Court, the result might be similar. Epstein's claim against Balk derived from Balk's nonpayment to Epstein for goods apparently shipped from Baltimore to Balk in North Carolina.⁵⁸ Balk may even have ordered the goods while present in Maryland.⁵⁹ Regardless of where the goods were ordered, it is likely that under *International Shoe*⁶⁰ and *McGee*,⁶¹ Balk would be subject to the in personam jurisdiction of the Maryland court.⁶² Absent other considerations, therefore, quasi in rem jurisdiction over Balk's Maryland property would be appropriate under *Shaffer*.

57. The lack of notice to Balk would seem to be a fatal defect under current standards with-out regard to *Shaffer*. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

58. Record, at 46 (containing lists of goods Epstein claimed Balk had purchased from him; the goods being consigned to Balk by "Baltimore Bargain House, Jacob Epstein, proprietor . . . , 216 West Baltimore Street"). Further, Balk testified that as Harris "was going off to Baltimore, I told him to tell Jacob Epstein I would be in Baltimore soon . . ." *Id.* at 23. Harris testified that Balk had told him before he left for Baltimore "that if Epstein would give him a clear receipt for his old debt, he would go to Baltimore and buy \$500 or \$600 worth of goods and pay cash . . ." *Id.* at 22. On the basis of the testimony, it seems likely that the pattern of dealing between Balk and Epstein involved Balk selecting the goods he wanted at Epstein's Baltimore store and Epstein shipping the goods from Baltimore to Balk in North Carolina.

59. *Id.*

60. 326 U.S. 310 (1945).

61. 355 U.S. 220 (1957).

62. See, e.g., *Wichman v. Hughes*, 248 Ark. 121, 450 S.W.2d 294 (1970) (sustaining the as-ertion of personal jurisdiction over a buyer who, by agent, purchased horses in Arkansas); *Parke-Bernet Galleries, Inc. v. Franklyn*, 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970) (sus-taining the assertion of personal jurisdiction over a nonresident who sent a letter to plaintiff in New York stating that he wished to bid \$68,000—later increased to \$71,000—for a specific paint-ing plaintiff was planning to auction in New York; who, by telephone, arranged to have tele-phonic communication established between himself and plaintiff during the auction in order to participate in the bidding; for whom an employee of plaintiff monitored the telephone during the auction; and who entered bids through plaintiff's employee while the auction was in progress); *State ex rel. White Lumber Sales, Inc. v. Sulmonetti*, 252 Or. 121, 448 P.2d 571 (1968).

For a discussion of other Type 2b cases in which jurisdiction probably would exist after *Shaffer*, see *Vernon*, *supra* note 25, at 1015-17; text accompanying notes 96-101 *infra*.

If the events in *Harris* occurred after *Shaffer* in a state that permitted assertions of in personam jurisdiction to the extent permitted by the Constitution,⁶³ Epstein could proceed in personam or quasi in rem. If he proceeded quasi in rem⁶⁴ by service on Harris, it is possible that he would violate a state policy against multiplicity of suits.⁶⁵ Epstein's claim against Balk exceeded \$300. Balk's claim against Harris was for \$180. Since Epstein could have proceeded against Balk in personam and prevented potential dissipation of assets by attaching Balk's property,⁶⁶ Epstein could have settled the entire matter in a single suit. By proceeding quasi in rem, Epstein would force Balk to defend two actions rather than one, without any gain to Epstein.⁶⁷ Although Epstein would not technically be guilty of splitting his cause of action⁶⁸ by proceeding quasi in rem, he would violate the policies forwarded by rules preventing the splitting of a cause of action. Orderly judicial administration as well as good litigation judgment by plaintiff's counsel require a person in Epstein's position to opt for the remedy more likely to resolve the dispute in a single action.⁶⁹ In due process terms, Balk would arguably be denied fair play and substantial justice if required to defend the same suit twice.⁷⁰

The property attached in *Harris* was intangible and only transiently in Maryland—for as long as Harris remained there. Further, Harris, rather than Balk, controlled the situs of the latter's property. Is the assertion of quasi in rem jurisdiction in *Harris* suspect because the property was intangible, was in Maryland transiently, or because of the fact that Balk did not voluntarily transport the property to Maryland?

Although Justice Powell in his concurring opinion in *Shaffer* stated

63. See note 29 *supra*.

64. See note 30 *supra*.

65. For a discussion of modern views on multiplicity of suits, see RESTATEMENT (SECOND) OF THE LAW OF JUDGMENTS §§ 76-143 (Tent. Draft No. 1, 1973).

66. *Shaffer v. Heitner*, 433 U.S. at 210.

67. See note 31 *supra*.

68. Since Epstein in his quasi in rem action would assert his entire claim, with his "remedy" being restricted to the value of the property attached, he technically would not be splitting his claim, only his remedy. In terms of judicial economy, harassment of Balk, and finality, however, the impact would be the same. For a discussion of claim splitting in the context of res judicata and preclusion, see generally A. VESTAL, RES JUDICATA/PRECLUSION v-7 to v-12 (1969).

69. *Id.*

70. One of the main due process concerns of the Court in *Shaffer* was the unfairness to defendants of forcing them into a forum to defend their property when the property as such was unrelated to the claim. It seems no less unfair to leave plaintiffs who have the power to litigate their claims in a single action the option of forcing defendants to defend two separate actions.

his preference for retaining the presence-power doctrine for property "indisputably and permanently"⁷¹ in the forum, and Justice Stevens concurred "where real estate is involved,"⁷² the majority opinion does not suggest that the property's tangible nature or its transience is a significant factor.⁷³

Balk's lack of control over the property's presence in Maryland, however, might be significant in a similar case filed after *Shaffer*. The *Shaffer* Court indicated indirectly⁷⁴ that a state court could not assert

71. 433 U.S. at 217 (Powell, J., concurring).

72. *Id.* at 219 (Stevens, J., concurring).

73. *Harris v. Balk*, 198 U.S. 215 (1905), held that the debt Harris owed Balk traveled with Harris as he went from North Carolina to Maryland, *i.e.*, the situs of the debt was with the debtor. Since then, quasi in rem jurisdiction has been asserted successfully when the debtor was present in the forum. *See, e.g.*, *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934) (defendant's claim in a federal interpleader action in Texas was based on a prior quasi in rem proceeding it had instituted in Illinois against two insurance companies who were amenable to process there, the property attached being the claim the Texas insured had against the companies on fire insurance policies covering Texas property); *Steele v. G.D. Searle & Co.*, 483 F.2d 339 (5th Cir. 1973), *cert. denied*, 415 U.S. 958 (1974). In escheat cases, the Supreme Court appears to have "sited" the intangible property with the creditor in the sense that such property escheats to the state of the creditor's last known address, assuming such state has appropriate legislation permitting such escheat. *E.g.*, *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Texas v. New Jersey*, 379 U.S. 674 (1965). And, for purposes of taxation, intangible property is treated as having a situs at the domicile of the decedent whose estate is being taxed. *E.g.*, *Treichler v. Wisconsin*, 338 U.S. 251 (1949). It would appear that the situs of intangible property depends on the purpose for which situs is to be determined. *See, e.g.*, *Waite v. Waite*, 6 Cal. 3d 461, 467-68, 492 P.2d 13, 16-17, 99 Cal. Rptr. 325, 328-29 (1972). Other than pointing out that the Court in *Harris* "limited its holding to States in which the principal defendant (Balk) could have sued the garnishee (Harris) if he had obtained personal jurisdiction over the garnishee in that State," 433 U.S. at 201 n. 18, the *Shaffer* Court did not consider the problem of the "presence" of intangible property for purposes of quasi in rem jurisdiction.

74. When discussing in rem and Type 1 quasi in rem cases, the Court said: "[T]he defendant's claim to property located in the State would normally indicate that he expected to benefit from the State's protection of his interest." 433 U.S. at 207-08 (emphasis added). The Court footnoted the word "normally" as follows: "In some circumstances the presence of property in the forum State will not support the inference suggested in the text. *Cf., e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 60 (1971), Comments c, d; Traynor, *Is this Conflict Really Necessary?*, 37 TEX. L. REV. 657, 672-73 (1959); Note, *The Power of a State to Affect Title in a Chattel Atypically Removed to It*, 47 COLUM. L. REV. 767 (1947)." *Id.* at 208 n.25. Comments c and d to § 60 of the RESTATEMENT discuss limitations on jurisdiction over chattels brought into the state by fraud (c) and without the consent of the owner (d). The portion of Justice Traynor's article cited by the Court discusses *People v. One 1953 Ford Victoria*, 48 Cal.2d 595, 311 P.2d 480 (1957), in which the court held that a Texas secured party would not be held to a California requirement that secured parties make a character investigation of borrowers or forfeit the security interest if the car financed were used for unlawful transportation of narcotics. The car had been taken from Texas without the consent of the secured party. The Note on atypically removed chattels considers problems arising when a chattel is in a state without the consent of the owner, while in transit, or as the result of the owner fraudulently being induced to send it to the state.

in rem or quasi in rem jurisdiction over property within a state without the owner's consent⁷⁵ or within the forum as the result of fraudulent inducement of the owner.⁷⁶ In *Harris*, Balk's lack of control over Harris' movements did not influence the result. Yet, the distinction between lack of consent and inability to control the presence of property in a forum seems too insubstantial to permit a constitutional distinction. The requirement in *Shaffer* that the defendant consent to the presence of the property as a condition precedent to in rem and quasi in rem jurisdiction presumably is based on an assumption of risk theory, *i.e.*, by consenting to property being in the forum, the owner "knowingly assume[s] some risk that the state will exercise its power over . . . [the] property . . ." ⁷⁷ The knowing consent "gives rise to predictable risks,"⁷⁸ and thus, satisfies contemporary concepts of fair play and substantial justice. Under this analysis, Balk's lack of control over Harris' movements arguably would prevent Maryland from asserting quasi in rem jurisdiction over Balk's property even though Maryland could assert personal jurisdiction over Balk.

The *Shaffer* Court emphasized the owner's consent to the property's presence in the forum in explaining why the property's presence allows states to assert in rem and Type 1 quasi in rem jurisdiction. The Court said: "In such cases, the defendant's claim to the property located in the State would normally indicate that he expected to benefit from the State's protection of his interest."⁷⁹ Because in *Harris* the property's presence in the state was beyond Balk's control, he could not have had any expectations of benefit from the state's protection of his property right. In the absence of such expectations, it would seem that neither in rem nor quasi in rem jurisdiction could be asserted successfully.

Balk's lack of control over the presence of the property in Maryland would have no impact on Maryland's power to assert in personam jurisdiction over Balk; that power would arise as the result of his dealing with Epstein in Maryland.⁸⁰ And it might appear that the ability to obtain personal jurisdiction over Balk would permit Maryland to assert quasi in rem jurisdiction over his property or, at a minimum, to attach Balk's property located in Maryland as part of the in personam pro-

75. See note 74 *supra*.

76. *Id.*

77. 433 U.S. at 218 (Stevens, J., concurring).

78. *Id.*

79. *Id.* at 207-08 (opinion of the Court).

80. See note 62 *supra*.

ceeding. Although *Shaffer* holds that the ability to obtain personal jurisdiction over an absent property owner is a condition precedent to the assertion of jurisdiction over the owner's property, it does not hold that the right to assert quasi in rem jurisdiction or to attach the owner's property necessarily exists wherever personal jurisdiction is available. *Shaffer* seems to deny states the power to assert jurisdiction over property present in the state without the owner's consent regardless of whether the state could proceed in personam against the owner. It seems to require the same result when efforts are made to attach property as an adjunct to personal jurisdiction. Proceeding in rem or quasi in rem is accomplished by attachment⁸¹ and whether the action is based entirely on the presence of the property or is an adjunct to a personal action, the "expectation of benefit" seems to be a necessary element to the state's power to proceed.

B. *Home Insurance Co. v. Dick*

Although the *Shaffer* Court used *Harris v. Balk* to epitomize the undesirable results produced by the presence-power doctrine, *Home Insurance Co. v. Dick*⁸² presents an even greater example of extreme assertions of quasi in rem jurisdiction by state courts. In *Dick*, the plaintiff⁸³ had purchased fire insurance on a tugboat from a Mexican company that did no business in Texas, the forum. The policy, purchased in Mexico, covered losses in specified Mexican waters, was payable in Mexico in Mexican money, and contained a clause barring suit "unless . . . filed within one year . . . from the date on which . . . [the] damage occurs."⁸⁴ *Dick* filed a quasi in rem action against the Mexican company more than one year after the tug was destroyed by fire. The property attached in Texas was the Mexican company's right of exoneration from two American companies with whom part of the risk had been reinsured.⁸⁵ The companies, which had agents for service in Texas, had become reinsurers as a result of New York-Mexican correspondence. The Texas courts granted relief to the

81. *E.g.*, *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877). In pointing out the errors of the Oregon court in the quasi in rem proceeding *Mitchell* had brought against *Neff* and on which *Pennoyer's* title rested, the Court said: "The court below did not consider that an attachment of the property was essential to its jurisdiction or to the validity of the sale . . ." *Id.*

82. 281 U.S. 397 (1930).

83. "At the time the policy was issued, when it was assigned to him, and until after the loss, *Dick* actually resided in Mexico, although his permanent residence was in Texas." *Id.* at 403-04.

84. *Id.* at 403.

85. The Mexican corporation did not appear in the proceeding.

plaintiff under a Texas statute declaring invalid contract clauses restricting the right of action to a period shorter than two years.⁸⁶ In reversing, the Supreme Court held that Texas lacked sufficient contacts with the transaction to apply its own law to deny a contract defense valid where all of the events occurred.⁸⁷

The American companies conceded—as they had to under the presence-power doctrine—that plaintiff's "inability to sue the Mexican corporation in Texas, in personam . . . [was] not material"⁸⁸ Under *Shaffer* the inability to proceed in personam against the Mexican company would prevent the Texas courts from proceeding quasi in rem against the Company's property, if the property were present in

86. 281 U.S. at 404-05.

87. The impact of *Dick* on the choice of law powers of state courts is difficult to assess. It clearly applies to contract cases in which the forum implements its own law to deny a defense valid by the law of the place where the events occurred when the forum has no more than a "slight" or "casual" contact with the events. *John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178 (1936); *Hartford Acc. & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934). When the contacts are more than "slight" or "casual," a state may apply local law to deny such a defense. *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964) (an insured who purchased personal property insurance in Illinois from a British company moved to Florida thereafter and filed suit in Florida for a loss occurring there; Florida was permitted to apply its statutory rule invalidating contract clauses restricting the right to file suit to a period shorter than five years); *Watson v. Employers Liab. Assur. Corp.*, 348 U.S. 66 (1954) (when the alleged injury occurred in Louisiana, its courts were permitted to apply the Louisiana direct action statute in a suit against the insurance company in the face of a no-direct-action clause in the policy which was negotiated and issued in Massachusetts and delivered in Massachusetts and Illinois).

It is not clear whether *Dick* applies to noncontract cases. In *Lauritzen v. Larsen*, 345 U.S. 571 (1953), the Court was faced with a claim that a federal statute, the Jones Act, 46 U.S.C. § 688 (1975), governed the rights of a Danish seaman who joined the crew of a Danish ship in New York and was injured during the course of his employment in Havana, Cuba. In denying the applicability of the Jones Act, the Court said: "We have held it is a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state." 345 U.S. at 590-91 (citing *Dick* and *Hartford Acc. & Indem. Co.*, 281 U.S. 397 (1930)). In another Jones Act case, *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970), Justice Harlan in dissenting from the holding that United States law governed, said: "There must be at least some minimal contact between the State and the regulated subject before it can, consistently with the requirements of due process, exercise legislative jurisdiction." *Id.* at 413 (Harlan J., dissenting) (citing *Dick* and *Watson*). Justice Brennan indicated in his dissent to *Shaffer* that *Dick* has broad applicability as a choice of law rule: "While constitutional limitations on choice of law are by no means settled, see, e.g., *Home Ins. Co. v. Dick*, . . . important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction." 433 U.S. at 225. *But see* *Schwartz v. Consolidated Freightways Corp.*, 300 Minn. 487, 221 N.W.2d 665 (1974), in which Minnesota applied its own comparative negligence rule to a case in which its only contact with the events was that the plaintiff was from Minnesota; the accident occurred in Indiana which had a contributory negligence rule.

88. 281 U.S. at 402-03.

Texas.⁸⁹

In *Dick*, the forum contacts were insufficient to permit Texas to apply its own law. Texas had no "interest" in the outcome of the litigation.⁹⁰ In *Shaffer*, the appellee argued that Delaware was an appropriate forum⁹¹ because of its strong interest in the outcome of a suit against officers and board members of a Delaware corporation charged with wrongfully dissipating the corporation's assets.⁹² The Court responded:

[E]ven if Heitner's assessment of the importance of Delaware's interest is accepted, his argument fails to demonstrate that Delaware is a fair forum for this litigation. The interest appellee has identified may support the application of Delaware law to resolve any controversy over appellants' actions in their capacity as officers and directors. But we have rejected the argument that if a State's law can properly be applied to a dispute, its courts necessarily have jurisdiction over the parties to that dispute.⁹³

The *Shaffer* majority held that contacts that create an interest in a state sufficient to permit the application of its law are not necessarily sufficient to permit that state to assert judicial jurisdiction over a claim.⁹⁴

89. The companies argued that since the debt no longer existed, and since their only obligation was to exonerate the Mexican insurance company from the debt, no property existed in Texas, and thus, quasi in rem jurisdiction was improper. *Id.* at 403-04. For a discussion of some other Type 2b cases in which quasi in rem jurisdiction was asserted prior to *Shaffer*, but which would not be available at present, see Vernon, *supra* note 25, at 1016-17. See also *Yarborough v. Yarborough*, 290 U.S. 202 (1933).

90. A State may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily, it may prohibit performance within its borders, even of contracts validly made elsewhere, if they are required to be performed within the State and their performance would violate its laws. But, in the case at bar, nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was ever done or required to be done in Texas. All acts relating to the making of the policy were done in Mexico. All in relation to the making of the contracts of re-insurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law.

281 U.S. at 407-08.

91. 433 U.S. at 213-14.

92. *Id.*

93. *Id.* at 215 (footnote omitted).

94. "[The State] does not acquire . . . jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not

In a case such as *Dick*, in which the forum has insufficient interest to apply its own law, may the state's courts assert judicial jurisdiction? If so, is there any justification for permitting such an assertion? A state barred from applying its own laws to override a contract clause valid where the events occurred would seem to lack contacts with the litigation sufficient to permit it to assert jurisdiction under the minimum contacts theory.⁹⁵ Unless some basis other than minimum contacts would permit post-*Shaffer* courts to assert jurisdiction, it is unlikely that the forum could adjudicate the claim.

Assuming that *Shaffer* does not change the various single-factor bases of jurisdiction, a state court, although barred from applying its own laws, could assert judicial jurisdiction over a claim if the defendant is served while present in the forum,⁹⁶ is a domiciliary of the forum,⁹⁷ does continuing business⁹⁸ or has an agent in the forum,⁹⁹ or is subject to "broad" jurisdiction under any of the other single-factor bases of jurisdiction.¹⁰⁰ It is anomalous that a state with a sufficient governmental interest to apply its own law to the dispute may have

choice of law. It is resolved in this case by considering the acts of the [appellants]." *Hanson v. Denckla*, 357 U.S. 235, 254 (1958) (brackets in original), *quoted in* 433 U.S. at 215. Justice Brennan, while concurring in the Court's overruling of the presence-power doctrine of *Pennoyer*, dissented from the Court's decision that insufficient minimum contacts existed on the facts of *Shaffer* to permit the assertion of in personam jurisdiction, and questioned the rigidity of the majority's sharp distinction between choice of law and jurisdiction:

I recognize that the jurisdictional and choice-of-law inquiries are not identical. *Hanson v. Denckla*, 357 U.S. 235, 254 (1958). But I would not compartmentalize thinking in this area quite so rigidly as it seems to me the Court does today, for both inquiries "are often closely related and to a substantial degree depend on similar considerations." *Id.* at 258 (Black J., dissenting). In either case an important linchpin is the extent of contacts between the controversy, the parties, and the forum State. While constitutional limitations on the choice of law are by no means settled, see, e.g., *Home Ins. Co. v. Dick*, . . . important considerations certainly include the expectancies of the parties and the fairness of governing the defendants' acts and behavior by rules of conduct created by a given jurisdiction. See, e.g., Restatement (Second) of Conflict of Laws § 6 (1971). . . . These same factors bear upon the propriety of a State's exercising jurisdiction over a legal dispute.

Id. at 224-25 (Brennan, J., dissenting).

95. See excerpt from Justice Brennan's dissenting opinion in *Shaffer*, note 94 *supra*. There are relatively few constitutional prohibitions on state-court powers to select the governing law in choice of law cases. The extraterritorial due process doctrine of *Dick*, discussed in note 87 *supra*, is one such limitation. Another constitutional limitation involves claims against fraternal benefit societies. E.g., *Order of Travelers v. Wolfe*, 331 U.S. 586 (1947). See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 9 (1971).

96. See note 6 *supra*.

97. See note 12 *supra*.

98. See note 13 *supra*.

99. See note 15 *supra*.

100. See note 14 *supra* (defendant incorporated in the forum).

insufficient contact to permit it to assert judicial jurisdiction, while a state barred constitutionally from applying its own law is free to assert jurisdiction. It is at least possible—and, perhaps, likely—that as an aftermath of *Shaffer*, courts in states with only a “slight or casual”¹⁰¹ interest in the outcome of litigation will be barred from asserting jurisdiction under the various single-factor rules used prior to *Shaffer*.

In considering the quasi in rem jurisdiction Delaware attempted to assert in the *Shaffer* case, the Court did not regard the single factor of the presence of defendants’ property in Delaware as controlling. It prescribed a multiple-factor test for quasi in rem jurisdiction, and equated quasi in rem with in personam assertions of judicial power. The presence of the property is significant under the *Shaffer* analysis only because it carries with it other factors on which jurisdiction can be based. For in rem and Types 1 and 2a quasi in rem cases, the property’s presence with the absent owner’s consent will permit in personam actions against the owner. It will also permit quasi in rem actions against the owner’s property because the presence of the property carries with it a situs governmental interest in the outcome, a forum reasonably convenient to litigate the issues, and facts supporting a finding that the absent owner reasonably should have anticipated suit in the situs courts. In Type 2b cases in which the claim is unrelated to the property or the forum, on the other hand, the property’s presence does not carry with it the elements necessary to permit in personam jurisdiction over the absent owner. We will now consider whether assertions of in personam jurisdiction based on single factors other than presence of property survive the *Shaffer* analysis, or whether they also will permit jurisdiction only if the single factor involved carries with it a forum interest, convenience of litigation, and anticipation of suit by the absent defendant.

VI. THE POTENTIAL IMPACT OF *SHAFER* ON SINGLE-FACTOR BASES OF IN PERSONAM JURISDICTION

Relying on the language and analytical techniques of the Court in *Shaffer*, we can only speculate on the impact of the case on existing single-factor bases of in personam jurisdiction. *Shaffer*, with two narrow exceptions,¹⁰² eliminates one-half of the presence-power doctrine—that the presence of property in the forum, in and of itself, is no

101. See note 87 *supra*.

102. See note 25 *supra*.

longer an appropriate basis for the assertion of in rem and quasi in rem jurisdiction. We do not know whether the personal presence portion of the doctrine survives—whether the presence of the defendant in the forum, no matter how transient, remains a sufficient basis for asserting “broad” jurisdiction.

The Court concluded that “all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.”¹⁰³ Those standards, however, are unclear. Although the Court held that *International Shoe* and its progeny required a nexus among the forum, the litigation, and the defendant,¹⁰⁴ the nexus was not required in two situations,¹⁰⁵ and the Court was neutral on the need for the nexus in two other situations: (1) proceedings to establish status, such as ex parte divorce/dissolution suits;¹⁰⁶ and (2) cases in which plaintiff’s only available forum is a state where defendant’s property is located but which has no other contact with the litigation or the defendant.¹⁰⁷ Thus, the forum-litigation-defendant nexus will not be required in “all” cases, but it is unclear whether it will be required in “most” or only in “some” cases.

It seems clear that if all elements of the *Shaffer* analysis apply to in personam jurisdiction, the right to assert such power will be more limited after *Shaffer*; and, in fact, the concept of “broad” jurisdiction will lose its constitutional validity. Several factors suggest that the Court’s attitude toward in personam jurisdiction may have shifted: (1) *Shaffer* eliminated one-half of the presence-power doctrine; (2) the Court said that “all” assertions of state-court jurisdiction are governed by *International Shoe*; and (3) it emphasized the need for a tripartite nexus among the forum, the litigation, and the defendant.

A. *Personal Jurisdiction in General*

Before discussing the single-factor bases of jurisdiction, it is important to understand the rationale of the *Shaffer* Court’s decision to elim-

103. 433 U.S. at 212.

104. See notes 41 & 94 *supra*.

105. See note 25 *supra*.

106. See note 44 *supra*. See also *In re The Marriage of Rinderknecht*, 367 N.E.2d 1128, 1134 (Ind. Ct. App. 1977) (a post-*Shaffer* case holding that *Shaffer* did not change the “domicile” rule in ex parte divorce actions).

107. See note 44 *supra*.

inate the property half of the presence-power doctrine. The Court explained:

The case for applying to jurisdiction *in rem* the same test of 'fair play and substantial justice' as governs assertions of jurisdiction *in personam* is simple and straightforward. It is premised on recognition that "[t]he phrase, 'judicial jurisdiction over a thing,' is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing." Restatement (Second) of Conflict of Laws § 56, introductory note (1971) This recognition leads to the conclusion that in order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing.' The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum contacts standard elucidated in *International Shoe*.¹⁰⁸

The Court recognized that the forum-litigation-defendant nexus necessary for personal jurisdiction over an absent owner, and for *in rem* or quasi *in rem* proceedings, normally will be present in the situs state for claims deriving from ownership of property located in the forum, *e.g.*, *in rem* and Type 1 quasi *in rem* cases¹⁰⁹ and Type 2a quasi *in rem* cases.¹¹⁰

Why is it fair and just to have such claims litigated in the situs state while denying that state jurisdiction in Type 2b cases?¹¹¹ If the significant differences between the two situations can be identified, the Court's perception of the general requirements of *in personam* jurisdiction may be clarified. When competing claims to the property are at issue, a primary reason for permitting jurisdiction is that the situs state may be the only forum with authority to settle the dispute.¹¹² Further, the situs "State's strong interests in assuring marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about possession of that property would . . . support jurisdiction" ¹¹³ Assertions of jurisdiction in such cases also would be supported by "the likelihood that important records and witnesses will be found" in the situs state.¹¹⁴ Finally, an absent defendant

108. 433 U.S. at 207 (footnotes omitted).

109. Claims to the property itself at issue. *See* text accompanying note 45 *supra*.

110. Claims stemming from the property at issue. *See* text accompanying note 46 *supra*.

111. Claims arising independently and unrelated to the property. *See* text accompanying note 47 *supra*.

112. *See, e.g.*, *Clarke v. Clarke*, 178 U.S. 186 (1900).

113. 433 U.S. at 208.

114. *Id.* (footnote omitted). In finding that California did not have jurisdiction over Fisher Governor, a corporate defendant, on a claim arising in Idaho, with defendant's activities in Cali-

with an ownership or other claim to the property reasonably should anticipate that litigation concerning such claims is likely to occur in the situs state.¹¹⁵ For in rem and Type 1 quasi in rem cases, therefore, the existence of a forum governmental interest, the convenience of litigating the issues in the forum, and defendant's lack of surprise that ownership issues are litigated at the situs, make assertions of jurisdiction fair and just.

For Type 2a cases, the analysis varies but the elements permitting assertions of jurisdiction are similar. Although the issues can be litigated elsewhere,¹¹⁶ the situs state has a strong governmental interest in the outcome of litigation arising from property located within its borders. In the slip-and-fall case, the situs state has an interest in the safety of the property and in the welfare of the person injured on it. Because the events occurred there and the witnesses are most likely located there, the situs state is probably the most convenient forum. Finally, it is not unfair to conclude that an absent property owner should anticipate the possibility of suit in the courts of the situs for

fornia being limited to sales promotion by independent nonexclusive representatives, Justice Traynor, for the court, stated:

The interest of the state in providing a forum for its residents . . . or in regulating the business involved . . . ; the relative availability of evidence and the burden of defense and prosecution in one place rather than another . . . ; the ease of access to an alternative forum . . . ; the avoidance of multiplicity of suits and conflicting adjudications . . . , and the extent to which the cause of action arose out of defendant's local activities . . . are all relevant to this inquiry [whether jurisdiction was present].

None of these considerations supports an assumption of jurisdiction in plaintiffs' actions. The causes of action did not arise out of and are not related to Fisher's activities in this state, and none of the relevant events occurred here. . . . Evidence can be produced as easily or more easily elsewhere, and even if plaintiffs cannot secure jurisdiction over Fisher in Idaho, they can prosecute their actions . . . as conveniently in Iowa as here.

Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225-26, 347 P.2d 1, 3-4, 1 Cal. Rptr. 1, 3-4 (1959) (citations omitted). See also Traynor, *Is This Conflict Really Necessary*, 37 TEX. L. REV. 657, 658-61 (1959).

115. The Court made it clear that one of the major defects in the jurisdiction being asserted by Delaware in the *Shaffer* case was the absence of a reasonable anticipation by defendants of being sued there. 433 U.S. at 216.

116. See, e.g., *Moreland v. Rucker Pharmacal Co.*, 59 F.R.D. 537, 540 (W.D. La. 1973) ("A transitory action may be brought in any court of general jurisdiction wherein defendant can be found and served"); *Donigan v. Donigan*, 236 Minn. 516, 522, 53 N.W.2d 635, 639 (1952) ("The fundamental rule for determining whether an action is a transitory or a local one is this: If the cause of action could have arisen in any place whatsoever it is transitory; and unless there is a statute to the contrary, an action thereon can be brought wherever the defendant can be found"); *Calder v. District Court*, 2 Utah 2d 309, 314, 273 P.2d 168, 171 (1954) ("Under the common law a transitory action is one which might be tried wherever personal service could be obtained on the defendant").

injuries incurred on or in relationship to the property. These considerations satisfy the fairness-justice standard of *International Shoe* in Type 2a cases.

As noted above, *Shaffer* indicates that the presence of property in a state does not give rise to contacts sufficient to permit personal jurisdiction in in rem, Type 1 quasi in rem, and Type 2a quasi in rem cases if the property is in the state without the owner's consent.¹¹⁷ Consent to the property's presence supports a possible finding that the absent owner has reason to anticipate litigation in the situs state on claims relating to the property. The *Shaffer* majority clearly indicated that the absence of the owners' tacit consent was significant to its decision:

[A]ppellants had no reason to expect to be haled before a Delaware court. Delaware, unlike some States, has not enacted a statute that treats acceptance of a directorship as consent to jurisdiction And "[i]t strains reason . . . to suggest that anyone buying securities in a corporation formed in Delaware 'impliedly consents' to subject himself to Delaware's . . . jurisdiction on any cause of action."¹¹⁸

Justice Stevens' concurring opinion also emphasized the importance of the defendants' lack of reason to anticipate being sued in Delaware.¹¹⁹ The *Shaffer* analysis thus appears to be based on interest, convenience, and anticipation of suit.

In rem and Types 1 and 2a quasi in rem jurisdiction involve "limited" jurisdictional assertions, with the claims being directly related to the property in the state. In Type 2b cases in which the claim arises outside the forum and the property in the state is unrelated to the asserted claim, the situs court is asked to assert "broad" jurisdiction. Assuming no purposeful impact on the forum state, the only time an identifiable governmental interest in the forum arises in a Type 2b case is when plaintiff is a forum domiciliary. The forum's interest may be humanitarian¹²⁰ or it may be to avoid burdening the forum's taxpayers

117. See note 74 *supra*.

118. 433 U.S. at 216 (quoting Folk & Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 COLUM. L. REV. 749, 785 (1973)).

119. *Id.* at 217-19 (Stevens, J., concurring).

120. In *Kell v. Henderson*, 47 Misc. 2d 992, 263 N.Y.S.2d 647 (Sup.Ct.), *aff'd*, 26 App. Div. 2d 595, 270 N.Y.S.2d 552 (1966), plaintiff, a guest from Ontario in a car owned and driven by an Ontario defendant, was killed in a one-car accident in New York. Ontario's guest statute would have barred relief, while New York's common law negligence rule would have permitted it. The court applied New York's law. In commenting on the case, Professor Leflar said:

New York's interest in applying its own law rather than Ontario's on these issues is based primarily on its status as a justice-administering state. In that status it is strongly concerned with seeing that persons who come into New York courts to litigate facts with

with the support of the plaintiff.¹²¹ Because all the events in this Type 2b case occurred outside the forum, problems of proof and availability of witnesses make the forum less than convenient. It seems unfair to find that an absent property owner reasonably should anticipate suit in the situs state on claims unrelated to the property. Thus, if the plaintiff is a nondomiciliary of the forum, the three elements essential in *Shaffer* are absent; even if plaintiff is domiciled in the forum, two of the elements are lacking.

In *Shaffer*, the Court held that assertions of in rem and quasi in rem jurisdiction depend on a court's ability to obtain personal jurisdiction over the absent defendant. The Court's analysis, although specifically directed at obtaining jurisdiction on the basis of the presence of property, also applies to a state's ability to obtain personal jurisdiction over an absent defendant. In summary, *Shaffer* indicates that the minimum relationships necessary to obtain in personam jurisdiction are: (1) the events must have contact with or impact on the forum sufficient to give rise to a governmental interest in the forum; (2) the forum must be a reasonably convenient place to litigate the issues raised; and (3) the defendant must have had reason to anticipate—tacitly consent to—the assertion of judicial jurisdiction by the forum court.

substantial New York connection have their cases determined according to rules consistent with New York's concepts of justice, or at least not inconsistent with them. That will be as true for non-domiciliary litigants as for domiciliaries.

Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 CALIF. L. REV. 1584, 1594 (1966). See Milkovich v. Saari, 295 Minn. 155, 203 N.W.2d 408 (1973) (on facts similar to *Kell* except that the accident was in Minnesota, the court, viewing itself as a justice-administering entity, applied its own common law rule in preference to Ontario's guest statute).

121. See *DeAngelis v. Scott*, 337 F. Supp. 1021 (W.D. Pa. 1972). In discussing the policy behind the statutory prohibition against the assignment of rights to workmen's compensation benefits, the court said:

We are speaking charitably when we state the motive for the Pennsylvania statutory rule was the protection of the wage earner from attachment of his wages. Other cases have bluntly stated that the motive is the protection of the taxpayers of the Commonwealth from the burden of supporting the destitute workman

Id. at 1025; *Schwartz v. Consolidated Freightways Corp.*, 300 Minn. 487, 221 N.W.2d 665 (1974). In applying Minnesota's comparative negligence rule rather than Indiana's contributory negligence rule in favor of a Minnesota plaintiff injured in a three-truck Indiana accident, the court said: "[Plaintiff] currently resides in Minnesota, saddled with crippling physical disabilities arising from the collision. Thus, the economic impact of these injuries . . . will be felt by Minnesota residents." *Id.* at 492, 221 N.W.2d at 668.

A forum will almost always have an interest in the welfare of a domiciliary plaintiff, but that interest, standing alone, is not sufficient under *Shaffer* to permit the forum to assert its judicial power. 433 U.S. at 215. See also *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Lucini v. Mayhew*, 113 R.I. 641, 647, 324 A.2d 663, 665 (1974).

B. *The Domicile Rule*

Five years before deciding *International Shoe*, the Court held in *Milliken v. Meyer*¹²² that “[d]omicile in the state is alone sufficient to bring an absent defendant within the reach of the state’s jurisdiction for purposes of a personal judgment by means of appropriate substituted service.”¹²³ In explaining why domicile, in and of itself, is a sufficient contact with the forum to permit assertions of broad in personam jurisdiction, the Court said:

The state which accords [the domiciliary] privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. “Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable” from the various incidences of state citizenship. . . . The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state¹²⁴

Just as *Pennoyer’s* presence-power theory of jurisdiction relied on the single factor of physical presence, the analysis in *Milliken* found the single factor of domicile sufficient to permit assertions of “broad” state-court jurisdiction. *Shaffer* rejected *Pennoyer’s* single factor analysis, and the application of *Shaffer* to the domicile rule seems to require a similar rejection of domicile as a single factor permitting state courts to assert “broad” jurisdiction over the defendant.

Assume a suit in personam against an absent domiciliary is filed by the forum state to collect taxes it claims are due. If the state’s tax claim arises from the defendant’s domiciliary status, the case is similar to the slip-and-fall Type 2a quasi in rem proceeding considered in *Shaffer*.¹²⁵ In the slip-and-fall case, the claim asserted stems from property located in the forum. In the tax case, the claim asserted stems from the existence of the domiciliary relationship. In both cases, the existence of the single factor—property and domicile—permits the courts to act. “Limited” jurisdiction is available because in both cases there is a governmental interest in the outcome, the forum is a convenient place to

122. 311 U.S. 457 (1940).

123. *Id.* at 462.

124. *Id.* at 463-64.

125. *See* note 47 *supra*.

litigate, and the defendants have reason to anticipate suits in the forum. In both cases, tacit consent to "limited" jurisdiction is present.

Assume, however, a case is filed in the domiciliary state against an absent domiciliary by a nondomiciliary alleging a right arising out of an automobile accident in a state other than the forum. The case is similar to the facts of *Shaffer*. In *Shaffer*, however, the state of incorporation, Delaware, had a governmental interest in the litigation.¹²⁶ In the automobile hypothetical, on the other hand, it is difficult to identify such an interest. In both *Shaffer* and the automobile case, tacit consent to jurisdiction is absent. Just as property ownership carries with it reason to anticipate suits in the situs state only if they involve claims to or stemming from the property, domiciliary status only carries with it reason to anticipate suits arising from that status.

Because the Court decided *Milliken* five years before *International Shoe*,¹²⁷ it did not evaluate the domicile rule against the "fair play and substantial justice" concept of *International Shoe*. The existence of

126. Justice Brennan, dissenting from the Court's treatment of the minimum contacts issue, dealt with the suit as a shareholders' derivative action in which the benefits inure primarily to the corporation rather than to the named plaintiff. He said:

Viewed in this light, the chartering State has an unusually powerful interest in insuring the availability of a convenient forum for litigating claims involving a possible multiplicity of defendant fiduciaries and for vindicating the State's substantive policies regarding the management of its domestic corporations. I believe that our cases fairly establish that the State's valid substantive interests are important considerations in assessing whether it constitutionally may claim jurisdiction over a given cause of action.

433 U.S. at 222-23 (Brennan, J., dissenting).

The majority did not concede that Delaware had an interest in the litigation because of its view that the quasi in rem nature of the action—attachment of shares of stock and stock options—controlled the kind of interest that would support jurisdiction; that is, the state interest supporting jurisdiction must relate to the presence of the property in the state and not to the existence of a fiduciary relationship between the corporation and the defendants. Because ownership of shares was not a condition to being an officer or director of the corporation, the majority viewed the defendants' ownership rights as being unrelated to their fiduciary duties. *Id.* at 214 (opinion of the Court).

127. *International Shoe* was decided in 1945; *Milliken* in 1940. In discussing the adequacy of notice, the Court in *Milliken* referred to fair play and substantial justice as follows:

[The] adequacy [of substituted service] so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. If it is, the traditional notions of fair play and substantial justice (McDonald v. Mabee) [243 U.S. 90 (1917)] . . . implicit in due process are satisfied.

311 U.S. at 463. The *Milliken* Court did not refer to the fair play-substantial justice standard in its discussion of domicile as a single-factor jurisdictional base. The Court in *International Shoe*, 326 U.S. at 316, quoted the "fair play and substantial justice" language of *Milliken* in defining the due process requirements for in personam jurisdiction.

technical domicile¹²⁸ frequently involves a tenuous connection with the forum—a person in the armed forces retains the domicile existing at the time of enlistment;¹²⁹ a person serving a life sentence in prison retains a domicile existing at the place he or she lived immediately prior to incarceration;¹³⁰ a husband who deserted his family fifteen years before and whose whereabouts are unknown, retains his old domicile.¹³¹ It is neither substantially just nor consistent with fair play to permit the domicile state to assert jurisdiction over such persons when their only contact with the forum is the existence of technical domicile. In such situations, the reciprocal rights and duties associated with domicile¹³² are unrelated to the domicile's interest in the outcome of the litigation, the convenience of that state as a place to litigate, or the likelihood that a defendant would anticipate being sued there. Nothing in the domicile relationship calls for a departure from the tripartite nexus requirement of *Shaffer*. In functional terms—interest, convenience, anticipation—the presence of property or domicile are substantially identical, such that in some situations the presence of either should give rise to “limited” jurisdiction, but neither standing alone should permit the assertion of “broad” jurisdiction.

128. There are different kinds of domiciles recognized by the law. It is generally held that the subject may be divided into three general classes: (1) Domicile of origin; (2) domicile of choice; (3) domicile by operation of law. . . . The domicile of origin of every person is the domicile of his parents at the time of his birth.

The domicile of choice is the place which a person has elected and chosen for himself. . . . Domicile by operation of law is that domicile which the law attributes to a person, independent of his own intention or action

In re Estate of Jones, 192 Iowa 78, 80-81, 182 N.W. 227, 228-29 (1921). See RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 11-23 (1971). A person normally does not lose an existing domicile until a new one is acquired. *Id.* § 19; *Estate of O'Neill v. Tuomey Hosp.*, 254 S.C. 578, 176 S.E.2d 527 (1970).

129. See, e.g., *Mayfair Sales, Inc. v. Sams*, 169 So.2d 150, 152 (La. Ct. App. 1964). See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 17 (1971).

130. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 17, Comment c (1971). “Under the rule of this Section, it is impossible for a person to acquire a domicile in the jail in which he is incarcerated. To enter jail, one must first be legally committed and thereby lose all power of choice over the place of one's abode.” *Id.*

131. See, e.g., *Mounts v. Mounts*, 181 Neb. 542, 149 N.W.2d 435 (1967) (Defendant husband had lived in Minnesota with his wife and children for some time until May, 1950 when he deserted his family; his whereabouts thereafter were unknown. In 1964, his wife filed an in personam action against him in Minnesota, obtained a default judgment, and petitioned to have it registered in Nebraska where the husband had property. The court in Nebraska held that the assertion of jurisdiction was proper on the ground of the domicile rule coupled with the rule that an existing domicile is not lost until a new one is acquired).

132. See text accompanying note 124 *supra*.

C. *The Presence Rule*

In the years between *Pennoyer* and *Shaffer*, in personam jurisdiction existed in courts with subject matter jurisdiction whenever an individual defendant was served in the forum.¹³³ The presence-power doctrine of *Pennoyer* permitted personal jurisdiction over persons physically within or over the forum¹³⁴ when served, without regard to (1) the temporary or transient nature of the presence,¹³⁵ or (2) the remoteness to the forum of the asserted claim.¹³⁶ Although a forum non conveniens argument might persuade a court in an individual case to refrain from asserting jurisdiction,¹³⁷ the court's power over the defendant who was physically present when served continued to exist. The various single-factor rules that developed after *Pennoyer* required a status or other relationship with the forum that approximated physical presence, e.g., place of incorporation, continuing activities in the forum, presence of an agent in the forum. Do conceptual and pragmatic considerations require a different constitutional conclusion when jurisdiction is based on the defendant's physical presence or similar relationships rather than the presence of property?

i. *The Transient Defendant*

The presence-power doctrine permits state courts to assert jurisdiction without regard to the transient nature of the defendant's relationship with the forum.¹³⁸ If the asserted claim is unrelated to the forum and the single factor on which jurisdiction is based is the transient presence of the defendant in the state,¹³⁹ the forum's jurisdictional claim is weaker than one based on domicile. When domicile is the only contact, at least the reciprocal rights and duties analysis of *Milliken* is available. Transient physical presence does not carry with it reciprocal obligations emphasized by the *Milliken* Court. While domicile may carry with it anticipation of suit, it is less likely that transient presence carries with it anticipation of litigation on matters unrelated to the

133. See note 6 *supra*.

134. *Grace v. McArthur*, 170 F. Supp. 442, 443 (E.D. Ark. 1959).

135. *Id.* See also *Fisher, Brown & Co. v. Fielding*, 67 Conn. 91, 34 A. 714 (1895).

136. See note 6 *supra*.

137. See, e.g., *Adkins v. Chicago, Rock Island & Pac. R.R.*, 54 Ill. 2d 511, 301 N.E.2d 729 (1973); *Cray v. General Motors Corp.*, 389 Mich. 382, 207 N.W.2d 393 (1973); *Hadjioannou v. Avramides*, 40 N.Y.2d 929, 358 N.E.2d 516, 389 N.Y.S.2d 833 (1976).

138. See notes 134-36 *supra*.

139. Examples include vacationing there for a weekend or flying over the state from a point outside the state to another point outside the state. See note 134 *supra*.

presence. If the claim arose outside and had no impact on the forum it would lack any governmental interest in the outcome and most likely would be an inconvenient place to litigate. While a tenuous forum-defendant nexus might be said to exist, the necessary forum-litigation nexus and tacit consent to jurisdiction would be absent.

Shaffer requires that "all" state-court assertions of jurisdiction meet the standards of *International Shoe*.¹⁴⁰ The Court held presence of property in the forum permitted assertions of jurisdiction only if the forum also had a nexus with both the litigation and the defendant. Unless *Shaffer* is limited to jurisdiction based on the presence of property, the validity of the transient defendant rule after *Shaffer* is doubtful. The single factor of the defendant's transient presence in the forum contributes nothing more than the presence of the defendant's property in the forum contributes to the existence of a forum interest in the outcome, the convenience of the forum as a place to litigate, or a reason for defendant to anticipate suit there. Because it was unfair to assert jurisdiction in *Shaffer*, it is unfair to assert jurisdiction in the transient defendant case.

ii. *Permanent Relationships Between the Forum and Defendant*

Many relatively permanent or substantial relationships between defendants and the forum have permitted assertions of "broad" jurisdiction over such defendants. Thus, although the claim may have no connection with or impact on the forum, corporations have been subject to the jurisdiction of the courts in their state of incorporation;¹⁴¹ individual defendants have been subject to the jurisdiction of the courts where they live—presence with¹⁴² or without¹⁴³ domicile; and both individuals and corporations have been subject to the jurisdiction of the courts where they have engaged in continuing activities.¹⁴⁴ The single factor of the substantial contact between the defendant and the forum has permitted the assertion of "broad" jurisdiction.

It is unclear whether *Shaffer* will have an impact on assertions of

140. *Shaffer v. Heitner*, 433 U.S. at 212.

141. See note 14 *supra*.

142. As a norm, an individual defendant would be served at her or his home, *i.e.*, presence-domicile combined. "Domicile is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance . . ." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 (1971). "Home is the place where a person dwells and which is the center of his domestic, social and civil life." *Id.* § 12.

143. See note 6 *supra*.

144. See note 13 *supra*.

jurisdiction based on such relatively permanent relationships. If the court intended that these single-factor bases of jurisdiction must meet the standards of *International Shoe*, and if those standards require a forum governmental interest, reasonable convenience, and the defendant's tacit consent to assertions of jurisdiction, *Shaffer* casts doubt on such single-factor rules. It is not at all clear, of course, that *Shaffer* will be read this expansively. Even if *Shaffer* requires all jurisdictional claims based on single-factor relationships to meet the tripartite nexus test, however, it does not necessarily follow that all single-factor bases of jurisdiction are dead. In many cases in which the defendant has a relatively permanent relationship with the forum, it is arguable that the interest, convenience, and anticipation elements of *International Shoe* and *Shaffer* are present and that assertions of jurisdiction are reasonable.

When the asserted claim arises outside the forum and has no direct impact on it, the inconvenience of litigating the suit there as to matters of proof, availability of witnesses, and ability to view the premises are the same as if the defendant had no connection with the forum. It is more convenient, however, for a defendant to defend a suit at "home," and the *Shaffer* Court regarded convenience to the defendant as an important element in its decision.¹⁴⁵ Although the "home" forum may not have a direct governmental interest in the litigation's outcome, it has a general interest in the economic health of defendants living, organized, or continually functioning in the forum, just as the plaintiff's "home" state has a strong general interest in the welfare of plaintiffs living, organized, or functioning in the forum. More importantly, defendants should reasonably anticipate suit at "home" and may have consented tacitly to the use of courts there to settle claims against them.

Beyond the specific requirements of *Shaffer*, a stable system of judicial administration requires the identification of one or more states in which a plaintiff may file suit with some confidence that the chosen forum will have power to adjudicate the claims. If courts eliminate permanent relationships that permitted assertion of jurisdiction in the past and hold that *Shaffer* requires a forum-litigation-defendant nexus instead, the necessary certainty arguably will be lacking.

145. See 433 U.S. at 203-04, in which the Court discusses *International Shoe*, and presents the defendant's relationship with the forum as a dominant factor in the jurisdictional decision. See also the Court's discussion of the need for the defendant to have reason to anticipate being subject to the jurisdiction of the court as a condition precedent to the assertion of jurisdiction. *Id.* at 216.

On the other hand, it is difficult to understand why defendants should be forced to defend in an inconvenient forum whose only contact with the litigation is the defendant's relationship to it. It is also difficult to understand why a forum should be permitted to assert jurisdiction in a case in which the forum lacks any direct governmental interest. In a *Dick*-type situation, the forum may assert jurisdiction but be barred from applying its own law. The "home" forum's general interest in the defendant's welfare is equal to the interest of the plaintiff's "home" state in the plaintiff's welfare. When a plaintiff sues at home, the forum always has an interest, but *Shaffer* held that a forum's interest in the outcome is not a dominant factor in determining whether the forum may assert jurisdiction.¹⁴⁶ It is tautological to argue that "broad" jurisdiction exists in states with which defendants have relatively permanent contacts because defendants reasonably should anticipate the "broad" jurisdiction of courts in states with which they have relatively permanent contacts—the anticipation of such suits is present because of the law and the law is as it is because of the anticipation.¹⁴⁷ Finally, it may be argued¹⁴⁸ that our thirty years of experience with the fair play-substantial justice standard of *International Shoe*¹⁴⁹ and our twenty years of experience with the minimum contacts analysis of *McGee*¹⁵⁰ provide a reasonably certain means of identifying forums that meet those standards and remain available.

146. See note 94 *supra*.

147. A similar tautology has been used to establish a state's interest in low insurance rates as an interest of significance in choice of law cases. See *Cipolla v. Shaposka*, 439 Pa. 563, 566, 267 A.2d 854, 856 (1970). In *Neumeier v. Kuehner*, 31 N.Y.2d 121, 126, 286 N.E.2d 454, 456, 335 N.Y.S.2d 64, 68 (1972), the court discussed the tautology as follows:

The fact that insurance policies issued in this State on New York-based vehicles cover liability, regardless of the place of the accident . . . certainly does not call for the application of internal New York law in this case. The compulsory insurance requirement is designed to cover a car-owner's liability, not create it; in other words, the applicable statute was not intended to impose liability where none would otherwise exist.

See also *Cipolla v. Shaposka*, 539 Pa. 463, 572, 267 A.2d 854, 859 (1970) (Roberts, J., dissenting).

148. The Court in *Shaffer* recognized the possibility that a shift to a minimum contacts rule might cause uncertainty. It said:

It might also be suggested that allowing *in rem* jurisdiction avoids the uncertainty inherent in the *International Shoe* standard and assures a plaintiff a forum. . . . We believe, however, that the fairness standard of *International Shoe* can be easily applied in the vast majority of cases. Moreover, when the existence of jurisdiction in a particular forum under *International Shoe* is unclear, the cost of simplifying the litigation by avoiding the jurisdictional question may be the sacrifice of "fair play and substantial justice." That cost is too high.

433 U.S. at 211 (citations omitted).

149. 326 U.S. 310 (1945).

150. 355 U.S. 220 (1957).

VII. THE IMPACT OF THE ABOLITION OF SINGLE-FACTOR BASES OF JURISDICTION

Just as one can only speculate on *Shaffer's* impact on in personam jurisdiction, one can only speculate on the pragmatic effect of abolition of "broad" jurisdiction and the substitution of a minimum contacts test for the various single-factor bases of jurisdiction. With fewer forums available to plaintiffs, forum shopping will be reduced. Although all possible complications of a minimum contacts jurisdictional system cannot be considered here, the following hypothetical cases may indicate how the system may work. In addition, the hypotheticals will test the hypothesis that fair play and substantial justice can be achieved despite the abolition of "broad" jurisdiction.

A. *The Automobile Accident*

Assume a two-car accident in State *X* involving Alice, a plaintiff from State *X*, and Bob, a defendant from State *Y*. Prior to *Shaffer*, Alice had the option of suing Bob in *X*¹⁵¹ or *Y*,¹⁵² and perhaps in other states if Bob could be served elsewhere,¹⁵³ had a continuing relationship with another state,¹⁵⁴ had property in another state,¹⁵⁵ or satisfied one of the other single-factor bases of jurisdiction.¹⁵⁶ Under the *Shaffer* analysis, Alice probably would be limited to a suit in *X*. She would lose her power to select the forum most favorable to her cause, *i.e.*, having more generous jurors or, perhaps, a more favorable choice of law.¹⁵⁷

As the situs of the accident, *X* is likely to be the most convenient forum in terms of physical evidence and witnesses. Its governmental

151. See, e.g., *Berghammer v. Smith*, 185 N.W.2d 226 (Iowa 1971) (Minnesota plaintiff's suit in Iowa against an Illinois defendant for injuries resulting from an Iowa accident).

152. See, e.g., *Tooker v. Lopez*, 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969) (in the aftermath of a Michigan automobile accident that occurred during an intra-Michigan trip, a New York plaintiff sought relief against a New York defendant in New York).

153. See note 6 *supra*.

154. See note 13 *supra*.

155. See note 7 *supra*.

156. See notes 12, 15-16 *supra*.

157. While choice of law questions arising from the accident in State *X* are unlikely to play an important role, it certainly is possible that a statute of limitations issue might arise if the *X* statute has run and suit is filed in another state. See *In re Goldsworthy's Estate*, 45 N.M. 406, 115 P.2d 627 (1941). If the suit is filed in a forum which follows Minnesota's lead in applying (as a controlling factor) the forum's interest as a justice administering entity, a comparative negligence rule might displace *X's* contributory negligence rule. See *Schwartz v. Consolidated Freightways Corp.*, 300 Minn. 487, 221 N.W.2d 665 (1974).

interests—highway safety, humanitarian interest in the welfare of persons injured in the state, avoidance of a burden on *X* taxpayers, protection of *X* medical creditors—are dominant. In addition, Bob, having driven into *X*, would have reason to anticipate suit there on claims arising from an automobile accident there. Indeed, *X* probably would have a “consent”¹⁵⁸ or other statute¹⁵⁹ specifically applicable to assertions of jurisdiction over nonresident motorists such as Bob. *Y*, having no contacts with the events, is likely to be an inconvenient forum and would have little interest in the litigation other than its general interest in Bob as a resident.

If Alice lived in State *Z*, *X*'s interest would remain substantial—highway safety, a humanitarian interest in the welfare of persons injured in *X*, and, perhaps, a medical creditor interest. The convenience-anticipation elements would be unchanged. A more difficult case would be presented if Alice were a resident of *Y*, was injured in a one-car accident in *X* while a passenger in a car Bob was driving on a trip that started and was to end in *Y*, and *X* had a guest statute while *Y* did not.¹⁶⁰ *X* remains a convenient forum to litigate the fact issues, witnesses (other than the parties) are available, and Bob should have anticipated suit in *X* for action taken there. If *X*'s governmental interest is viewed from a choice of law perspective, *X* would have little or no interest in having its guest statute govern the relationship between Alice and Bob, both of whom are from *Y*.¹⁶¹ But governmental interests for jurisdictional purposes are quite different. In making a choice of law under modern interest theory, the interests are significant only as they relate to the narrow issue in conflict.¹⁶² For jurisdictional pur-

158. *E.g.*, IOWA CODE § 321.498 (1977) provides in pertinent part:

The acceptance by any nonresident . . . of the privileges extended by the laws of this state to nonresident operators or owners of operating a motor vehicle or having the same operated, within this state shall be deemed:

1. An agreement by him that he shall be subject to the jurisdiction of the district court of this state over all civil actions . . . for damages . . . growing or arising out of such use and operation

159. Most states “deem” the use of the highways as the equivalent of designating a state official as the nonresident’s agent or attorney for service. *See, e.g.*, CAL. VEHICLE CODE § 17451 (Deering 1972); S. C. CODE § 15-9-350 (1976); VA. CODE § 8.01-308 (1977).

160. *See Tooker v. Lopez*, 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969).

161. *Id.* *See also Babcock v. Jackson*, 12 N.Y.2d 473, 482, 191 N.E.2d 279, 284, 240 N.Y.S.2d 743, 750-51 (1963).

162. *See Reich v. Purcell*, 67 Cal. 2d 551, 553-55, 432 P.2d 727, 729, 63 Cal. Rptr. 31, 33 (1967):

For many years courts applied the law of the place of the wrong in tort actions regardless of the issues before the court, e.g., whether they involved conduct, survival of actions, applicability of a wrongful death statute, immunity for liability, or other rules

poses, however, a state's interest relates to the entire case. When acts occur in¹⁶³ or impact on¹⁶⁴ a state, it has a general interest in litigation arising out of the actions.¹⁶⁵ *X* clearly has a sufficient nexus with the litigation and the defendant to assert in personam jurisdiction over him.

A more difficult question is whether *Y* has sufficient minimum contacts to act as a forum. *Y*'s interest in the outcome of a suit brought by one resident against another may outweigh *X*'s interest even though the accident occurred in *X*.¹⁶⁶ Since the trip started in *Y* and was to end

determining whether a legal injury has been sustained. . . . It was assumed that the law of the place of the wrong created the cause of action and necessarily determined the extent of the liability. . . . Aside from procedural difficulties. . . , this theory worked well enough when all the relevant events took place in one jurisdiction, but the action was brought in another. In a complex situation involving multistate contacts, however, no single state alone can be deemed to create exclusively governing rights. . . . The forum must search to find the proper law to apply based upon the interests of the litigants and the involved states.

Ease of determining applicable law and uniformity of rules of decision, however, must be subordinated to the objective of proper choice of law in conflict cases, i.e., to determine the law that most appropriately applies to the issue involved. . . . Moreover, as jurisdiction after jurisdiction has departed from the law of the place of the wrong as the controlling law in tort cases, regardless of the issue involved. . . , that law no longer affords even a semblance of the general application that was once thought to be its great virtue. We conclude that the law of the place of the wrong is not necessarily the applicable law for all tort actions brought in the courts of this state.

See also Joseph L. Wilmore & Co. v. Rosenman Bros., 258 N.W.2d 317, 325-26 (Iowa 1977) (applying the rules of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971) to the issue of the validity of an arbitration clause in a commercial contract); Babcock v. Jackson, 12 N.Y.2d 473, 477-78, 191 N.E.2d 279, 281, 240 N.Y.S.2d 743, 746 (1963).

163. *See* note 17 *supra*.

164. *See* note 19 *supra*.

165. *E.g.*, McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 899-900, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969); Gray v. American Radiator & Sanitary Corp., 22 Ill. 2d 432, 444, 176 N.E.2d 761, 767 (1961).

166. *See* Babcock v. Jackson, 12 N.Y.2d 473, 482, 191 N.E.2d 279, 284, 240 N.Y.S.2d 743, 750 (1963). In *Babcock*, a New York host took a New York guest on a trip to Ontario that started and was to end in New York. The plaintiff guest was injured in a one-car accident in Ontario, which had a guest statute. New York's law called for the application of ordinary negligence rules and in holding that New York's law applied, the court said:

Comparison of the relative "contacts" and "interests" of New York and Ontario in this litigation, vis-a-vis the issue here presented, makes it clear that the concern of New York is unquestionably the greater and more direct and that the interest of Ontario is at best minimal. The present action involves injuries sustained by a New York guest as the result of the negligence of a New York host in the operation of an automobile, garaged,

there, Bob should have anticipated suit in *Y* for injuries he might inflict on his passenger during the trip, wherever the injuries were suffered. *Y* may not be as convenient a forum as *X* on issues of physical evidence and availability of nonparty witnesses, but the jurisdictional requirement is only that the forum be a reasonably—not necessarily the most—convenient forum.¹⁶⁷ For the parties, the convenience of litigating at “home” may outweigh whatever convenience litigation in *X* offers. It seems likely that *Y* could assert in personam jurisdiction, although the certainty that such jurisdiction would be sustained on a presence or domicile theory is weaker after *Shaffer*.

The facts of *Dym v. Gordon*¹⁶⁸ present another possibility. In *Dym*, New York asserted jurisdiction in a suit filed by a New York plaintiff against a New York defendant (driver of a car registered in New York) for injuries received in Colorado while plaintiff was riding in defendant’s car on a trip that began and was to end in Colorado. Although Colorado had jurisdiction,¹⁶⁹ the post-*Shaffer* power of the New York courts to assert jurisdiction is doubtful even though New York’s governmental interest is as strong as it would be if the Colorado trip had started and was to end in New York.¹⁷⁰ The convenience or inconvenience of New York as a forum also is the same as if the trip started and was to end there. It is difficult, however, to find that the defendant

licensed and undoubtedly insured in New York, in the course of a week-end journey which began and was to end there. In sharp contrast, Ontario’s sole relationship with the occurrence is the purely adventitious circumstance that the accident occurred there.

New York’s policy of requiring a tort-feasor to compensate his guest for injuries caused by his negligence cannot be doubted—as attested by the fact that the Legislature of this State has repeatedly refused to enact a statute denying or limiting recovery in such cases—and our courts have neither reason nor warrant for departing from that policy simply because the accident, solely affecting New York residents and arising out of the operation of a New York based automobile, happened beyond its borders. Per contra, Ontario has no conceivable interest in denying a remedy to a New York guest against his New York host for injuries suffered in Ontario by reason of conduct which was tortious under Ontario law.

167. In a system where minimum contacts sufficient to support assertions of in personam jurisdiction may exist in more than one state, it follows necessarily that jurisdiction is not limited to the most convenient forum. In the dissenting portion of his opinion in *Shaffer*, Justice Brennan makes the point that the concern in determining whether jurisdiction has been asserted fairly is that “minimum” contacts exist, not that the “best” contacts are present. 433 U.S. at 228 (Brennan, J., dissenting).

168. 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965).

169. See note 151 *supra*.

170. New York’s humanitarian interest would be the same, as would its interest in avoiding the imposition of an unnecessary burden on New York taxpayers. *Dym v. Gordon*, 16 N.Y.2d 120, 129-30, 209 N.E.2d 792, 797-98, 262 N.Y.S.2d 463, 470-71 (1965) (Fuld, J., dissenting). See also notes 120-21 *supra*.

should have anticipated suit in New York as the result of an accident in Colorado on a trip that began and was to end in Colorado.

Can the absence of anticipation be provided by a consent statute under which persons registering their vehicles in New York consent to the jurisdiction of its courts in suits stemming from the operation of the vehicle, wherever the accident occurred? Or could the anticipation element be provided by a similar statute as to persons licensed by New York to drive? In *Shaffer*, the Court suggested that a consent statute might provide the necessary anticipation of suit: “[A]ppellants had no reason to expect to be haled before a Delaware court. Delaware, unlike some States, has not enacted a statute that treats acceptance of a directorship as consent to jurisdiction in the State.”¹⁷¹ While a consent statute may provide a basis for finding that a defendant had reason to anticipate suit in the state, it cannot create an interest in a state where none exists, nor can it make the state a more convenient place to litigate than it is. Single-factor bases of jurisdiction cannot be reinstated by legislation that declares, for example, that all domiciliaries of the state, all corporations incorporated in the state, or all corporations having their principal office in the state “consent” to the “broad” jurisdiction of the state’s courts. Consent statutes, at most, can clarify the anticipation element necessary for constitutional assertions of jurisdiction. The other conditions precedent—interest and convenience—are beyond the state’s legislative powers.

In view of the uncertainty of jurisdiction in automobile accident cases arising outside the forum but involving residents of the forum, legislatures should seriously consider enacting vehicle registration or driver licensing¹⁷² consent statutes. Such statutes might permit courts to find that the defendant had reason to anticipate suit in the forum, and thus provide at least one of the conditions precedent to judicial jurisdiction.

B. *The Products Liability Case*

Assume that (1) Alyse Alternator Company, incorporated in State *X*,

171. 433 U.S. at 216. Delaware’s response to *Shaffer* was to enact a consent statute under which accepting election or appointment to the board of a Delaware corporation will be deemed a designation of a state official as the director’s agent for service on claims relating to corporate activities. DEL. CODE tit. 10, § 3114 (Supp. 1978).

172. “[J]urisdiction can be acquired in a motor vehicle negligence suit based solely on the defendant’s status as a New Jersey licensed driver of a New Jersey registered motor vehicle at the time of the accident.” *Guas v. Guas*, 146 N.J. Super. 541, 546, 370 A.2d 91, 94 (1977).

manufactures miniature alternators at its plant in State *Z* and ships them directly or through wholesalers located in State *X* to retailers in all fifty states; (2) Bob, a domiciliary of State *V*, is injured in *V* by the explosion of one of the miniature alternators he bought there.

Under the various single-factor rules in force before *Shaffer*, Bob, in a suit against Alyse, could select a variety of forums—*X* as the place of incorporation,¹⁷³ and any state in which Alyse had property,¹⁷⁴ carried on continuing business activities,¹⁷⁵ or had appointed an agent for service.¹⁷⁶ In addition, under a long-arm statute coextensive with the Constitution, Bob could sue in *Z* (place of manufacture) because Alyse acted there,¹⁷⁷ and in *V* (place of injury) because Alyse purposefully caused an effect there.¹⁷⁸ Both forums would be reasonably convenient: the manufacturing process is centered in *Z* and the injury occurred in *V*. Both states have interests in the outcome: *Z* in the safety of products manufactured there and *V* in its residents' welfare and the safety of products used there. Because Alyse shipped alternators nationally, it should anticipate suit wherever its products cause injury as well as where it manufactures the product.

If *V* has a relatively limited long-arm statute and Alyse's distribution system involves Alyse only indirectly in the shipment of alternators to *V*, it is entirely possible under a *Shaffer* analysis that Alyse would not be subject to the jurisdiction of *V*'s courts.¹⁷⁹ The only forum available to Bob may be *Z*, the state in which the alternator was manufactured.¹⁸⁰ Before *Shaffer*, even with a limited long-arm statute, jurisdiction might have been available in *V* if Alyse engaged in continuing activities in *V*, regardless of whether the activities were related to Bob's

173. See note 14 *supra*.

174. *E.g.*, *Steele v. G. D. Searle & Co.*, 483 F.2d 339 (5th Cir. 1973), *cert. denied*, 415 U.S. 958 (1974).

175. *E.g.*, *Lee v. Walworth Valve Co.*, 482 F.2d 297 (4th Cir. 1973).

176. See note 15 *supra*.

177. *E.g.*, *In re Paris Air Crash of March 3, 1974*, 399 F. Supp. 732 (C.D. Cal. 1975) (suit against manufacturer at place of manufacture).

178. *E.g.*, *Reilly v. Phil Tolkan Pontiac, Inc.*, 372 F. Supp. 1205 (D.N.J. 1974); *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 580 (1969); *Pust v. Union Supply Co.*, 561 P.2d 355 (Colo. Ct. App. 1977); *Gray v. American Radiator & Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961); *A.F. Briggs Co. v. Starrett Corp.*, 329 A.2d 177 (Me. 1974); *John G. Kolbe, Inc. v. Chromodern Chain Co.*, 211 Va. 736, 180 S.E.2d 664 (1971); *Deutsch v. West Coast Mach. Co.*, 80 Wash. 2d 707, 497 P.2d 1311, *cert. denied*, 409 U.S. 1009 (1972); *Stevens v. White Motor Corp.*, 77 Wis. 2d 64, 252 N.W.2d 88 (1977).

179. See, *e.g.*, *Houghton v. Piper Aircraft Corp.*, 112 Ariz. 365, 542 P.2d 24 (1975); *O'Brien v. Comstock Foods, Inc.*, 123 Vt. 461, 194 A.2d 568 (1963).

180. See note 177 *supra*.

mishaps. After *Shaffer*, a long-arm statute that does not permit suit in the place of injury seems unduly restrictive. Since the lack of jurisdiction results from a state law bar rather than a constitutional inhibition, the problem may be remedied by the enactment of state legislation extending the long-arm statute to the extent permitted by the Constitution.¹⁸¹

C. *The Airplane Crash*

Assume that (1) on a cross-country flight from State *X* to State *Z* a commercial airliner crashed in State *Y*; (2) the airline was incorporated in State *M* and engaged in continuing business activities in twenty other states; (3) the plane manufacturer was incorporated in State *O*, had its principal office in State *P*, manufactured the plane in State *Q*, and had sales offices and repair facilities in forty-three other states; (4) the company that provided the plane's engines was organized in State *R*, had its main manufacturing plant in State *S*, and had plants that manufactured parts for the engine in six other states; (5) passengers on the plane, all of whom were killed, came from nine different states, purchased tickets in twelve different states, and left survivors in fifteen different states; (6) suits on behalf of the passengers' estates and the survivors were filed against the airline, the manufacturer of the plane, and the manufacturer of the engines.

Shaffer will reduce substantially the number of available forums. Thus, suit will not be permitted in states whose only contact with the events and parties is the existence of one of the traditional single-factor bases of judicial authority. Yet plaintiffs may select from among a large number of prospective forums—the place of the crash (*Y*),¹⁸² the place where the flight originated (*X*),¹⁸³ the places where the plane and

181. See note 29 *supra*.

182. *E.g.*, *Newman v. Fleming*, 331 F. Supp. 973 (S.D.Ga. 1971) (sustaining jurisdiction in a suit by a Florida plaintiff against the administrators of a deceased Tennessee pilot for injuries resulting from an air crash in Georgia, with Georgia's only contact being the fact that the plane crashed there); *Texair Flyers v. District Court*, 180 Colo. 432, 506 P.2d 367 (1973) (sustaining jurisdiction over a Texas corporation and a nonresident personal representative of a deceased Texas pilot whose alleged negligence caused the plane to crash in Colorado on a flight from Texas to Colorado; the court sustained jurisdiction on the basis of the single factor of the commission of a tort in Colorado).

183. There does not appear to be a case in which jurisdiction has been asserted solely on the basis of a flight having originated in the forum. Assertions of jurisdiction in such forums are based on a combination of contacts of which the fact that the forum was the place the flight originated is only one. *E.g.*, *Kilberg v. Northeast Airlines*, 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961) (a Massachusetts crash on a trip that originated in New York, with the dece-

the engines were manufactured (*Q* and *S*),¹⁸⁴ and the place where individual passengers purchased tickets.¹⁸⁵ The problems of consolidating the suits filed by the multiple plaintiffs remain. *Shaffer* neither exacerbates the consolidation problem nor unreasonably limits plaintiffs' options.

D. *The Shaffer Case—Multiple Defendants*

Shaffer itself raises the issue of its impact on the problem of multiple defendants. In *Shaffer*, plaintiff-appellee filed suit in Delaware against Greyhound Corporation, incorporated in Delaware and having its principal place of business in Arizona; Greyhound Lines, Inc., a California corporation with its principal place of business in Arizona and a wholly-owned subsidiary of Greyhound Corporation; and twenty-eight present and former officers and directors of one or both of the corporations. The shareholders' derivative suit alleged that the individual defendants had violated their duties to Greyhound Corporation

by causing it and its subsidiary to engage in actions that resulted in the corporations' being held liable for substantial damages in a private anti-trust suit [\$13,146,090 plus attorneys fees] and a large fine in a criminal contempt action [\$100,000 against the parent and \$500,000 against the subsidiary]. The activities which led to these penalties took place in Oregon.¹⁸⁶

The action against the individual defendants, all of whom resided outside of Delaware, was quasi in rem by means of a sequestration order against stock and stock options allegedly owned by the individual defendants and located in Delaware under a statute establishing Delaware as the situs of all shares of stock in a Delaware corporation.¹⁸⁷ Of the twenty-eight named individual defendants, nineteen owned

dent's ticket purchased in New York); *Griffith v. United Air Lines, Inc.*, 416 Pa. 1, 4, 203 A.2d 796, 799 (1964) (a Colorado crash of a Pennsylvania to Arizona flight, with round-trip ticket purchased in Pennsylvania and the defendant regularly doing business in Pennsylvania and maintaining operating facilities there). The state in which a flight originates has contacts with the events, has a strong interest in the safety of flights starting there, would be reasonably convenient as a place to litigate a portion of many such cases—when the condition of the aircraft is at issue—and would seem to be a place in which the airline reasonably should anticipate being sued.

184. See note 177 *supra*.

185. *E.g.*, *Benjamin v. Delta Air Lines, Inc.*, 12 Av. Cas. ¶17,286 (N.D. Ill. 1971).

186. 433 U.S. at 190 (footnotes omitted).

187. *Id.* at 192 n.9 (quoting DEL. CODE ANN. tit. 8, § 169 (1975)). The plaintiff identified the property he sought to sequester as including more than shares of stock and stock options, but the Court noted that the shares and the options were the only property attached. *Id.*

shares and two held stock options.¹⁸⁸ If defendants wished to defend on the merits, Delaware law required that they enter a general appearance.¹⁸⁹

Had the assertion of quasi in rem jurisdiction been sustained in *Shaffer*, plaintiff-appellee would have had jurisdiction over more than \$1,000,000 worth of property owned by twenty-one of the twenty-eight named individual defendants. Even if the twenty-one who owned the property came in to defend, plaintiff would have lacked jurisdiction over the other seven defendants.

Shaffer's abolition of "broad" jurisdiction and the single-factor bases of jurisdiction would seem to have a relatively minor impact on plaintiff's ability to identify a single forum in which to sue multiple defendants. Both before and after *Shaffer*, the effort to find a single forum called for a minimum contacts analysis. Thus, if multiple defendants from across the country or world purposefully cause an effect in a single state by their joint actions, that state would have in personam jurisdiction over the defendants if the minimum contacts test were met.¹⁹⁰ In the absence of such concerted and purposeful action, a plaintiff's search for a single forum in which to assert a claim against multiple defendants remains, as it was before *Shaffer*, a difficult, and at times, impossible task. *Shaffer* may make it slightly more difficult because national corporations engaged in continuing activities in all states were subject to jurisdiction in all states before *Shaffer*. Forum selection, therefore, could concentrate on other defendants not as readily subject to the jurisdiction of state courts. Further, joint owners of property could be brought before the courts in a Type 2b quasi in rem action now barred by *Shaffer*. Overall, however, *Shaffer's* impact on multiple defendant cases will be slight.

VIII. MINIMUM CONTACTS AND *SHAFFER V. HEITNER*

The impact of *Shaffer* on the minimum contacts theory is uncertain. In holding that inadequate minimum contacts existed to permit the assertion of in personam jurisdiction over the absent officers and directors, and thus over their property, the Court in *Shaffer* said:

1. Delaware's sequestration statute "evinces no special concern"¹⁹¹

188. *Id.* at 192.

189. *Id.* at 195 n.12.

190. See cases cited in notes 19 & 178 *supra*.

191. 433 U.S. at 214.

with actions of corporate fiduciaries, but rather applies generally to persons owning property located in Delaware, thus demonstrating some absence of legislative interest in sequestration as a means of controlling corporate fiduciaries.¹⁹²

2. Even if plaintiff-appellee is right that Delaware has a strong interest in the outcome of the litigation and in the conduct of corporate fiduciaries of Delaware corporations sufficient that it would be appropriate to apply Delaware law, that interest "does not demonstrate that appellants have 'purposefully avail[ed themselves] of the privilege of conducting activities within the forum State,' . . . in a way that would justify bringing them before a Delaware tribunal. Appellants have simply had nothing to do with the State of Delaware."¹⁹³

3. "[A]ppellants had no reason to expect to be haled before a Delaware court. Delaware, unlike some States, has not enacted a statute that treats acceptance of a directorship as consent to jurisdiction in the State. And '[i]t strains reason . . . to suggest that anyone buying securities in a corporation formed in Delaware "impliedly consents" to subject himself to Delaware's . . . jurisdiction on any cause of action.'"¹⁹⁴ Appellants were not required to own shares in order to hold their positions as officers and directors, and the fact that they did buy shares did not function to subject them to the jurisdiction of the Delaware court.¹⁹⁵

4. The assertion of jurisdiction by Delaware is inconsistent with the constitutional limitation stated in *International Shoe* that due process "does not contemplate that a state may make binding a judgment . . . against an individual or corporate defendant with which the state has no contacts, ties, or relations."¹⁹⁶

In its minimum contacts analysis, the *Shaffer* majority considered as controlling the fact that jurisdiction had been asserted under the Delaware sequestration statute. The Court found that defendants, as non-resident property owners, had no reason to anticipate suit in Delaware on matters unrelated to their property; to have no "contacts, ties, or relations" with Delaware that related to the litigation.

If we accept that the only relationship between the defendants and Delaware was the defendant's ownership of property located there, the

192. *Id.*

193. *Id.* at 215.

194. 433 U.S. at 216 (quoting Folk & Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 COLUM. L. REV. 749, 785 (1973)).

195. *Id.*

196. *Id.*

majority's analysis of minimum contacts is reasonable and consistent with its general analysis of Type 2b quasi in rem actions. Although it "strain[s] reason" to conclude that persons owning property in Delaware should anticipate suit there on matters unrelated to their property ownership, it does not strain reason to conclude that directors and officers of a Delaware corporation should anticipate suit there for alleged violations of their fiduciary duty to the corporation. While Delaware as the situs of the shares of stock may not have a substantial interest in breaches of fiduciary duty to a Delaware corporation, as the place of incorporation it has a relatively strong interest in such breaches. In dissent, Justice Brennan treated the relationship between the defendants and Delaware as deriving from their status as officers and directors and not as stemming from their status as property owners.¹⁹⁷ He had little difficulty then in finding that constitutionally permissible minimum contacts existed on the facts of *Shaffer*.¹⁹⁸ A majority of the Court might have agreed with him had the Justices looked beyond the sequestration base on which jurisdiction was asserted to recognize the factual relationship between the defendants and the forum.

It is difficult to predict the impact, if any, *Shaffer* will have on minimum contacts analysis in the future. The majority and the dissent seem to disagree not on the minimum contacts analysis but on the relationship controlling that analysis. By failing to deal with the reality of the relationship between the defendants and the forum, the majority may have signaled an intention to preclude the more extreme assertions of in personam jurisdiction by state courts;¹⁹⁹ alternatively, it simply may have been persuaded that jurisdiction asserted under a specific sequestration statute properly should be dealt with only under that statute.

197. I, therefore, would approach the minimum-contacts analysis differently than does the Court. Crucial to me is the fact that appellants voluntarily associated themselves with the State of Delaware, "invoking the benefits and protections of its laws," *Hanson v. Denckla*, 357 U.S. at 253; *International Shoe Co. v. Washington*, 326 U.S. at 319, by entering into a long-term and fragile relationship with one of its domestic corporations. They thereby elected to assume powers and to undertake responsibilities wholly derived from that State's rules and regulations, and to become eligible for those benefits that Delaware law makes available to its corporations' officials.

Id. at 227-28 (Brennan, J., dissenting).

198. *Id.* at 222-28.

199. *E.g.*, *Kulko v. Superior Court*, 19 Cal. 3d 514, 564 P.2d 353, 139 Cal. Rptr. 97 (1977), *rev'd*, 98 S. Ct. 1690 (1978); *ABKCO Indus. v. Lennon*, 52 App. Div. 2d 435, 384 N.Y.S.2d 781 (1976).

IX. CONCLUSION

If the prognosis presented above is accurate—that “broad” jurisdiction no longer exists and that all assertions of in personam jurisdiction must be tested in a minimum contacts framework—the most difficult problem we face may be to persuade judges and lawyers to adjust their thinking about jurisdiction. Legislatures may have to enact some “consent” statutes and broaden long-arm statutes. Plaintiffs will have to be more careful in selecting a forum, but forum shopping, while reduced somewhat, remains available as a litigation weapon. If the Court intended to restrict access to courts under the minimum contacts theory, a careful analysis must be made of the cumulative effect of the double restriction on jurisdiction.

The conclusions reached in this article are speculative. Although they do not follow necessarily from the *Shaffer* holding, the Court’s conclusion that “all” assertions of jurisdiction by state courts “must be evaluated according to the standards set forth in *International Shoe* and its progeny”²⁰⁰ is very broad. The post-*Shaffer* judicial system contemplated herein is a more rational system than we have had in the past. It is difficult to justify a system that permits litigation in an inconvenient forum having no interest in the outcome, and in which defendant has no reason to anticipate suit. With a system in which all assertions of jurisdiction are tested against an interest-convenience-anticipation standard, the unreasoned chaos of the past can be eliminated, forum shopping reduced, and an orderly and evenhanded system of judicial jurisdiction established.

X. ADDENDUM

In *Kulko v. Superior Court*,²⁰¹ its first post-*Shaffer* state-court jurisdiction case, the Supreme Court made clear that the existence of a strong forum-plaintiff nexus coupled with a strong forum-governmental interest will not overcome the absence of a forum-defendant nexus. The Court invalidated California’s assertion of personal jurisdiction over a New York father in a suit for child support in which the father’s only contact with California was the payment of one-way air fare for his daughter to fly there from New York so that the child, at her re-

200. 433 U.S. at 212.

201. 98 S. Ct. 1690 (1978).

quest, could live with her mother during the school year. The Court said:

It cannot be disputed that California has substantial interests in protecting resident children and in facilitating child-support actions on behalf of those children. But these interests simply do not make California a "fair forum," *Shaffer v. Heitner*, . . . in which to require appellant, who derives no personal or commercial benefit from his child's presence in California and who lacks any other relevant contact with the State, either to defend a child-support suit or to suffer liability by default.²⁰²

202. *Id.* at 1701. See also notes 11, 141-50 & 199 *supra*; text accompanying notes 141-50 *supra*.