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THE OFF-RESERVATION GARNISHMENT OF AN ON-RESERVATION DEBT AND RELATED ISSUES IN THE CROSS-BOUNDARY ENFORCEMENT OF MONEY JUDGMENTS*

Robert Laurence**

The Problem Stated

Imagine a hypothetical member of a hypothetical Indian tribe, say, Roberta Avila of the Tewa Tribe, whose reservation lies in the not-so-hypothetical state of New Mexico. Ms. Avila works mostly on-reservation — with occasional trips to off-reservation training sessions — as a computer operator for Global Mining, Inc., a non-Indian-owned business incorporated in Delaware, with corporate headquarters in Denver and operations in sixteen states and three foreign countries. Global Mining does not do any off-reservation business in New Mexico, aside from the minor purchase of office supplies and such.

Ms. Avila banks at First Federal Savings Bank, located just off the reservation and, as Avila does not use "direct deposit" of her paycheck, this means she must drive to Mesa City, bordering the reservation, to do her banking business. First Federal's only on-reservation facility is an ATM machine, which it operates inside of the Tewa Casino, and which is used mainly by nonmember players. This machine is capable of taking deposits, but Avila has never used it for that purpose, nor has most anyone else.

Ms. Avila also follows family tradition and makes pottery, which she sells in two ways. Some pots she places on consignment with Garcia's Pawn Shop, an off-reservation business. The arrangement between Avila and Garcia's is both longstanding and rather informal: she delivers her pots to Garcia's shop in Mesa City, and receives a receipt. Every few months she places some new pots in the shop, picks up the money for the pots that have sold, and reclaims the ones that remain. All deliveries and exchanges are made off-reservation. Secondly, Avila sells her pots through the local Tewa

*This article is a revised and expanded version of one small piece of a much longer article. See P.S. Deloria & Robert Laurence, Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question, 28 GA. L. REV. 365 (1994). Due credit is given and acknowledged to Sam Deloria, whose contributions to that article and this one were immeasurable. Thanks, too, to Jessica R. Martin for her valuable, comprehensive, and good-natured research assistance.

**Robert A. Leflar Professor of Law, University of Arkansas. Professor Laurence has a string of degrees from a number of second-rate North American institutions.
Potters' Cooperative, which runs a store for tourists on-reservation. The Cooperative is not incorporated under New Mexico law, and it engages in no off-reservation business.

Suppose now that Avila entered into a contract to buy a new car from Mesa City Dodge, giving a purchase money security interest in return. The contract was negotiated and signed at Mesa City Dodge's off-reservation location, and the car was delivered there. Avila later defaulted on the contract and surrendered the car back to the seller. Pursuant to New Mexico law,1 Mesa City Dodge resold the car at a private sale and then sued Avila in state court for the difference between what was owed and the resale price of the car, plus expenses.2 Avila did not answer and Mesa City Dodge recovered a default deficiency judgment of $5000. Avila has not paid this judgment voluntarily, and the creditor now seeks to enforce the judgment under New Mexico law. However, with the exception of the pots she has placed at Garcia's Pawn Shop, all of Avila's tangible property is located on the reservation, unreachable by state process. Suppose finally that Mesa City Dodge is reluctant, though not absolutely adverse, to use tribal process, for the Tewa tribal courts are notoriously disinclined to enforce off-reservation default deficiency judgments relating to new car and truck sales.

The enforcement option that would probably occur to most off-reservation lawyers advising Mesa City Dodge in this scenario is garnishment. There are three non-Indian entities here—Global Mining, Inc., First Federal Savings Bank, and Garcia's Pawn Shop—each of which is comfortably located off-reservation, each of which is entirely reachable by state process, and each of which owes Avila money. The question then, and the one which this article addresses, is whether garnishment under state law is an appropriate enforcement technique in the problem given.

**The Basic Rules of Garnishment**

Garnishment is one of the most convenient and effective judicial collection devices available to a plaintiff when a money judgment is not paid voluntarily.3 The garnishment may issue upon anyone owing money to or

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2. The Uniform Commercial Code mentions the creditor's right to obtain a deficiency judgment in section 9-504(2), but it does not mention any connection between this entitlement and the creditor's having complied with the UCC's repossession and resale requirements. Some states would deny Mesa City Dodge a deficiency judgment if it had not properly followed article 9's rules. See, e.g., Bank of Bearden v. Simpson, 808 S.W.2d 341, 342 (Ark. 1991). Most other states would at least give Avila a presumption that no deficiency would have existed following a sale in compliance with the Code. See, e.g., CIT Corp. v. Nielson Logging Co, 706 P.2d 967, 969 (Or. App. 1985).
3. Regarding garnishment in general, see James J. Brown, Judgment Enforcement Practice and Litigation (1994); Roger A. Needham & Lester Pollack, Collecting Claims and Enforcing Judgments (1968); Elizabeth Warren & Jay Lawrence
having possession of the defendant's property. The writ of garnishment is served on the garnishee, with notice going to the defendant, and the garnishee answers, usually admitting the debt owed. The debt is paid into court and transferred to the plaintiff. Participation in the garnishment satisfies the garnishee's underlying indebtedness to the defendant, but is usually not res judicata between the defendant and the garnishee on the question of the validity of the debt.4

While it is true that one may garnish debts before maturity, the derivative title principle applies and the plaintiff as garnishor succeeds only to the defendant's rights.5 Hence, when an immature obligation is garnished, the plaintiff cannot advance the due date. On the other hand, one may not garnish a contingent liability unless statutory authority exists.6 The plaintiff may not garnish negotiable paper, more precisely, payment by the garnishee pursuant to the garnishment does not relieve the garnishee from liability to a holder in due course of the paper. Furthermore, some courts hold that judgment debtors are not subject to garnishment by their plaintiff's creditors.7

The garnishment is a new lawsuit between the original plaintiff, now the garnishor, and the defendant's debtor, now the garnishee. The garnishment is ancillary to the initial suit between the plaintiff and the defendant, and the defendant is the real party in interest. By service of the writ of garnishment, the garnishee is made to answer what debts he or she may owe to the defendant or what property of the defendant he or she may possess. While there are often penalties for a defaulting garnishee, in the usual course of things, the garnishee is a disinterested party, willing, but for the inconvenience and expense, to participate in the garnishment and pay the


4. Garnishment is entirely a statutory remedy and state statutes vary considerably one from another. For the present purposes, it seems unnecessary to cite any specific state's statute for these basic propositions. For general discussions, see supra texts cited in note 3. For more specific discussions, see Robert Laurence, Recent Developments in the Arkansas Law of Garnishment, A Compendium of the Pertinent Cases and Statutes, 1992 ARK. L. NOTES 39; Robert Laurence, North Dakota's New Rules Respecting Garnishment and the Property Exempt Therefrom, 58 N.D. L. REV. 183 (1982).

5. For a rigorous statement of this principle, see Hatcher v. Plumley, 164 N.W. 698 (N.D. 1917).


debt to whomever the court orders. Assuming that the garnishee in fact owes the defendant money as wages, money in a bank account, money for goods or services received, money lent by the debtor, money for breach of contract or any of the other debts that one might garnish, the garnishee is a neutral party, unconcerned with whom he or she pays.

While theoretically one can garnish any debt owing to the defendant, in practice nearly all garnishments are of one of three types of debts: (1) where the defendant's employer is garnished, seeking the defendant's wages payable or to become payable; (2) where the defendant's bank is garnished, seeking the money in the defendant's deposit accounts; or (3) where the defendant's account debtors are garnished, seeking accounts receivable or to become receivable. As mentioned above, traditionally the garnishor could not reach contingent liabilities, so unearned wages were beyond the reach of a garnishor, and a new garnishment was required each pay period. Recently, though, state legislatures have responded by enacting special statutory provisions to reach future wages. Such statutes are not uncommon, but hardly universal. 8 Less commonly, one may garnish contingent tax refunds. 9

On the other hand, it is almost never the case that a garnishment will reach moneys deposited in a bank account after the answer to the writ; in fact, some states do not even allow the garnishment to reach deposits after service but before answer. 10 The garnishor may reach immature obligations that are not strictly "receivable." However, a garnishor may not reach accounts as yet entirely unearned, for example by garnishing the obligation to pay for goods or services that may or may not be provided by the defendant to the garnishee in the future.

_Garnishment and Federal Indian Law_

Now take these general garnishment principles and move them on or near an Indian reservation, as in the hypothetical first stated. Where and how might Mesa City Dodge enforce its off-reservation judgment against Avila?

_On-reservation Garnishment in Tribal Court: Full Faith and Credit Issues_

Should Mesa City Dodge, against all expectations, decide to use Tewa tribal court to enforce its state court judgment, then the issues presented to state court are those of cross-boundary enforcement of judgments. Basically, three approaches to this problem have been offered. First, there are those scholars who have advocated, and a few courts which have held, that tribes

OFF-RESERVATION GARNISHMENT

must give full faith and credit to state judgments and by states to tribal judgments.\textsuperscript{11} Full faith and credit, which, of course, exists among the states by constitutional command, requires, with very few exceptions, the enforcement of foreign judgments.\textsuperscript{12}

Second, proposed, perhaps, by fewer scholars, but accepted by more courts, is the notion that comity should apply between and among tribes and states. Comity is a more flexible requirement than full faith and credit, in which the receiving court shows a generalized respect for the issuing regime, but is not commanded to enforce the judgment. As the United States Supreme Court has said:

Comity in the legal sense is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.\textsuperscript{13}

Professor Nell Jessup Newton lists four "preconditions" to enforcement of a foreign judgment under principles of comity: (1) Subject matter and personal jurisdiction over the defendant in the court rendering the judgment; (2) no fraud against the foreign court by the plaintiff; (3) a fundamentally fair foreign proceeding; and (4) a broad consistency between the foreign judgment and local policy.\textsuperscript{14} As Professor Newton notes, the fourth requirement threatens to "swallow the whole rule,"\textsuperscript{15} unless moderated, and she suggests that the court receiving the foreign judgment ought to presume that the fourth requirement is met unless enforcement would "shock the conscience of the community in which enforcement is sought."\textsuperscript{16}


\textsuperscript{12} The Full Faith and Credit Clause is found in U.S. CONST. art. IV, § 1. This constitutional provision is implemented by 28 U.S.C. § 1738 (1994), which is broader in its statutory full faith and credit command than is the Constitution itself. This broader command is constitutional. See Embry v. Palmer, 107 U.S. 3 (1882). In regards to full faith and credit as it generally applies to the states, see ROBERT A. LEFLAR ET AL., AMERICAN CONFLICTS LAW 215-49 (4th ed. 1986).

\textsuperscript{13} Hilton v. Guyot, 159 U.S. 113, 164 (1894). Regarding the comity that is due by states to foreign-nation judgments, see generally LEFLAR, supra note 12, at 249-53.

\textsuperscript{14} See Ransom, supra note 11, at 250-55 (remarks of Professor Newton). The Ninth Circuit recently opted for comity. See Wilson v. Marchington, 127 F.3d 805 (9th Cir. 1997).

\textsuperscript{15} Id. at 252.

\textsuperscript{16} Id.
Finally, there is the so-called "asymmetric" solution, to which I am the only public adherent, which holds that whatever the rule is it should not require that tribes treat state judgments identically to the way states treat tribal judgments. This asymmetric solution rules out "full faith and credit," which is the prototypically symmetric solution to the problem of cross-boundary enforcement. The asymmetric solution is consistent with comity as long as it is not required that all jurisdictions apply comity identically. My own particular brand of asymmetric comity would allow a tribe a more sensitive inspection of the merits of an off-reservation judgment than Professor Newton's conscience-shocking inspection.7

Actually, Professor Newton's own definition of comity contains a certain asymmetry, as who is to say that two different courts will have their consciences shocked in perfect symmetry? In fact, one would expect the much smaller and more fragile on-reservation tribal community to be more easily shocked than the more diverse, larger, and younger off-reservation community. Courts need to guard against the inclination to retaliate against one another for the failures to exhibit shock at the same incident.

The states are divided on the question of full faith and credit and comity, with a majority of those who have decided the issue opting for comity.18 Federal courts only rarely become involved in the issues, which usually have to do with the enforcement of private money judgments, because there is no appeal from tribal court decisions into the federal system and because few federal collateral attacks are allowed on the procedure or the merits of tribal court civil-side litigation.19 Finally, because of the hit-and-miss nature of tribal court reporting, it is difficult to determine the approach to cross-boundary enforcement of any particular tribe. Thus, the law of cross-boundary enforcement is in a state of some disarray, with no help in sight.

Recently the Court of Appeals of the Cheyenne River Sioux Tribe found itself bound by the full faith and credit provision of the federal Parental Kidnapping Prevention Act, and gave a strong indication that it was ready to find itself also bound by the more general full faith and credit provisions of 28 U.S.C. § 1738 which is applicable to all final money judgments.20 For

17. See id. at 247-50 (remarks of Professor Laurence).
reasons set out in detail elsewhere, the Cheyenne River Sioux court was wrong to bind itself to federal full faith and credit requirements more applicable to states of the Union. The recitation of the details will not occur here; they have to do generally with the questions of whether a congressionally imposed regime of cross-boundary enforcement impinges on tribal sovereignty (it does) and whether the rules of statutory construction should allow Congress to legislate with respect to Indian tribes without mentioning Indian tribes in either the statute or the legislative history (they should not).

For now it is enough to note that the present hypothetical shows just how smoothly a full fledged full faith and credit regime just might work. Full faith and credit is nothing, in fact, if not efficient: Mesa City Dodge will take its off-reservation default judgment to tribal court and "domesticate" it, that is, turn it into a Tewa judgment. Full faith and credit principles would severely limit the Tewa court in the collateral review it could give to the off-reservation judgment. In particular, it could not inspect whether the merits of the lawsuit were seriously at odds with strong Tewa public policy. As Dr. Leflar writes with respect to state-to-state full faith and credit: "The local public policy of the second state, however strong it may be, is not a ground for denying full faith and credit to a valid sister state judgment." Thus, for example, the court could not consider any differences, no matter how profound, between Tewa and New Mexico philosophies regarding the occasions for and the manner of obtaining default judgments under a full faith and credit regime. Courts using full faith and credit should not and could not inquire into substantive matters regarding the legitimacy of deficiency judgments, in general, or regarding the connection between steps taken in the enforcement of the judgment and the entitlement to the deficiency judgment, or in the connection between steps taken in the creation of contract and steps taken in its enforcement. And so on.

Rather, the tribal court, under federal full faith and credit rules, is limited to deciding whether the New Mexico court had jurisdiction over the underlying cause of action. Since Avila bought her car off-reservation and took delivery of it off-reservation, the state court surely had jurisdiction to decide the contract dispute, and the garnishor could enforce a deficiency judgment on-reservation under full faith and credit principles against any of the garnishees mentioned in the hypothetical.

It is more sensible and more in keeping with the grand doctrines of tribal sovereignty and self-determination, for the tribal court to retain the kind of...
enforcement discretion which is available under a comity regime, but which is impossible under a strict full faith and credit regime. The state should retain some similar, though asymmetric, discretion when it receives a tribal judgment for enforcement.23 The Tewa tribal court, then, would become something more than a mere collection agency for off-reservation car dealers and would make inquiry into whether Mesa City Dodge's judgment should be enforced.

It is in order to avoid this tribal court inquiry that Mesa City Dodge might well wish to enforce its judgment under New Mexico, not Tewa, process. A discussion of the issues raised in that event follows.

On-reservation Garnishment in State Court: Williams v. Lee Issues

Suppose that, instead of using tribal process and facing these difficult full faith and credit issues, Mesa City Dodge determines to use state garnishment process. The least complicated legal issue is tackled first, albeit in the context of the least likely practical scenario: Suppose the judgment creditor tries to use New Mexico process to reach the debt owed to Avila by the Tewa Potters' Cooperative, the on-reservation business that owes Avila money due to its sales of her pottery. The attempt should fail, under the holdings and reasoning of Williams v. Lee24 and Joe v. Marcum.25

"Absent governing Acts of Congress, the question has always been whether the state action infringes upon the rights of the reservation Indians to make their own laws and be ruled by them." Thus reads the Williams v. Lee infringement test, arguably the most well-known pronouncement of the modern Court in the field of Indian law. The test, clearly, contains two branches: Supremacy and Infringement. The post-Williams Court prefers Supremacy:

[T]he trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption. The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power.27

Public Law 280 is the only Act of Congress with any application to the enforcement of judgment question, and it serves to grant state jurisdiction,  

25. 621 F.2d 358 (10th Cir. 1980).
26. Williams, 358 U.S. at 220.
not to preempt it. In those states which were given authority over Indian country, and in those which took it voluntarily under the statute (lately, only with the tribes' consent'), Williams v. Lee is legislatively overruled, at least with respect to the application of state rules of decision in state courts. Hence, state courts may take jurisdiction over disputes regarding reservation transactions in Public Law 280 states, and they may grant judgments. The garnishor could enforce those judgments on the reservation. The statute, however, prohibits the attachment or encumbrance of property held in trust, even in Public Law 280 states, so enforcement must ordinarily proceed against non-trust personal property only.

In non-Public Law 280 states, the issue, as always, is whether the on-reservation enforcement, under state law, of a valid state court judgment contravenes the Williams infringement test. That it does becomes plain when one realizes that the enforcement of a judgment implicates local laws and governmental policies that are entirely unrelated to the matters that were the subject of the off-reservation trial. The following are all areas in which conflicting determinations might arise between state and tribal courts: the exact role in the execution process of the sheriff or other enforcement officer, the susceptibility or not of certain property to execution, the kinds and extent of hearings that are available to challenge enforcement procedures, the need or not for the enforcing officer to have a search warrant while executing, the method of sale or other disposition of the property seized to satisfy the judgment, the existence and length of any redemption period. Surely the use, say, of a state's three-month redemption period following a sheriff's sale, when the tribe's choice is one year, or the use of a state's rule imposing excessive penalties on defaulting garnishees, while the tribe was more forgiving of such a default, would "infringe upon the rights of the reservation Indians to make their own laws and be ruled by them." One must concede that, at this time, relatively few tribal codes contain much law on the enforcement topics listed above. Is there an infringement when a tribe has not enacted its own enforcement of judgment laws? It was the square holding of Joe v. Marcum that a New Mexico wage garnishment, where the garnishee was a non-Indian business, failed the infringement test, notwithstanding the absence of a Navajo garnishment

29. Id.
32. Williams, 358 U.S. at 220.
33. Id.
34. 621 F.2d 358 (10th Cir. 1980).
statute, which the court characterized as "the Navajo policy, as the tribal code does not provide for garnishment." 35

Joe v. Marcum was carefully written not to sweep more broadly than actually needed. The Tenth Circuit noted that the Navajo legal system is complex and sophisticated, in the dominant-society sense. The Navajo Code contains several other enforcement devices, but not wage garnishments. Wage garnishment, the court noted, "is a matter upon which there is no unanimity of thought," 36 which is indeed true; Florida, for example, does not allow the garnishment of wages. 37 Furthermore, "[g]arnishment is a statutory remedy, which does not exist at common law." 38

Joe v. Marcum is a sensible decision, well received by other jurisdictions, 39 and should not be limited to these narrowing circumstances; that is to say, one should not view the case as merely a Navajo garnishment case. "The right of the reservation Indians to make their own laws and be ruled by them," at least in the area of the enforcement of judgments, should include the right to be silent about remedies that are thought not needed or are thought subject to abuse. As Margery H. Brown and Brenda C. Desmond have written:

A matter may be of great concern to a tribe, yet the tribe may have no written law in that area and the tribal court may not be adjudicating cases in that area. Tribal legislative authority certainly includes the decision not to legislate or, more significantly perhaps, the decision not to put unwritten customary law into writing. 40

Even where the states are in agreement with respect to the appropriateness of the remedy, a court should hesitate to find, absent clear evidence of a kind unlikely to exist, that tribal silence is meant to indicate adoption of the accepted dominant-society rule. The conversion of judgments into money by the involuntary seizure and sale of the defendant's property is a phenomenon not without controversy; there is the constant potential for harassment and the continual likelihood of violence. On the other side, creditors are not being paid voluntarily and the effectiveness of the tribal process will have an impact on the entire tribe's ability to do business off-reservation. From

35. Id. at 361-62.
36. Id. at 361.
37. FLA. STAT. ANN. tit. XV, § 222.11 (West 1989).
38. Joe, 621 F.2d at 361.
both sides, then, there are abundant reasons to allow the tribes plenty of room to "make their own laws and be ruled by them." 41

Professor Frank Pommersheim, of the University of South Dakota, calls this the "no law" issue. 42 Discussing Joe v. Marcum, as well as other cases, he concluded that the Tenth Circuit's analysis in Joe v. Marcum is the correct one. As he makes the point:

Such state or federal law may conflict with tribal tradition and culture. In other words, the apparent absence of tribal law, in some instances, is not a void, but rather a well-considered tribal public policy judgment. 43

"[I]n some instances." 44 But which instances? Litigators and judges will look in vain for the kind of tribal legislative history that might lead to an answer. That history, if it exists, might well be in a language that most lawyers and judges do not speak. Expert witnesses, perhaps testifying in an Indian tongue, could provide evidence of tribal custom and tradition, but such evidence is unlikely to reveal whether it is consistent with custom that a period of redemption following a sheriff's sale of the defendant's pickup exists or whether it is customary to impose a substantial penalty on a defaulting garnishee.

Hence, my approach is not as generous to state law as the one taken by Professor Pommersheim. Whether in the presence or the absence of codified tribal enforcement law, the state sheriff should not enforce even a valid state judgment on the reservation. Enforcement should occur through the tribal court system, as discussed in the previous section.

But what, Professor Pommersheim wonders, if there is no tribal method of enforcement and the method is noncontroversial among the states? He asks:

This all seems correct, but what if there were state unanimity in permitting garnishment? Would this preclude tribal law to the contrary? The [Joe v. Marcum] court's holding might then begin to wobble, as it did in the analogous situation in Little Horn State Bank v. Stops[45] in Montana where the Crow Tribal Court did not provide for honoring state court judgments. There the Montana Supreme Court found no infringement of tribal

43. Id. at 353-54.
44. Id.
45. 555 P.2d 211 (Mont. 1976).
sovereignty, and permitted a state writ of execution to be enforced against tribal members on the reservation.46

Stops is an unfortunate case, on facts similar to Joe v. Marcum, except that execution, not garnishment was involved. At the heart of the opinion is the Montana Supreme Court's view that a judgment that is not enforceable was "absurd."47 This was not a fair characterization; many judgment-proof defendants exist, and while this is unfortunate for all parties, it is not "absurd." Furthermore, being judgment proof does not merely reflect an embarrassed debtor's financial position. It also reflects equally on the enforcing state's exemption laws, and only the most hard-boiled of creditors consider exemptions to be "absurd." Furthermore, bankruptcy makes judgments generally unenforceable in a way that is hardly "absurd."48 Viewed from this vantage point, one could characterize the Williams v. Lee protection against on-reservation enforcement under state process as a federal exemption, protecting reservation property from valid state court judgments, but not from tribal court recognition of those judgments.49 Stops, then, based as it was on the perceived "absurd[ity]" of a result that is in fact both common and common-sensical, was ultimately unpersuasive. The lack of dominant-society enforcement devices should not allow execution or garnishment to proceed on-reservation under state law, under the control of the state deputy sheriff. Once again, on-reservation enforcement belongs in tribal court.

Off-reservation Garnishment in State Court: Shaffer v. Heitner Issues

Now suppose Mesa City Dodge forsakes Tewa enforcement process, for reasons sensible to it, thereby avoiding any direct application of tribal-court full faith and credit issues, first discussed. Suppose, too, that the creditor does not attempt to use state enforcement process to reach an on-reservation defendant or garnishee, thereby avoiding the Joe v. Marcum and Little Horn State Bank v. Stops issues just discussed. Suppose instead that Mesa City Dodge sues out its writ of garnishment against one of the off-reservation

46. Pommersheim, supra note 42, at 352.
47. Stops, 555 P.2d at 215.
businesses — Global Mining, First Federal or Garcia's Pawn Shop — in an off-reservation state court, New Mexico or otherwise. The Indian-law ramifications of the full faith and credit issue disappear, for now it is a state court enforcing a state court judgment — most straightforwardly, a New Mexico court enforcing a New Mexico court judgment, with no full faith and credit questions at all. Here, the application of Williams v. Lee and Joe v. Marcum is less clear. What result?

Federal law should forbid the garnishment of Global Mining, if Avila's wages were earned on-reservation, of First Federal if her money was deposited anywhere except at the automatic teller machine, and of Garcia's Pawn Shop, if her pottery was delivered on-reservation. Garcia's, on the other hand, is reachable for the pottery that is in the off-reservation pawn shop, and for Avila's account receivable which arose off-reservation. In other words, federal law should prevent the garnishment from going on under state law if the garnishor seeks an asset that has some substantial reservation connection, and should permit it if there is some substantial connection between the property and the state.

This result runs counter to an old common law tradition that says that the garnishment may proceed wherever the plaintiff finds the garnishee. This, in fact, was the holding of the once-venerable Harris v. Balk. In that case, Harris owed $180 to Balk and Balk owed $300 to Epstein. Harris lived in North Carolina but visited Baltimore, where Epstein resided. Epstein garnished Harris to reach the debt that Harris owed to Balk, Epstein's debtor. Harris did not contest the garnishment, and judgment was entered in favor of Epstein against Harris for $180, which judgment Harris duly paid. Balk then sued Harris in North Carolina for the same $180. Harris defended on the Maryland judgment, which, he argued, was entitled to full faith and credit in North Carolina. The trial court found for Balk, on the grounds that there had been no jurisdiction in Maryland to support the garnishment. The Supreme Court of North Carolina affirmed, but the United States Supreme Court reversed:

If there be a law of the State providing for the attachment of the debt, then if the garnishee [Harris] be found in that State, and process be personally served upon him therein, we think the court thereby acquires jurisdiction over him [Harris] there, and can garnish [on behalf of Epstein] the debt due from him [Harris] to the debtor of the plaintiff [Balk], and condemn it, provided the garnishee [Harris] could himself be sued by his creditor [Balk] in that state. 51

50. 198 U.S. 215 (1905).
51. Id. at 221.
By analogy, under *Harris v. Balk*, Mesa City Dodge could garnish Global Mining, First Federal Savings Bank and/or Garcia's Pawn Shop in any state court where they were subject to suit. This is called "the *Harris v. Balk* debt-follows-the-debtor rule," and it held sway, both before and after judgment, for many years.

However, this rule's application to the hypothetical under discussion is limited for two reasons: (1) it is an outmoded doctrine that does not survive modern constitutional analysis; and (2) even if the old doctrine were generally good law, paramount federal concerns should prohibit its use when the asset is on-reservation.

The modern objection to the old tradition emanates from the case of *Shaffer v. Heitner*. *Shaffer* is a prejudgment garnishment case where shareholders of Greyhound, Inc. sought to hold directors of the corporation liable for antitrust violations that occurred in Oregon. Greyhound Corporation is incorporated in Delaware with its principal place of business in Arizona. Greyhound Lines, Inc., the subsidiary which had allegedly been in violation of the antitrust laws, is incorporated in California, with its principal place of business in Arizona. The plaintiff and individual defendants were residents of various states; none of them lived in Delaware. Jurisdiction was sought in Delaware by garnishing the shares of the corporation owned by the defendants; Delaware law said that those shares were located in Delaware.

The United States Supreme Court held that in the prejudgment situation, due process concerns worked a major constraint on the old rule that allowed the garnishment to go on wherever one found the garnishee. The Constitution requires that there be at least minimum contacts between the defendant and the forum in which the suit was being brought, and that jurisdiction otherwise be established in a way that comports with "fair play and substantial justice."

Now, it is true that the Court itself seemed to think that there was no real constitutional problem if the garnishment were to occur after rather than

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54. Id. at 189 n.1.

55. Id.


before judgment, as in the hypothetical case. It was the opinion of the Court, written by Justice Thurgood Marshall, that:

"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." 8

This statement was truly the "opinion" of the Court, for it was dicta in the purest sense, where the Court was speculating on the impact of the present decision on a case not then before it. Such speculation, of course, can go awry, as the Court may have been thinking of an easy future case, rather than a hard one. In footnote 36, the Court was probably imagining the case of a straightforward execution against tangible personal property, and not an attempt to reach, via garnishment process in one jurisdiction, wages that were earned in another. Few challenges have arisen to execution in the jurisdiction where real property or tangible personal property was found, assuming it was not exempt in the jurisdiction. 9

For instance, Bank of Babylon v. Quirk 50 was a well-decided case. There, the bank was permitted to use Connecticut execution process to reach Quirk's boat, which was docked in Connecticut, to enforce a New York judgment against a Tennessee resident. Quirk, of course, involved enforcement against tangible personal property, a boat, whose location was easily established. It is here that Justice Marshall's dicta from Shaffer's footnote 36 seems entirely correct: "[T]here 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." 6

In other words, it was immaterial whether the Bank of Babylon could or could not have sued Quirk originally in Connecticut, as it was immaterial whether the boat had any connection whatsoever to the bank's underlying cause of action. Proper jurisdiction presumably lay in New York, and if it did not, its absence was raisable collaterally by Quirk in the Connecticut enforcement action. 62 Assuming the New York's jurisdiction over Quirk was valid under constitutional due process requirements, full faith and credit

58. Id. at 210 n.36.
59. States use their own exemption laws. See LEFLAR, supra note 12, at 335.
60. 472 A.2d 21 (Conn. 1984).
61. Shaffer, 433 U.S. at 210 n.36.
62. See LEFLAR, supra note 12, at 236. This is the major exception to the full faith and credit rule, which generally prohibits collateral attacks on the judgment to be made in the enforcing state.
required that Connecticut enforce it against the boat, unless boats were exempt in Connecticut, which they are not.

Suppose the Bank had been trying to reach Quirk's wages, earned in Tennessee working for an employer whose corporate headquarters were in Connecticut, say the Connecticut General Life and Casualty Insurance Company. Or, to make the connection between Quirk and Connecticut even weaker, suppose Quirk worked in Tennessee for an employer principally located in Arkansas, incorporated in Delaware, but which conducted business in Connecticut, say Wal-Mart, Inc. Now one may have difficulty seeing the sense of the *dicta* in footnote 36. Giving a Tennessee defendant a fully fair trial on the underlying cause of action in New York may well comport with the requirements of *International Shoe*. However, the appropriateness comes into question when state enforcement process goes on without any due process restraints in a state with which the defendant has such an attenuated connection.

When post-judgment process attempts to reach something as intangible as wages payable, the constitutional dimensions of the problem change dramatically, a point that the *dicta* in footnote 36 missed. Constitutional "fair play and substantial justice" should now be required both for the garnishee — who is the nominal defendant in the garnishment — and the original defendant, who is the real party in interest. That is to say, a garnishment is only proper in a jurisdiction which has the constitutionally minimum contacts with both the garnishee and the defendant.

In *Quirk* itself, that jurisdiction was most plainly Connecticut, where the boat was located. In the hypothetical *Quirk*, where the Bank of Babylon is seeking Quirk's wages, jurisdiction exists most plainly in Tennessee, where the wages were earned, or, somewhat less plainly, New York, where the original cause of action was brought, if the garnishee is reachable there. Creative forum shopping, seeking the most obscure place where one can find an intangible asset and where the most liberal garnishment laws and the most grudging exemption laws prevail, needs constitutional control.

In comparison to *Quirk*, consider *State ex rel. Department of Revenue v. Control Data Corporation*. The Oregon Tax Court rendered a judgment against one Brest, a resident of Oregon who worked there for Control Data. The judgment was not paid voluntarily and Brest moved to Minnesota, where he remained an employee of Control Data. Following the move, the Department of Revenue sought a share of Brest's wages, earned in Minnesota, by garnishing Control Data in Oregon. The Oregon Supreme Court permitted the garnishment to proceed, in the face of a *Shaffer*

63. 713 P.2d 30 (Or. 1986) (en banc).

challenge, citing footnote 36 and holding exactly as the Supreme Court suggested in that footnote:

Here the creditor, the Department of Revenue, did not attach assets in the forum state as a way of getting jurisdiction to adjudicate a claim against an absent debtor. This creditor already has a judgment against the debtor, a judgment for unpaid taxes on income earned in Oregon while the debtor lived in Oregon. The Department seeks only to collect this judgment by reaching an asset belonging to the debtor in the hands of Control Data, a third party that unquestionably is present in Oregon.65

This paragraph does not show that Brest was unworthy of a post-judgment hearing on the constitutional validity of the garnishment. Rather it shows that in such a hearing the garnishor could easily demonstrate that Brest had the minimum contacts with Oregon necessary under International Shoe for the garnishment to occur. There was no surprise to Brest that a garnishment against him would transpire in Oregon, even after he moved to Minnesota and kept working for the same company. Difficulties would arise in the case if, on moving to Minnesota, he went to work, say, as a clerk at Wal-Mart and the garnishment were then brought in, say, Delaware, where Wal-Mart is incorporated, or in, say, Arkansas, where Wal-Mart has its principal place of business, or in, say, Kansas, where Wal-Mart transacts sufficient business to be susceptible to service of process.

Control Data's result, then, was correct, but it proved too much by suggesting that footnote 36 meant precisely what it said in all circumstances. The "too much" that it proved was that Harris v. Balk is still good law, after judgment. Levi Strauss & Co. v. Crockett Motor Sales, Inc.66 is a better case, because it contradicted that suggestion and did not cite Shaffer's dicta-laden footnote 36 at all. (Shaffer, itself, was cited.67) Crockett sued Penn, an Arkansas resident, in Arkansas court, and won. The judgment was not paid voluntarily and Crockett garnished Levi Strauss, Penn's employer. Two garnishments went on without objection, before Levi Strauss closed its Arkansas plant where Penn had worked. Penn moved to Tennessee and continued in the employment of Levi Strauss there. When the third garnishment was commenced in Arkansas against Levi Strauss (which was still susceptible to service based on other plants in Arkansas), the garnishee objected. Held: the third garnishment was proper:

In considering the situation here in view of the Shaffer holding, we have no difficulty in deciding that Penn, a non-

65. Control Data, 713 P.2d at 32.
66. 739 S.W.2d 157 (Ark. 1987).
67. Id. at 159.
resident defendant, had sufficient contacts with Arkansas and the litigation here to sustain the court's jurisdiction in this matter. . . . Unquestionably, Penn was present in Arkansas and had sufficient contacts for Crockett to obtain the judgment against her, and due process does not require a renewal of each of those contacts with this state in order that Crockett can collect on that judgment. [Citing Control Data.] Suffice it to say, Penn's contacts, past and present, with this state are sufficient for us to sustain the trial court's exercise of jurisdiction in the garnishment proceeding below.68

As with the cited Control Data, the result here is the correct one. In Crockett Motor Sales, the analysis as well as the result was correct, for it appears in the last sentence quoted that the Arkansas Supreme Court was undertaking a brief due process inspection of the "fair play and substantial justice" of the garnishment, notwithstanding that there had been plenty of Penn-Arkansas contact to support the exercise of jurisdiction in the underlying case. Thus Crockett Motor Sales was subtly, and properly, inconsistent with the dicta found in Shaffer's footnote 36.69 "Fair play and substantial justice" should function as the hallmark of postjudgment enforcement process when the plaintiff tries to reach the defendant's intangible property.

The Crockett Motor Sales case arose at a time when repeated garnishments were necessary in Arkansas to reach wages as they became payable, hence the cross-boundary question arose on the third garnishment. Today, the law is simpler, as one garnishment reaches all future wages, until the judgment is paid.70 Under the present statute, once a wage garnishment had begun against Levi Strauss in Arkansas, it would continue against the same employer, without surprise to Penn, wherever Penn moved, while still working for Levi Strauss. It is another question whether, if Penn went to work for Wal-Mart in Tennessee, a new Arkansas garnishment against those wages would withstand a constitutional attack. It is yet another question whether, if Penn went to work for Connecticut General Life and Casualty in

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68. Id.


Shaffer brushed off post-judgment issues in a footnote [citing footnote 36] and post-Shaffer cases have followed that lead. Two states have confined Shaffer and Rush [v. Savchuk, 444 U.S. 320 (1980)] to the pre-judgment context and allowed wages being earned by a former resident in another state to be garnished by serving papers on the employer's forum-state office or agent [citing Crockett Motor Sales and Control Data].

Id. at 27.

Tennessee, the Constitution would allow a garnishment in Hawai'i, where Connecticut General does business.

One case that held proper such far-reaching garnishments was *Goodyear Tire & Rubber Co. v. Ruby.* The Rubys obtained a Maryland divorce in 1984. Mr. Ruby moved to Texas where he went to work for Goodyear and began to default on the obligations under his divorce decree. Ms. Ruby then garnished Goodyear in Maryland in order to reach her ex-husband's Texas wages, Goodyear being reachable by Maryland process as a business doing business in Maryland. Goodyear, at Mr. Ruby's prompting, objected to the garnishment.

The Court of Appeals of Maryland held first that

whether viewed from the constitutional perspective of due process or the requirements of Maryland Rule 1-321, Mrs. Ruby's request for a wage lien was not an additional claim for relief requiring new in-state service on Mr. Ruby. The right to exercise personal jurisdiction over Mr. Ruby arose when he was served with the original complaint, and extended to all the relief sought by that complaint. Moreover, the enforcement and modification of relief granted pursuant to that complaint remains within the continuing jurisdiction of the circuit court, subject to any due process requirement that the party against whom the modification or enforcement is sought be given reasonable notice and an opportunity to be heard.

The court then carefully analyzed whether service of notice of the enforcement action by mail on Mr. Ruby in Texas was sufficient, deciding that service was proper. The court ignored the more basic question of whether there was any property at all in Maryland? *Harris v. Balk* would have said that Mr. Ruby's wages tag along wherever Goodyear goes, but *Shaffer* cast serious doubt on *Harris,* and seemingly added a constitutional
dimension to that question. It might well have come as no "surprise" to Mr. Ruby that he had not escaped the reach of Maryland process by fleeing to Texas. The garnishor might have satisfied the requirements of *International Shoe* as to Mr. Ruby, but the court should have paused to consider the question.

As to Goodyear, the burden was on Ms. Ruby to show that Maryland had jurisdiction over the corporation, and her showing was thin. The mere presence of Goodyear stores in the state was not sufficient, the court noting that those stores might be franchises. In the end, the court allowed the garnishment to proceed to the discovery stage, confident that Ms. Ruby would show that there was no surprise to Goodyear to learn it could be garnished in Maryland.

Similar to Goodyear was *Bianco v. Concepts "100, ms* except that wages were not involved there. In that case, a Pennsylvania creditor recovered judgment in Pennsylvania against a New York corporation that transacted business in Pennsylvania. The cause of action was products liability, or strictly speaking in Pennsylvania, trespass to the person, a hair dryer having malfunctioned. The judgment was not paid voluntarily and the plaintiff garnished Foremost Insurance Company, the defendant's liability insurer. Foremost Insurance was a Michigan company which owned no property in Pennsylvania, and which had issued the policy covering Concepts "100" in New York, but which was licensed to do business in Pennsylvania. The insurance company objected to the garnishment and the trial court dismissed the garnishment for lack of jurisdiction over the garnishee.

Constitutionally acceptable basis for jurisdiction over individuals, such jurisdiction also can be invoked by the garnishor [Epstein] as statutory representative of the garnishee's creditors. Yet, despite the silence of *Shaffer v. Balk*, it would seem that a reexamination of these principles may be expected. *Id.* at 1195.

This is a difficult paragraph to understand. If Professor Riesenfeld is referring to post-judgment garnishment, then he is merely restating footnote 36. If he is referring to prejudgment garnishment, then "[p]rovided there is jurisdiction over [Balk]," there is no problem proceeding with the lawsuit at all. In that case, the prejudgment garnishment would not be for the purpose of establishing jurisdiction, but in order to preserve certain property, to wit, the garnishee's debt to the defendant.

Incidently, Professor Riesenfeld's term "the statutory representative of the garnishee's creditors" is his way of saying that the garnishor is statutorily able to tell the garnishee, on behalf of the garnishee's creditors — in particular, the defendant — where and how to pay the debt. The essence of the present complaint with footnote 36 is that due process should require an opportunity for the defendant to object that that statutory designation is inappropriate, either because the wrong state's statute is being used or because the right one is being misapplied.

74. *Goodyear*, 540 A.2d at 487.
75. *Id.*
77. *Id.* at 207.
The Superior Court of Pennsylvania reversed, observing that: "[T]he garnishable res is an intangible asset of the judgment debtor which may be garnished only when the garnishee is subject to in personam jurisdiction." The court's holding was: "Appellant established that appellee had been authorized to do business here for the last twenty-three years. Consequently, appellee falls within the reach of Pennsylvania's jurisdictional statutes."

There was no discussion of whether it would comport with fair play and substantial justice to a New York defendant to have its Michigan insurer garnished in Pennsylvania. As in Goodyear, a court might well find that the garnishment threatens no International Shoe "surprise" to Concepts "100," since Pennsylvania was the forum for the original cause of action, but a hearing to air the arguments should be constitutionally required.

Williamson v. Williamson is a case showing the existence of proper limits to the ability of a creative judgment creditor to reach wages earned. Ms. Williamson, a resident of Georgia, obtained an Arizona divorce decree, under which her ex-husband was in default. While he had once been a resident of Georgia, he was now a resident of California, where he worked for the Army. Ms. Williamson tried to use a Georgia garnishment to reach Mr. Williamson's wages earned in California.

The Georgia Supreme Court held that, if Mr. Williamson had property in Georgia, then footnote 36 allowed Ms. Williamson to reach it via Georgia garnishment process pursuant to her Arizona decree. "Personal jurisdiction over the defendant would, of course, not be required." However, and important for the position of the present article, the Court further held that she had failed to demonstrate that wages earned in California working for the Army were located in Georgia for purposes of the Georgia garnishment statutes.

Harris v. Balk's debt-follows-the-debtor rule would place the location of the wages wherever the Army is found, that is to say, everywhere. It is plain that the difficulty with the debt-follows-the-debtor rule is that it does not translate well from the Harris v. Balk case to cases such as Williamson, Goodyear and Concepts "100." The garnishor could only find Harris, the garnishee in the old case, an individual, in only one place at a time. If Harris had been carrying Balk's gold pocket watch around with him, then the rule would have made its clearest sense, and the garnishment could have proceeded in whichever state Epstein could find Harris with Balk's watch. Epstein found him in Maryland? Fine. Balk's protection? Keep the watch.

78. Id. at 210.
79. Id. at 212.
81. Id. at 45.
82. Id. at 46.
The Goodyear Tire & Rubber Company, the Foremost Insurance Company and the United States Army were corporate entities, capable of being in many places at one time. Now, it was less clear that Goodyear's debt to Mr. Ruby, or Foremost's debt to Concepts "100," or the Army's debt to Mr. Williamson were or should have been capable of similar multiple locations. The essence of Shaffer cautioned that aggressive application of the Harris rule threatens its constitutionality. Williamson noted that a state can avoid the constitutional implications by not accepting an aggressive use of at least the corporate arm of the debt-follows-the-debtor rule under its own state garnishment law.

Williamson, then, is a case showing a state court properly keeping control of far-reaching garnishments under state law. This "Williamson issue" is also seen in the question of whether, as a matter of state law, a garnishment of a bank account must be done at the place of the original deposit, or if it can go on wherever the bank is found. The jurisdictions are split. For example, in Shinto Shipping Co. Ltd. v. Fibrex & Shipping Co., Inc., Shinto Shipping, a Japanese corporation, chartered a vessel to Fibrex, an Oregon corporation. A dispute arose, and Shinto Shipping sought arbitration in Japan, which Fibrex resisted. Shinto Shipping then sued Fibrex in California to compel, under federal law, arbitration in Japan. Shinto Shipping garnished the Bank of California in order to establish jurisdiction, alleging that the bank held deposits made by Fibrex at the bank's branch in Portland, Oregon. The Bank resisted the garnishment and refused to answer the usual interrogatories.

Citing section 542.5 of the California Code of Civil Procedure, the federal court refused to compel the garnishee to answer: "A California state court would, I am confident, hold the attachment in question invalid as to remote branch accounts." This exemplifies, similar to Williamson, the lack of property or debt "here" under state law, hence a rejection of Harris v. Balk on state law grounds.

Such a holding makes sense, when one realizes that a general deposit account at a bank is not a mere bailment of money. On the contrary, a deposit into an account is a loan of money from the depositor to the bank; it establishes a debtor-creditor relationship, with the bank as the debtor.86


84. 425 F. Supp. 1088 (N.D. Cal. 1976), aff'd, 572 F.2d 1328 (9th Cir. 1978).

85. Id. at 1091.

86. See, e.g., Lasley v. Bank of Northeast Arkansas, 627 S.W.2d 261, 263 (Ark. Ct.App.)
Hence, the account balance is in fact a debt running from the bank to the depositor, intangible and susceptible to distorted definitions of its location. Under this view, *Shinto Shipping* was correct in its sensible location of the account in Oregon, where the deposit was made and the debt created, not in California, where the Bank was located.

A different result would surely obtain in the case of an actual bailment, via safe deposit, for instance, of money to the bank. The contents of a safe deposit box are located in the jurisdiction wherein the box lies. Likewise, if the deposit were to take on some tangible form of its own legal significance, like a certificate of deposit, for instance, then it would make sense for the actual location of the certificate to suffice under state property law.

State law alone will not always do, as shown by the present state of Arkansas garnishment law. Wal-Mart, of course, has its principle place of business in Bentonville, Arkansas, and is a very large employer and account debtor. Hence Wal-Mart is very frequently an attractive garnishee in cases involving defendants with little or no connection between themselves and Arkansas. Furthermore, the Arkansas garnishment statute may not withstand constitutional scrutiny under various holdings of the Arkansas Supreme Court. However, the Arkansas Supreme Court has also held that the garnishee has no standing to raise this constitutional objection. So, it is quite easy to see the constitutional questions raised by a rejection of the *Williamson* state-law theory by imagining a case involving a Florida judgment against a Florida resident who works for Wal-Mart in Orlando. Wages are exempt in Florida, so a garnishment where the wages are earned would not yield a favorable result. If the defendant's wages are garnished in Arkansas, the defendant would suffer an extreme burden if required to come to Arkansas and attack the use of the remote — to the Florida resident — garnishment. Wal-Mart itself cannot object to the


87. See generally Robert Laurence, Recent Developments in the Arkansas Law of Garnishment: A Compendium of the Pertinent Cases and Statutes, 1992 ARK. L. NOTES 39, 47-49. The Arkansas garnishment statute was first held unconstitutional in *Davis v. Paschall*, 640 F. Supp. 198 (E.D. Ark. 1986). *Accord In re McDougal*, 65 B.R. 495 (Bankr. W.D. Ark. 1986); *cf. Duhon v. Gravett*, 790 S.W.2d 155 (Ark. 1990) (Arkansas's post-judgment execution statute is unconstitutional). This defect was fixed by Act 523 of 1987. The statute as amended was again declared unconstitutional in *Bob Hankins Distrib. Co. v. May*, 805 S.W.2d 625 (Ark. 1991). In its attempt to fix the *Hankins* defect by Act 1027 of 1991, the General Assembly required that notice go out to explain the law to the garnishee; unfortunately the statutorily required notice misexplains the law by using a *prior*, not current version of the statute. If this is a third constitutional defect — and if lack of notice is a problem, then notice of the wrong law would seem to be, if anything, worse — then *Kennedy v. Kelly*, 751 S.W.2d 6 (Ark. 1988), holds that the defect cannot be fixed by the plaintiff itself correcting the notice.

88. *Kennedy*, 751 S.W.2d at 7.

89. FLA. STAT. ANN. tit. XV, § 222.11 (West 1989).
garnishment, even if it had an interest in doing so.\(^9\) Unless there is an effective constitutional attack on the jurisdiction of the Arkansas garnishment, traditional full faith and credit analysis requires that Florida respect the Arkansas garnishment.\(^9\)

The best resolution to this quandary is a two-step analysis: First, under Williamson, then under Shaffer. That is to say, the first question is whether, under state garnishment law, the debt is "here." If it is, then the second question is whether it comports with the International Shoe anti-surprise rights of both the defendant and the garnishee for this state's garnishment process to reach the debt.

Other cases discussing Shaffer issues after judgment, and Shaffer's footnote 36, are less useful than those already discussed. Hexter v. Hexter,\(^9\) Rich v. Rich,\(^9\) Berger v. Berger,\(^9\) Fraser v. Littlejohn\(^9\) and Fine v. Spierer\(^9\) all involved attempts by creditors to reach legacies under wills in favor of their judgment debtor; in the first three cases, the underlying judgment was one for support and in the last two it was in contract. In Rich and Littlejohn the legacies were described with enough specificity to suggest little difficulty finding that the property was "here," i.e. in the state in which enforcement was sought. For example, in Rich the legacy was securities, apparently certificated, "now in the hands of New York attorneys."\(^9\) Rich, then, resembles Quirk, and the attempt was to reach tangible personalty. Attempts to reach such "Quirk property" where it is found are rarely, if ever, surprising, in the International Shoe sense. On the other hand, it would be equally rare that a post-judgment International Shoe hearing to show that the shares were literally in New York would be especially cumbersome.

Hexter, Berger and Fine are somewhat more difficult cases, for the tangibility, or not, of the legacies is not set forth. For example, Ms. Berger, a resident of California sought to enforce in Vermont a California support order against her ex-husband, a resident of Italy. Neither party had ever lived in Vermont, and the only contact Mr. Berger had with Vermont was that his mother had died there. The legacy was not described. The Vermont Supreme Court stated: "Recognizing that, under the facts in Shaffer, the

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91. There is authority to support the issuance of an injunction from the Florida state court against the plaintiff's seeking the Arkansas garnishment. See in this regard LEFLAR, supra note 12, at 160 ("One of the most common types of cases in which injunctions are granted against maintenance of foreign suits is that in which an extra-state garnishment is brought to reach a claim that under the local law is exempt from garnishment.").
94. 417 A.2d 921 (Vt. 1980).
footnote in question [36] is dicta, we are nonetheless inclined to follow it. There is nothing in the concept of justice and fair play that requires a second opportunity to litigate the liability established by a valid judgment. True enough, there seems at first blush nothing objectionable about garnishing an estate in the state where it is being probated, even given that in other circumstances having one's mother a resident of the state attempting to exercise jurisdiction would not function as "minimum contact" for International Shoe purposes. Suppose, however, that if all of the late Ms. Berger's property was intangible and was "in Vermont" only because she was there when she died and only because Vermont law said that the property was "in Vermont." In that case Mr. Berger deserves a due process hearing in which to argue that the garnishment would go on more fairly in the state where the assets truly were located.

Holt v. Holt\(^9\) involved an attempt by a resident of Missouri to enforce a Missouri court order against her ex-husband, a resident of Alabama, against real property located in North Carolina. Of course, there can be no surprise, and hence no International Shoe objection to the enforcement of any judgment against nonexempt real property in the state where one finds it, and the North Carolina court agreed, citing Shaffer. The court refused to enforce the order, but only on the grounds that the petitioner had, as yet, no final judgment from Missouri:

> We do not believe this dictum of the Supreme Court [in footnote 36] embraces the facts disclosed by the record before us. To proceed under this principle, we think it would be essential for plaintiff to first obtain a judgment in the Missouri courts that defendant is in arrears of a sum certain on the ordered payments.\(^10\)

This is an entirely unobjectionable holding.

The reception given footnote 36 by the law review commentators has been largely positive. Professor Richard B. Cappalli wrote in support of Shaffer's footnote 36, and the lack of a due process inquiry after judgment:

> We now understand why the Shaffer court could confidently say that there would be no unfairness in a plaintiff's execution of a judgment against a defendant's dispersed property [citing footnote 36]. The executing court should not do a full contacts probe because that body is exercising such limited power against the judgment debtor. That court is not assessing liability and measuring compensation but merely making property available

\(^9\) Berger, 417 A.2d at 922.
\(^10\) Id. at 409.
to satisfy the liquidated claim. Instead the assessing and measuring is done by a judgment-issuing court with "full" in personam power.\textsuperscript{101}

As the previous discussion shows, the question is not so easy if the property is intangible. When an Arkansas court declares that Arkansas is the situs of wages which were earned in Florida working for Wal-Mart, and allows the garnishment of Wal-Mart, under Arkansas law, to reach those wages, notwithstanding Florida's strong public policy prohibiting the garnishment of wages, it seems wrong to characterize Arkansas as "merely making property available" to the plaintiff.\textsuperscript{102}

To make the point another way and to test the true limits of the \textit{dicta} of footnote 36, recall the Delaware law at issue in \textit{Shaffer}, which made Delaware the locus of all stock for all Delaware corporations.\textsuperscript{103} Suppose that Michigan law had a statutory provision analogous to Delaware's proclaiming Michigan to be the situs of every automobile made anywhere by an automaker whose principal place of business was Michigan. Thus, under Michigan law, replevin actions could commence and go to judgment in Michigan, then enforcement could go forward under full faith and credit principles in the state where the car was in fact being driven. Should the Constitution control such aggressive, if unlikely, use of state power? The essence of \textit{Shaffer} would seem to say that it should; \textit{dicta} in the margin should not override this essence.

Professor David H. Vernon of the University of Iowa also wrote briefly in support of footnote 36, shortly after the \textit{Shaffer} decision came down.\textsuperscript{104} He concluded that

\[ \text{[the exemption of proceedings to realize on judgments from the minimum contacts standard of} \textit{International Shoe} \text{is pragmatically necessary if judgment debtors are to be prevented from shielding their assets from judgment creditors by shipping} \]

\begin{footnotes}
\footnote{102. Scholarly acceptance, if not defense, of footnote 36 is found in Stanley Cox, \textit{Would That Burnham Had Not Come to be Done Insane! A Critique of Recent Supreme Court Personal Jurisdiction Reasoning, An Explanation of Why Transient Presence Jurisdiction is Unconstitutional, and Some Thoughts About Divorce Jurisdiction in a Minimum Contacts World}, 58 TENN. L. REV. 497, 511 (1991), and Note, \textit{Resisting Enforcement of Foreign Arbitral Awards Under Article V(1)(e) and Article VI of the New York Convention: A Proposal for Effective Guidelines}, 68 TEX. L. REV. 1031, 1035, n.21 (1990).}
\footnote{103. \textit{See} 8 DEL. CODE § 169 (1991).}
\end{footnotes}
OFF-RESERVATION GARNISHMENT

the assets to a state with which the underlying litigation had no prior connection.105

The key word in that quotation is "shipping," for it implies the most tangible kind of personal property: the kind capable of shipment across state lines. This, of course, is "Quirk property," tangible and easily locatable, the very kind of property that is not usually at issue, even in Shaffer itself. Reversing footnote 36 to require a due process inquiry on the enforcement would, indeed, make enforcement a bit more cumbersome. But, as shown by Quirk, this would hardly be so in the case of goods "shipped" across state lines. On the other hand, to allow the garnishment in one state of wages earned in another, or of accounts receivable created in another, without a hearing on due process concerns seems hardly "pragmatically necessary," and regulating these far-reaching garnishments under the Constitution and International Shoe will control abuse by forum-shopping creditors against understandably complacent debtors.

Messrs. Pickholz and Bernard, as well, approved of footnote 36, in their article about foreign — that is, international — attachment.106 Discussing the case of Biel v. Boehm,107 they reason that a plaintiff with a foreign country judgment must obtain jurisdiction over the defendant to enforce the foreign country judgment in New York. The plaintiff, however, need only establish pre-Shaffer quasi-in-rem jurisdiction. That is, the plaintiff does not need to establish a relationship between the assets, the forum and the litigation — mere presence of assets is sufficient to support jurisdiction. This is to be distinguished from post-Shaffer quasi-in-rem jurisdiction, which requires minimum contacts, and is necessary to support an order of attachment before judgment is obtained.108

"Mere presence of assets."109 Biel is a case in which the property against which the enforcement action is undertaken is not described more than to say that it is "located in New York."110 Again, if the property is real or tangible personal property, then there is no objection to New York's exercise of jurisdiction over the enforcement action. If the property sought is intangible, susceptible to having many locations, then it might be "located in New York" in much the same way that the defendants' property in Shaffer was

105. Id. at 1008.
109. Id.
"located in Delaware," i.e. by legislative fiat. Then there are due process concerns in the enforcement action, footnote 36 to the contrary notwithstanding. Are the earned but unpaid wages of a Tennessee resident, working in Tennessee for a Connecticut-based employer "present" in Connecticut for the purposes of that conclusion? The question should have a constitutional dimension.

Finally, there is the work of Professor Maltz, which, read narrowly, appears to affirm the cogency of Shaffer's footnote 36:

One of the difficulties with Marshall's analysis is that on its face it threatens a mainstay of American jurisprudence — the concept that one can always enforce a judgment obtained against a defendant in one state by levying against property located in another state. An action to enforce a judgment is a classic quasi in rem situation; the judgment creditor is seeking to seize property in order to vindicate a claim based on the defendant's breach of a duty which may be completely unrelated to the property. The body of the Shaffer opinion suggests that in such a case the judgment could be enforced only if the judgment debtor has minimum contacts with the state where the property is located. Such a rule would represent a radical change from current practice. Marshall brushed off this problem rather cavalierly in a footnote [quoting footnote 36].

As it is clear from this quotation, Professor Maltz does not think much of Shaffer at all, and helps to establish his critique by pointing out that footnote 36 is not much of an explanation of why the principles of Shaffer do not apply after judgment. My position is exactly the opposite one: the principles of Shaffer should apply after judgment as well as before.

Pickholz and Bernard cite Restatement (Third) of the Foreign Relations Law of the United States to this effect: "[A]n action to enforce a judgment may usually be brought whenever property of the defendant is found, without any necessary connection between the underlying action and the property, or between the defendant and the forum." This comment is certainly correct in noting that there is nothing, either in state or constitutional law, that requires a connection between the property against which execution is sought and the cause of action that led to the money judgment. This observation is not in dispute. The comment may well, in fact, be correct in its entirety, depending on the construction one gives to the word "usually." Quirk and other cases of that tangible ilk are the "usual" cases, and in those cases a


link does not need to exist between the property sought for enforcement and the underlying cause of action. Garnishments of wages, bank accounts, accounts receivable and other intangible debts may comprise the "unusual" cases. Problems arise when the plaintiff is being especially creative in finding the state of the property's "presence," and even more so when it is an on-reservation debt that is being sought off-reservation.

All the parameters of postjudgment due process analysis — including precisely where the garnishment of an intangible asset must occur — are yet to be worked out and, given Shaffer's footnote 36, it may be a while before they are. In Delaware, at least, where Shaffer arose, it appears the courts took footnote 36 to heart, and apply it directly to allow judgment creditors to reach the stock of Delaware corporations, which Delaware law has declared is located in Delaware. Some other states, as seen previously, have been more circumspect.

The synthesis is this: The first question is Williamson's and Shinto Shipping's: under state law, is there any property "here"? Sometimes the answer will be easy, as in Quirk and Holt, and as Professors Vernon and Cappalli and Messers. Pickholz and Bernard presume. However, when the property becomes intangible and susceptible to a variety of simultaneous locations, the question becomes more difficult, as shown by the Restatement (Third) of Foreign Relations' use of the word "usually." A state court could surely reject Harris v. Balk on pure policy grounds, holding that wages earned elsewhere are not "here," even when some corporate aspect of the employer is here. Kingland Holdings and UMS Partners are to the contrary under Delaware's famously aggressive corporate law. Rich and Littlejohn are quietly consistent with Williamson; Hexter, Berger and Fine are not. Where states follow Delaware's lead and keep an aggressive Harris v. Balk rule as a matter of state property law, the Constitution should come into play. This result, which is contrary to footnote 36's dicta and Professor Maltz's arguments, is shown by Crockett Motor Sales and, reading between the lines, Control Data. Goodyear and Concepts "100" are correct in providing some due process protection for the garnishee, but incorrect in providing none for the defendant.

Goodyear and Concepts "100" suggest the continued validity of Harris v. Balk after judgment. Even though Shaffer's footnote 36 is consistent with this position, that result is unfortunate as a general, sweeping proposition. A narrower reading of the two cases is more acceptable, emphasizing that, in Goodyear the original divorce action had been brought in Maryland and,


in Concepts "100" the original products liability action had been brought in Pennsylvania. If the cases are correct when read this narrowly, then they would seem to be directly on point for the hypothetical case in the present article, where the original contract action was brought in New Mexico state courts and the plaintiff, Mesa City Dodge, is attempting to reach some of the garnishees in that same jurisdiction. It is here, however, in the Indian reservation context, that accepted principles of American Indian law constrain off-reservation garnishments, even if Shaffer permits them more generally.


The key case that modifies the Goodyear result when it is an Indian reservation boundary being crossed is not a garnishment case at all, but McClanahan v. Arizona State Tax Commission. In that landmark case, the Court held that it was beyond the power of Arizona to tax McClanahan's reservation income. The Court showed no concern at all for where else beside the Navajo reservation that McClanahan's employer might do business or whether Arizona's jurisdiction otherwise ran to the employer, who was not named. There was no indication that the State of Arizona could tax McClanahan's income merely by finding her employer off-reservation, and thus it would be wholly inconsistent with McClanahan for a court to permit a private plaintive to garnish McClanahan's income using Arizona process by finding the employer off-reservation.

The key to the McClanahan case was that McClanahan's income was earned on the reservation, not for whom it was earned and where the employer did business. This should function as the rule for garnishment as well. Income earned on the reservation should be garnished using the tribal judicial system; income earned off-reservation should be garnished using the state judicial system, likewise for accounts receivable and bank accounts.

This view of McClanahan's holding is, in fact, broadly consistent with Shaffer's treatment of Harris v. Balk. In Harris, the Court found it especially significant that Harris, the garnishee, was susceptible to suit by Balk, Epstein's defendant, in Maryland. In the reservation garnishment

116. The Supreme Court wrote:
If there be a law of the State providing for the attachment of the debt, then if the garnishee be found in that State, and process be personally served upon him therein, we think the court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff and condemn it, provided the garnishee could himself be sued by his creditor in that state. . . .

There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed.
situation, the parallel inquiry would concern Avila's ability to sue, say, Global Mining in state court over the employment contract. Such a suit would be problematic in New Mexico, of course, because Global Mining has so few contacts with that state. Could she sue her employer in Colorado, its principal place of business, over her reservation employment contract?

In fact, the *Wold Engineering* cases suggest that Avila does indeed have that right, notwithstanding that *Williams v. Lee* holds that Global Mining could not sue her in state court on the same contract. If *Harris* were still good law, then *Wold Engineering* would suggest that Avila's right to sue Global Mining in Colorado state court would lead to Mesa City Dodge's right to garnish Global Mining there to reach Avila's wages. But *Shaffer* overruled *Harris*, at least "to [the] extent that [these] prior decisions are inconsistent with [International Shoe's] standard [of 'fair play and substantial justice']" and that result is repudiated. Without *Harris*, the link between *Wold Engineering* and the Colorado garnishment is missing, and the garnishment cannot go on. *Shaffer* and *McClanahan* each separately, as well as together, compel a holding denying that Mesa City Dodge's right to garnish Global Mining in an off-reservation court to reach Avila's on-reservation wages and the garnishment should occur in tribal court under tribal process. If there is no tribal garnishment process, or if wages are exempt under Tewa law, then Mesa City Dodge must seek other, nonexempt, off-reservation property.

The other two common types of garnishments should be handled the same way: the garnishing of bank accounts should only take place where the deposit was made and accounts receivable where the contract underlying the account was made and performed. If these connections with the relevant jurisdictions are mixed, then the jurisdiction whose interest predominates should control. As the law regarding the state taxation of reservation assets is so much more completely developed than the law of private debt

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him. Being a citizen of North Carolina, he was entitled to all the privileges and immunities of citizens of the several States, one of which is the right to institute actions in the courts of another State. *Harris v. Balk*, 198 U.S. 215, 221, 223 (1905) (emphasis added).


118. The apparent tension between *Williams v. Lee* and *Wold Engineering* — especially in the case where Avila sues Global Mining in state court under *Wold* and Global Mining counterclaims contrary to *Williams* — has never been fully examined by the Court, and need not be here.


120. On the question of whether *Shaffer* technically overruled *Harris v. Balk*, see sources cited supra note 73.
enforcement, the courts should follow the Supreme Court's lead in the taxation cases, such as *McClanahan*.

In the case of *Begay v. Roberts*, the Arizona Court of Appeals used at least half of the analysis urged here. Specht, owner of Sandland Motors of Page, Arizona, recovered judgment against Begay, who did not pay voluntarily. Specht then sought to reach Begay's wages by garnishing his employer, the Salt River Project, under Arizona process. One writ was served on Salt River's office on-reservation and one at its office off-reservation. (Salt River is a state agency reachable in many places across Arizona.) Begay received notice of the garnishments and moved to quash them. That motion denied, Begay sought "special action," or mandamus, against Roberts, the justice of the peace who issued the writs. Relief was denied and Begay appealed.

The court of appeals reversed and granted the relief, the result just urged. The first half of the opinion, though, was unsatisfying, for the court rejected, in very short order, Begay's argument that the garnishments were invalid as a matter of non-Indian law. That is to say, the court rejected the theory that *Shaffer v. Heitner* places limits on the ability to garnish an employer merely by finding it in the jurisdiction: "Under Arizona law, the justice court clearly had jurisdiction to issue the writs of garnishment against [Salt River]. . . . [A]s a general rule, wages can be garnished in the forum where the employee could sue for them." A pre-*Shaffer*, 1924 Arizona Supreme Court case was cited. Of course, this quotation harkens directly to the now discredited *Harris v. Balk* and needs reinspection under *Shaffer*.

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123. *Id.* at 1112-13.
124. *Id.* at 1118. The court of appeals affirmed the part of the lower court's decision finding that subject matter and personal jurisdiction existed in the "justice court," and hence Specht's underlying judgments were proper.
125. *Id.* at 1114.
127. The *Weitzel* court's citation to *Harris v. Balk* is found at Weitzel, 230 P.2d at 1107.
Huggins v. Deinhard,\textsuperscript{128} also cited by the Begay court,\textsuperscript{129} was a non-Indian case in which the Arizona Court of Appeals did that reinspection and followed the \textit{dicta} of \textit{Shaffer}'s footnote 36. The facts were these: Deinhard was divorced by his wife, now Huggins, in California, and ordered to pay support. He fell into arrears, causing the past-due installments to become final money judgments.\textsuperscript{130} Huggins then garnished Deinhard's Arizona bank under Arizona garnishment process. The court concluded: "[T]here is no unfairness in allowing [Huggins] to realize on [the California judgment] debt in Arizona where Deinhard has property, whether or not the Arizona court would have jurisdiction to determine the existence of the debt as an original matter."\textsuperscript{131}

In Begay, the court of appeals was faced with a prior holding contrary to the position taken above that there is and should be an \textit{International Shoe} due process inquiry, even after judgment, notwithstanding footnote 36 of \textit{Shaffer}. Begay followed Huggins and, to that extent, the decision was unfortunate. A court might well conclude as a general matter that Arizona bank accounts were garnishable pursuant to California judgments, but an opportunity should exist to argue against that result, both on state and constitutional grounds.

First, recall \textit{Shinto Shipping}'s holding that a debt created by an Oregon deposit was located in Oregon, and not in California, even if the plaintiff could find some corporate aspect of the bank in California.\textsuperscript{132} This sensible result required at a minimum an inquiry into where the deposit was made.

Beyond that state law inquiry, lies the constitutional one: Suppose the money had been deposited in a California bank which was related, through some obscure corporate structure unknown to the depositor, to the Arizona bank. Suppose the balance in the account was protected from garnishment under the law of California but not Arizona, and that the plaintiff was seeking a friendly forum in which to garnish. Is such a garnishment fair and substantially just? The defendant, who is the true party in interest, is entitled to a hearing to determine that.

The court of appeals in Begay did agree with the suggested analysis regarding the legitimacy of garnishing off-reservation to reach wages earned on-reservation. Using well-known Indian law principles, the court said:

\[\text{T}he\ garnishment\ of\ a\ reservation\ Indian's\ wages\ \textit{earned} on\ the\ reservation\ is\ preempted\ and\ infringes\ on\ Navajo\ tribal\ sovereignty.\ \text{Even} though\ the\ garnishment\ in\ this\ case\ may\ take\ place\ physically\ off\ the\ reservation\ .\ .\ .\ the\ effect\ of\ the\]
garnishment will be felt by Begay on the reservation. In this regard, the Navajo Tribe has enacted laws concerning the enforcement of judgments, which do not include garnishing wages. To allow a state court to garnish a tribal member's wages earned on the reservation would thwart the Navajo Tribe's authority to not allow garnishments of this sort.\textsuperscript{133}

This is a strong, convincing and correct analysis.

In the end, then, Begay reached the correct result with respect to off-reservation garnishments of on-reservation wages. Compare \textit{First v. State ex rel. Laroche},\textsuperscript{134} from the Supreme Court of Montana, which asked this question: If wages earned on-reservation should be garnished on-reservation, and wages earned off-reservation should be garnished off-reservation, then where should unemployment benefits be garnished?

In the first place, unemployment benefits are generally exempt from garnishment.\textsuperscript{135} Federal law, however, requires that support creditors be permitted to garnish at least some of the benefit,\textsuperscript{136} and the \textit{First} case involved LaRoche's attempt to reach her ex-husband's Montana unemployment benefits to enforce her South Dakota support order.

The \textit{First} court addressed the same issues as Begay did, except in the opposite order, reaching a different conclusion. Applying Indian law principles first, the Court held that the federal law, cited above,\textsuperscript{137} requiring Montana to remove its exemption from unemployment benefits to make them reachable by support claimants resulted in federal preemption of the field and permitted the garnishment to go on under state law. This, of course, was the reverse of the usual preemption doctrine, which ordinarily prevents the application of state law,\textsuperscript{138} and one Justice dissented on these grounds.\textsuperscript{139}

Preemption analysis is not necessary to resolve this issue. Unemployment benefits are state and federally administrated funds, enacted by off-reservation legislatures, the money coming via off-reservation treasuries, and paid off-reservation, even if there is an unemployment office on the reservation.\textsuperscript{140} True, either state or federal law, responding to on-reservation unemployment and poverty might provide special exempt status for benefits paid to Indians, but, not having done so, the off-reservation garnishment of

\textsuperscript{133. Begay, 807 P.2d at 1116 (emphasis added).}
\textsuperscript{134. 803 P.2d 467 (Mont. 1991).}
\textsuperscript{135. See, e.g., MONT. CODE ANN. § 39-51-3106 (1987); ARK. CODE ANN. § 11-10-109 (1987).}
\textsuperscript{137. See 42 U.S.C. §§ 654 (1994).}
\textsuperscript{138. See, e.g., White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980).}
\textsuperscript{139. First, 808 P.2d at 473 (Trieweiler, J. dissenting).}
\textsuperscript{140. A very useful chart showing the interaction of state and federal treasuries and how employer unemployment compensation taxes intermingle is found in WEX S. MALONE ET AL., WORKERS' COMPENSATION AND EMPLOYMENT RIGHTS 498 (2d ed. 1980).}
an off-reservation entitlement would seem appropriate, even under Indian law principles.

What of non-Indian-law, *Shaffer v. Heitner*, concerns? Citing footnote 36 and several of the cases discussed above, the *First* Court wrote:

Here, because this action is to enforce an already determined debt, an outstanding child support obligation, Mr. First, Jr.'s "minimum contacts" are not at issue. However, even if Mr. First, Jr.'s "minimum contacts" were at issue, Mr. First, Jr. clearly established "minimum contacts" with the State of Montana by accepting Montana unemployment insurance benefits, benefits governed under [Montana law].

The second sentence was correct, but as should by now be clear, the first was not.

Professor Margery Brown of the University of Montana and Brenda Desmond, a supervising attorney in Montana's Indian Law Clinic carefully analyzed *First* as part of their lengthy article on Montana's tribal courts, arguing that the garnishment should have been before the tribal court: "[I]n *First*, where all parties were Indians, the state's interest was minimal. *First* involved only Indian parties and a reservation-based claim in an area long seen principally the interests of tribal self-government." However, I am more generous to the Montana Supreme Court, and think that that the type of property being sought, state and federally funded and administered unemployment compensation, was relevant. As Brown and Desmond point out, the judgment being enforced was a domestic one between Indian parties and within what was once an Indian family. Such a judgment was perhaps properly within the tribe's jurisdiction, even after the wife moves off-reservation and out-of-state. A due process attack on South Dakota's jurisdiction over the underlying divorce case was acceptable under full faith and credit principles and was proper collaterally when enforcement was sought in Montana or before the tribal courts. But if there was a valid judgment from South Dakota, enforceable on or off reservation, then it seems the place to garnish the nonexempt unemployment benefits was in South Dakota state court.

141. *First*, 808 P.2d at 473.
143. Id. at 285.
144. Professor Brown's and Ms. Desmond's discussion of *First* is in the context of their careful inspection of Indian law as it applies to Montana tribal courts, and they have serious and important criticisms of the way *First* fits into the general evolution of Indian law jurisprudence as established by the Montana Supreme Court. I have no dispute with their broader conclusions about such issues as whether the *First* court did, and should have, followed earlier decisions of the Montana Supreme Court.
Conclusion

Returning to this article's original hypothetical, then, we have the following result. New Mexico garnishment process can be used to reach the money in Roberta Avila's off-reservation account at the First Federal Savings Bank, because she deposited the money and created the debt off-reservation. New Mexico and federal wage exemption laws will apply, probably to little avail, as the money is no longer in the form of wages. However, Avila should be able to change this result by beginning to make deposits at the on-reservation ATM machine, or by using some sort of direct electronic deposit, at which point tribal garnishment process would have to be used, and tribal and federal exemptions would apply. The tribe, in turn, might determine to protect wages all the way into her bank account.

The pots that are located at Garcia's Pawn Shop are reachable via a New Mexico writ of garnishment, as is any indebtedness that Garcia owes Avila for pots sold. The only way to keep the pots themselves from beyond the reach of a New Mexico writ of garnishment is to keep them on the reservation. Avila can avoid New Mexico jurisdiction over the accounts receivable only by insisting that Garcia contract with her and take delivery of the pots on-reservation, which may be to her considerable commercial detriment.

Could Avila and Garcia, by artful drafting of their consignment contract, locate the place of the contract in some state where her creditors could not garnish her? A court could easily avoid any such hiding of a transaction by using a rule analogous to the Uniform Commercial Code's choice of law rule, insisting that the parties could not locate the place of contracting in any state that does not have a "reasonable" or "appropriate" relationship to the contract.

The pots placed with the on-reservation Tewa Potters' Cooperative, and accounts receivable relating to pots sold by the Cooperative can only be reached through Tewa process.

Finally, Avila's wages earned working on-reservation for Global Mining are reachable only by a Tewa writ of garnishment served properly on Global Mining, according to Tewa rules, and subject to Tewa and federal exemptions. Global Mining might be susceptible to process in New Mexico, but this is problematic, as it does little business there. If New Mexico


146. There is nothing inherently suspicious about such a protective exemption. In fact, the federal social security exemption extends beyond payment and into the bank account of the recipient. See 42 U.S.C. § 407 (1994).

service can be made, then under *Williamson*, the New Mexico court should first address the question of whether the debt for Avila's wages is located in New Mexico, the better answer being "no." If the New Mexico court were to decide that the debt is located there, then under *Goodyear*, the garnishment could go on in New Mexico, as it was the site of the underlying lawsuit. States other than New Mexico, and foreign countries where Global Mining can be found should decline to exercise jurisdiction over Avila's wages, both under *Williamson* and under *Shaffer*.

If Avila occasionally has to leave the reservation in the course of her employment, the garnishment should still go on under Tewa rules, assuming that the off-reservation work is entirely incidental to her employment. If Avila regularly works off-reservation, then Global Mining should be susceptible to off-reservation garnishment to reach those off-reservation wages.

As mundane as enforcement of judgment issues appear to be, they raise important matters of both tribal and state sovereignty. These sovereign interests do not disappear when an off-reservation garnishment is undertaken; they have only been preempted by the garnishment. Such a preemption subordinates many of the sovereign interests of both the state and the tribe to that of a private plaintiff seeking payment. Such a single-minded plaintiff can not be expected to make the arguments necessary for the protection of the sovereign interests involved. This, of course, is always true when judgments are enforced across jurisdictional boundaries. Special care must be taken when the boundary is an Indian reservation boundary; tribal sovereignty is more fragile than most, due to years of direct and indirect, good faith and bad, attempts to destroy it.

One way to protect that sovereignty is to insist upon a careful cross-boundary recognition and enforcement rules, which ought not be a fully reciprocal full faith and credit regime. A second way to protect sovereignty is to keep enforcement officers confined to their own geographical limits, and not to use state execution and garnishment directly on the reservation. The third way is to take care that each sovereign retain judicial control over assets within its domain. With respect to real property and tangible personal property, the actual location of the assets governs which jurisdiction controls, and is rarely an issue. With respect to intangible assets, susceptible to many legislatively defined "locations," the actual location of those assets must be inquired into, and that actual location is where they are created, not merely where the law of one jurisdiction or the other artificially says they are located, nor, under *Harris v. Balk*, where the plaintiff fortuitously finds the garnishee. Due process and *Shaffer*, federal Indian law and *McClanahan*, and sensible common law all require the same result: It should become the law of each state where the assets of the defendant are reachable under the process of only the state or tribe, as appropriate, depending on the actual location of both tangible and intangible assets.