Cornell International Law Journal

Volume 21
Issue 2 *Summer 1988*

Article 7

Jurisdictional Reach for Interpleading Aliens: Can Use of 1655 Coexist with Federal Interpleader Law

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Jurisdictional Reach For Interpleading Aliens: Can Use Of § 1655 Coexist With Federal Interpleader Law?

In *Bache Halsey Stuart Shields, Inc. v. Garmaise*,[1] an American investment firm commenced an interpleader action[2] in order to resolve a dispute over various trust accounts in its possession. However, some of the parties disputing the distribution of the trust accounts were citizens of foreign countries who refused to submit to the jurisdiction of the American court.[3] These foreign claimants argued that the interpleader action was *in personam* and, therefore, could not proceed unless they were personally served within the United States.[4] The district court disagreed, hold-

1. 519 F. Supp. 682 (S.D.N.Y. 1981).

2. An interpleader action allows a party to avoid multiple claims in the face of a single liability. The party (the stakeholder) can bring all claimants with an interest in the disputed assets (the stake) before the court at one time where they can present their claims and litigate the issues among themselves. The stakeholder may deposit the stake with the court and remove itself from the dispute. An interpleader action results in the stakeholder meeting its obligation and exempting itself from all further liability. For a description and history of interpleader, see Professor Zechariah Chafee's series of articles published from 1921 to 1943: *Modernizing Interpleader*, 30 YALE L.J. 814 (1921); *Interstate Interpleader*, 33 YALE L.J. 685 (1924); *Interpleader in the United States Courts*, 41 YALE L.J. 1134 (1932) and 42 YALE L.J. 41 (1932); *The Federal Interpleader Act of 1936: I & II*, 45 YALE L.J. 963 & 1161 (1935-36); *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377 (1940); *Broadening Federal Interpleader*, 56 HARV. L. REV. 929 (1943). *See also* Hazard & Moskovitz, *An Historical and Critical Anlaysis [sic] of Interpleader*, 52 CALIF. L. REV. 706 (1964).

3. *Garmaise* at 685-86. The trust accounts held by the American investment firm were created by Judah Leib Gewurz in 1978 through a testamentary document created in Israel. This document revised an earlier will executed by Gewurz in Canada in 1975 and transferred to various family members' funds from a Liechtenstein corporation that Gewurz co-owned with his wife. The dispute turned on the legality of the Israeli document and on Gewurz's power to effect a testamentary disposition of corporate assets. *Id.* at 683-84.

4. *In personam* jurisdiction bases personal jurisdiction on a court having jurisdiction over a party's person rather than a party's property. An *in personam* judgment imposes a personal obligation on the defendant in favor of the plaintiff, rather than imposing a judgment against a thing. *In personam* jurisdiction also exposes the defendant to related cross-claims. *In personam* jurisdiction requires effective service upon the interested parties, while non-personal jurisdiction may proceed without personal notice to the interested parties. Shaffer v. Heitner, 433 U.S. 186, 199-200 (1976). *Cf.* 3 RESTATEMENT (SECOND) OF JUDGMENTS § 5, at 68-69 (1982) [hereinafter RESTATEMENT (SECOND) JUDGMENTS]; Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241; Clermont, *Restating Territorial Jurisdiction And Venue for State And Federal Courts*, 66 CORNELL L. REV. 411, 414 (1981).

ing that the disputed assets were a form of property that supported the exercise of *quasi in rem* jurisdiction.[5] The district court, therefore, ordered the foreign claimants to appear and authorized service beyond the borders of the United States under 28 U.S.C. § 1655.[6]

This Note discusses the validity of a United States federal court utilizing a statute such as 28 U.S.C. § 1655 to obtain jurisdiction over foreigners in an interpleader action. The Note begins with a discussion of the holding in *New York Life Ins. Co. v. Dunlevy*.[7] In *Dunlevy*, the United States Supreme Court held that an interpleader action concerning a debt on an insurance policy was a personal action and could not reasonably be reified to support non-personal jurisdiction.[8] Although the

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5. 519 F. Supp. at 686-87 (S.D.N.Y. 1981). *Quasi in rem* jurisdiction is based on a court's power over property within its territory; it results in a judgment affecting the interests of particular persons in a designated thing. The court's jurisdiction in a *quasi in rem* judgment is limited to the property supporting the jurisdiction. The property owner is not exposed to any personal liability. Another form of non-personal jurisdiction is *in rem* jurisdiction. *In rem* jurisdiction also is based on a court's power over property within its territory, but produces a judgment affecting the interests of *all* persons in a designated thing. The jurisdiction of a court in an *in rem* judgment is also limited to the property supporting the jurisdiction. *Shaffer*, 433 U.S. at 199, n.17; 14 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3631 (1985) [hereinafter WRIGHT & MILLER]; Clermont, *supra* note 4, at 414; Hazard, *supra* note 4.

6. 28 U.S.C. § 1655 commonly referred to as the "lien enforcement statute" provides:

> In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.
>
> Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.
>
> If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.
>
> Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

7. 241 U.S. 518 (1916). For a discussion of the *Dunlevy* case *see infra* notes 16-24, 32-39.

8. *Id.* Throughout this note, *in personam* jurisdiction will be referred to as personal jurisdiction, and *in rem* and *quasi in rem* jurisdiction as non-personal jurisdiction. Two distinct types of *quasi in rem* actions exist: in subtype-one, specific persons seek to establish a pre-existing interest in the thing in question; in subtype-two, courts seize a thing to support jurisdiction over an unrelated claim against the owner of the thing. *See* Clermont, *supra* note 4; RESTATEMENT (SECOND) JUDGMENTS § 6, at 73. Interpleader actions, and, therefore, this Note, involve only *quasi in rem* subtype-one.

breadth of the holding in *Dunlevy* is disputed,[9] this Note asserts that *Dunlevy* established the proposition that unless the stake at issue could reasonably support an action *in rem*, the federal court could not go forward without obtaining personal jurisdiction over all the parties.[10] Congress later solved the problem of obtaining jurisdiction in purely domestic cases by expressly giving federal courts personal jurisdiction in interpleader cases so long as the parties were within the United States and could be found for service.[11] This Note contends that Congress's action, though solving the *Dunlevy* problem[12] for cases where the parties can be found within the United States, failed to solve this problem in the international context. In cases like *Garmaise*, therefore, the nature of the stake remains critical in current interpleader law; if the stake is incapable of reification, the court cannot serve overseas claimants, and consequently the case cannot go forward. For this reason, courts must make a principled determination as to whether a stake constitutes a res; if the stake cannot be reified, courts should not use § 1655 non-personal service to reach a party outside the United States.

In Part One, this Note discusses *Dunlevy* and its successor cases, contending that the *Dunlevy* Court saw no essential difference between debts on insurance policies and other intangible debts with regard to their potential for reification. Part Two outlines the changes in general jurisdictional theory since *Dunlevy*, maintaining that *Shaffer v. Heitner*'s resurrection of the importance of power in jurisdictional theory reestablishes the importance of the *Dunlevy* problem. Part Three applies current jurisdictional theory to interpleader law, and Parts Four and Five argue that the structure and history of interpleader law show that Congress intended its resolution of the *Dunlevy* problem to extend only to purely domestic cases: Congress granted federal courts personal jurisdiction in interpleader cases only over persons found within the boundaries of a United States district court. Because Congress structured interpleader law on the distinction between personal and nonpersonal jurisdiction, this Note argues that it is inappropriate for courts to sidestep the question of whether a debt can reasonably be reified and apply § 1655's non-personal service provisions. This Note argues instead for minor reform of the Federal Interpleader Act, and for principled judicial inquiries into the nature of each interpleader stake.

I. The Case Law on the Nature of Interpleader Actions

A. The *Dunlevy* Case

The equitable remedy of interpleader was created to "protect a party

9. *See infra* note 17 and accompanying text.

10. *See infra* notes 106-08 and accompanying text.

11. *See infra* § IV.B.

12. The term "*Dunlevy* problem" refers to the situation where it is unreasonable to reify a debt and therefore to apply non-personal jurisdiction.

against . . . double vexation in respect of one liability."[13] In an interpleader action, a stakeholder, such as the investment firm in *Garmaise*, faces more than one claim against the stake it holds. Interpleader allows the stakeholder to require the various claimants to assert their adverse claims in a single action. The stakeholder may, therefore, avoid the multiple liability that could otherwise arise from only one stake.

The case law has defined interpleader actions in two ways: as strictly personal actions,[14] and as actions which can be either personal or non-personal depending upon the particular nature of the stake.[15] The primary authority for the characterization as strictly personal is *New York Life Insurance Co. v. Dunlevy*.[16] The *Dunlevy* opinion, however, was brief and ambiguous, leaving considerable room for disagreement over

13. National Fire Ins. Co. v. Sanders, 38 F.2d 212, 214 (5th Cir. 1930) (fire insurance company faced with claim from insured and from garnishee of insured used interpleader for protection against double vexation). For a general history of interpleader, *see* Chafee, *supra* note 2.

14. Metro Life Ins. Co. v. Dumpson, 194 F. Supp. 9, 11 (S.D.N.Y. 1961) (in an interpleader action by life insurer as a stakeholder of the cash surrender value of a policy, the court held that: "[I]nterpleader is an action *in personam* which brings about a 'final and conclusive adjudication of * * * personal rights' and requires that a claimant to the fund be brought before the court in order for a judgment to be binding upon him); Aetna Life Ins. Co. v. Du Roure, 123 F. Supp. 736, 740 (S.D.N.Y. 1954) (in an interpleader action by insurer as a stakeholder of annuity policies, the court held that interpleader is not an action *in rem*); Metro Life Ins. Co. v. Skov, 45 F. Supp. 140, 142 (D. Or. 1942) (in an interpleader action by life insurance company where all claimants were out-of-state citizens, the court held that the interpleader action was *in personam*).

15. U.S. v. Estate of Swan, 441 F.2d 1082 (5th Cir. 1971) (in an interpleader action by a bank as stakeholder of assets of an estate, the court held that the action was *quasi in rem* because assets of an estate on deposit in a bank pursuant to a court order constitute specific property); Guy v. Citizens Fidelity Bank & Trust Co., 429 F.2d 828 (6th Cir. 1970) (an interpleader action by a bank as stakeholder of oil and gas lease assignments where the court held that the action was *quasi in rem* because the law of the state defined an interest in an oil and gas well as a property right); Bache Halsey Stuart Shields, Inc. v. Garmaise, 519 F. Supp at 686-87 (in interpleader action by an investment firm as stakeholder of assets of an estate, the court held that the action was *quasi in rem* because the investment firm had a real interest in the determination of the rightful title holder to the assets); Cordner v. Metropolitan Life Insurance Co., 234 F. Supp. 765, 767 (S.D.N.Y. 1964) (an interpleader action by insurer as stakeholder of life insurance policy where the court held that actions involving insurance policies are *in personam* because the proceeds of an insurance policy do not constitute specific property); Kuerschner & Rauchwarenfabrik, A.G. v. New York Trust Co., 126 F. Supp. 684, 689 (S.D.N.Y. 1954) (an interpleader action by New York bank as stakeholder of frozen funds of Hungarian corporation where the court held that the action was *in personam* because the funds did not constitute specific property); Republic of China v. American Express Co., 95 F. Supp. 740 (S.D.N.Y. 1951), *aff'd* 195 F.2d 230 (2d Cir. 1952), *on remand* 108 F. Supp. 169 (S.D.N.Y. 1952) (interpleader action by bank as stakeholder of deposits by the postal system of the Chinese government where the court suggested that the action could be converted to *quasi in rem* proceeding by depositing the funds with the court).

16. 241 U.S. 518 (1916) (an interpleader action by insurer as stakeholder of insurance policy proceeds where the court held that the action resulted in a personal judgment against one of the claimants and therefore was an action *in personam*).

the actual extent of the Court's holding.[17] Some courts have extrapolated broad principles about the nature of interpleader actions from *Dunlevy*,[18] while other courts have held that *Dunlevy* should be limited to cases involving insurance policies.[19]

In *Dunlevy*, an insurance company faced three separate claims on one life insurance policy.[20] The insurance company was allowed to interplead the three claimants and remove itself from the lawsuit after depositing with the court funds equal to the amount of the policy. The interpleader action took place in Pennsylvania, and notice was given to Mrs. Dunlevy, one of the claimants and the daughter of the policyholder, in California. Mrs. Dunlevy failed to appear, and the interpleader action proceeded without her. The Pennsylvania state court deemed invalid Mrs. Dunlevy's claim that her father had assigned the proceeds to her.[21] The United States Supreme Court held that the Pennsylvania court did not have personal jurisdiction over Mrs. Dunlevy and overruled the Pennsylvania court's determination, stating that:

> The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the State, nor served with process within its borders, no matter what the mode of service, is void, because the court had no jurisdiction over his person.[22]

The principle most clearly derived from the *Dunlevy* opinion is that the dispute over the alleged assignment of the insurance proceeds was a personal action requiring personal jurisdiction. The stake was a contract debt and, according to the Court, the adjudication of the rights to that debt settled personal rights. The action, therefore, was not an action against property.[23] It is unclear whether *Dunlevy* establishes that all interpleader actions are personal actions or merely that this particular proceeding was a personal action. Although the *Dunlevy* Court broadly refers to "personal judgments," the opinion seems to rest on the specific determination that an adjudication of the rights to an insur-

17. *See, e.g.*, U.S. v. Estate of Swan, 441 F.2d 1082 (5th Cir. 1971); Bache Halsey Stuart Shields, Inc. v. Garmaise, 519 F. Supp at 682; WRIGHT & MILLER, *supra* note 5, § 3636; Hazard, *supra* note 4; von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1158 (1966).

18. *See supra* note 14 for cases which have cited *Dunlevy* for the broad principle that an interpleader action is an *in personam* action.

19. *See supra* note 15 for cases which have held that interpleader actions were *quasi in rem*.

20. 241 U.S. 518 (1916). After the policy matured, the policyholder claimed the proceeds. His daughter, Mrs. Dunlevy, claimed the proceeds on the ground that he had previously assigned them to her. Finally, a creditor of Mrs. Dunlevy claimed the proceeds on the ground that if she was entitled to the money, the proceeds should be garnished to satisfy a judgment previously rendered for the creditor against Mrs. Dunlevy. *Id.* at 519-20.

21. *Id.* at 520.

22. *Id.* at 521-23.

23. *Bache Halsey Stuart Shields, Inc.*, 519 F. Supp. at 687, n.12.

ance debt is a personal judgment.[24]

B. Progeny of *Dunlevy*

Cases citing *Dunlevy* for the proposition that interpleader actions are personal actions have consistently been insurance cases in which the stake was, as in *Dunlevy*, an insurance contract debt. In some of these cases, courts used broad language defining interpleader as a personal action without regard to the nature of the stake.[25] In another, the court used narrow language establishing only that the insurance debt in question was not property that could support *quasi in rem* jurisdiction.[26]

The cases holding that interpleader actions can be *quasi in rem* actions are all non-insurance cases.[27] These cases all limit *Dunlevy*'s holding to its specific facts. The leading such case is *United States v. Estate of Swan*.[28]

In *Swan*, the United States Court of Appeals for the Fifth Circuit rejected the idea that *Dunlevy* stands for the proposition that interpleader actions are strictly personal.[29] The Fifth Circuit reasoned that *Dunlevy* turned on the interpretation and consideration of the constitutionality of the Pennsylvania *in rem* service statute. It stated that *Dunlevy*'s determination that the Pennsylvania court's decision was not binding was based on the statute's inadequate due process, by "not provid[ing] for effective representation of the interests of a claimant not personally served . . . ."[30] The *Swan* court held that the federal service provision, § 1655, met the due process concerns raised in *Dunlevy*. Also, the stake in dispute in *Swan*, a bank account representing the remaining assets of an estate, was a form of property over which *quasi in rem* jurisdiction could be exercised. Therefore, § 1655 service could be applied.[31]

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24. This assertion is supported by the fact that the broad language in *Dunlevy* only refers to "personal judgments" after the court has already decided that the determination of the insurance debt was a personal judgment. 241 U.S. at 519-20.

25. *See* Metro Life Ins. Co. v. Dumpson, 194 F. Supp. 9 (S.D.N.Y. 1961); Aetna Life Ins. Co. v. Du Roure, 123 F. Supp. 736 (S.D.N.Y. 1954).

26. *See* Cordner v. Metro Life Ins. Co., 234 F. Supp 765 (S.D.N.Y. 1964) (in an interpleader action by insurer as stakeholder of life insurance, the court held that actions involving insurance policies are *in personam* because the proceeds of an insurance policy do not constitute specific property).

27. *See, e.g.*, U.S. v. Estate of Swan, 441 F.2d 1082 (5th Cir. 1971); *Garmaise*, 514 F. Supp. at 687, n.12; Georgia Sav. Bank & Trust Co. v. Sims, 321 F. Supp. 307, 309 (N.D. Ga. 1971); A/S Krediit Bank v. Chase Manhattan Bank, 155 F. Supp 30 (S.D.N.Y. 1957) (in an interpleader action by American bank as stakeholder of deposits of Estonian bank, the court held that the action was *quasi in rem* because the securities held by the American bank were personal property).

28. 441 F.2d 1082.

29. *Id.* at 1086.

30. *Id.*

31. *Id.* Swan has been cited to support the proposition that "insofar as modern notions of jurisdiction require only that due process be satisfied to enable an action to proceed, the characterization of interpleader as in personam or in rem has little validity." 7 WRIGHT & MILLER, *supra* note 5, § 1711 at 563.

The Fifth Circuit's reasoning in limiting *Dunlevy* seems untenable. *Dunlevy*'s broad language concerning jurisdiction over personal rights suggests that the Supreme Court was not merely dissatisfied with the structure of Pennsylvania's *quasi in rem* service statute.[32] Rather, the Court in *Dunlevy* was concerned with the fact that the Pennsylvania court could not determine Mrs. Dunlevy's rights to the insurance proceeds without personal service of Mrs. Dunlevy within Pennsylvania.[33]

Furthermore, the Fifth Circuit's misinterpretation of the holding in *Dunlevy* allowed it merely to conclude that the stake in *Swan*, a bank account, was a form of property that would support *quasi in rem* jurisdiction. If the *Swan* court had correctly interpreted *Dunlevy*, it would then have needed to distinguish a bank account from an insurance policy, rather than merely concluding the account formed a res.

C. Authority Cited by the *Dunlevy* Court

The authority cited by the *Dunlevy* Court demonstrates that it considered the Pennsylvania interpleader action to be personal, thus requiring *in personam* jurisdiction. The *Dunlevy* court cited *Pennoyer v. Neff*,[34] a treatise on Attachment and Garnishment,[35] and an Ohio Supreme Court case, *Cross v. Armstrong*.[36] Citing *Cross v. Armstrong* indicates that the Court thought interpleader of a debt was not *in rem* because in *Cross* the Ohio Supreme Court analyzed the differences between *in rem* and *in personam* actions and concluded that interpleader of a debt was not *in rem*.[37]

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32. As Professor Moore stated, *Dunlevy* speaks to general jurisdictional principles, not the structure of the Pennsylvania service statute:

> While a court may obtain in rem or quasi in rem jurisdiction over adverse claimants to a specific res, such as the corpus of a trust estate, a fund, securities, or other chattels, a person against whom in personam liability is asserted may not transform that liability into a res by depositing money into court and thus enable the court to proceed to an adjudication, by in rem or quasi in rem process, of the defendant's in personam claims against the plaintiff. This was the teaching of the *Dunlevy* case.

3A MOORE'S FEDERAL PRACTICE 22.06 at 22-41 to 22-42 (2d. ed. 1986) [hereinafter MOORE'S FEDERAL PRACTICE].

33. *Dunlevy*, 241 U.S. 518, 521-23 (1916). The *Dunlevy* Court stated that the interpleader action ". . . was an attempt to bring about a final and conclusive adjudication of personal rights, not merely to discover property and apply it to debts. And unless in contemplation of law [Mrs. Dunlevy] was before the court and required to respond to that issue, its order and judgment in respect thereto were not binding on her." *Id.* at 521. According to Professor Chafee, "the Supreme Court assumed without any question that the notice to [Mrs. Dunlevy] was made with due formalities and rested entirely upon general grounds of jurisdiction . . . ." Chafee, *Interstate Interpleader*, *supra* note 2, at 713.

34. 95 U.S. 714 (1877).

35. Shinn, ON ATTACHMENT AND GARNISHMENT § 674 (1896).

36. 44 OHIO ST. 613 (1887).

37. The Ohio Supreme Court's discussion of the nature of interpleader action in *Cross v. Armstrong* sheds light on the *Dunlevy* holding:

> [I]t appears that a judgment *in rem*, at least when against any *thing*, may bind the *res* in the absence of any personal notice to the parties interested, but a judgment *in personam*, as we have seen, can have no validity except upon service upon the interested parties, or what is equivalent to it. Why was the

Professor Zechariah Chafee, the leading figure in the development of federal interpleader law,[38] analyzed both the *Dunlevy* and the *Cross* opinions and concluded that such suits against insurance companies are clearly proceedings *in personam*.[39] But although Chafee believed that interpleader of a debt was not *in rem*, he also believed that interpleader was not necessarily a personal action. According to Chafee, if certain circumstances are present, interpleader may be a non-personal action. For example, Chafee believed that interpleader could be a non-personal action if the stake involved were land or certain chattels physically situated in the district of the proceedings.[40] If the chattel were a moveable chattel, however, physical presence might not be enough to allow a court to exercise non-personal jurisdiction for interpleader. Chafee believed that if the chattel were in the district without the consent of a claimant, the court must consider whether the exercise of non-personal jurisdiction would be unfair to the nonresident claimant.[41] Another situation where Chafee believed that the exercise of non-personal jurisdiction in interpleader would be possible is when a debt is "represented by documents which may often be regarded as chattels."[42] Promissory notes, bills of exchange, and corporate bonds are examples of such

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> Philadelphia action, in its nature, not a proceeding between parties claiming right to money due under the policy, rather than a proceeding to determine the *status* of such money? If it was the former, then the efficacy of the judgment depended upon having the parties before the court, so that their conflicting claims could be adjudicated; . . . . It was not the *status* of *any particular* money that was to be determined, for *any* money which was a legal tender would have effectually satisfied the claim of the party receiving it; . . . . The proceeding was clearly one of interpleader, and that only. We do not understand that an action *in personam*, simply because a debtor brings money, the right to recover which is in contention, and gives to the custody of the court a sum sufficient to discharge his debt, changes into an action *in rem*, or that an interpleader suit is, in its nature, a proceeding *in rem*. . . . Then, does the mere fact that the company, (the debtor,) being sued, voluntarily delivers money to the clerk of the court, rather than keep it in its own safe, or to its credit in bank, or loaned upon call, change the action from one *in personam* to one *in rem*? We think not.

Id. at 625-26.

38. For a list of Chafee's writings on interpleader, see *supra* note 2. For a discussion of Chafee's role in the development of the Federal Interpleader Act, *see infra* notes 142-43 and accompanying text.

39. Chafee stated that

> A suit by one person against an insurance company is clearly a proceeding *in personam*. If two persons bring separate suits against the company on the same policy, each suit is *in personam*. Interpleader is nothing but a device to unite these two suits in one litigation, which continues to be *in personam* and does not change its character when the money is paid into court. It is an attempt to adjudicate mere personal rights to a money demand.

Chafee, *Interstate Interpleader*, *supra* note 2, at 714-15.

40. *Id.* at 698-701.

41. *Id.* at 699.

42. *Id.* at 700.

documents.[43]

The court in *Garmaise* could have used Chafee's reasoning to support its application of non-personal jurisdiction to the assets held by the investment firm.[44] Unfortunately, the *Garmaise* court simply made a conclusory statement that the assets were a discrete res.[45] By failing to demonstrate the differences between the intangible debt before it and the intangible debt before the *Dunlevy* Court, the *Garmaise* court left unsolved the *Dunlevy* problem: When is it reasonable to reify a debt and, consequently, reasonable to apply non-personal jurisdiction?

Chafee dealt directly with the *Dunlevy* problem, offering a way to distinguish bank deposits from insurance policies. He used Justice Holmes's idea[46] that money in the bank is the same thing as coin in the pocket, thus justifying application of non-personal jurisdiction "for interpleader by a savings bank in the state where it is located, but not for interpleader by a life insurance company since insurance is not equivalent to coin in the pocket."[47] According to Chafee, because "the bank's state is not only the domicile of the debtor but the only place provided by contract for the payment of the debt, we have an argument for asserting a jurisdiction *in rem* which does not exist for ordinary debts . . . ."[48] Many kinds of modern bank deposit and investment accounts strain Chafee's reasoning, however, by being payable in more than one state and, following Chafee's reasoning, therefore, being unable to support *in rem* jurisdiction.[49]

The final situation where Chafee believed non-personal jurisdiction could be applied to interpleader would be when the stake is under administration in a probate proceeding.[50] A probate court's power to give complete relief, regardless of its lack of personal jurisdiction over the claimant, is based on the theory that a probate court has territorial jurisdiction over the estate.[51] Traditionally, however, probate courts have been granted this power, not because of jurisdictional theory, but because of the public need for ensuring the alienability of assets. Public policy, therefore, requires that a probate court have the power to clear

43. However, as Chafee pointed out, the theory that negotiable instruments will support non-personal jurisdiction was rejected in Cleveland National Bank v. Burroughs, 10 Oh. App. 61 (1917). *Id.* at 700, n.50.

44. For further discussion of *Garmaise*, *see infra* notes 58-61 and accompanying text.

45. The district court in *Garmaise* may have failed to explain its characterization of the assets held by Bache because it justified applying § 1655 as a matter of necessity and public policy. *See infra* notes 58-59 and accompanying text.

46. 188 U.S. 189 (1903), *rev'd,* Farmers Loan & Trust Co. v. Minnesota 280 U.S. 204 (1930).

47. Chafee, *Interstate Interpleader*, *supra* note 2, at 705.

48. *Id.* at 701.

49. For example, bank accounts that automatically transfer money from savings accounts to checking and investment accounts, thereby providing for access to funds in the form of checks, are payable in more than one state.

50. Chafee, *Interstate Interpleader*, *supra* note 2, at 698.

51. Simes, *The Administration Of A Decedent's Estate As A Proceeding In Rem*, 43 MICH. L. REV. 675 (1945).

in one proceeding title to all the assets of an estate.[52] Thus, if a debt is part of an estate under administration, and the object of an interpleader action, a court may be justified in applying non-personal jurisdiction.

D. Distinguishing Insurance Debts From Bank Accounts

In summary, the case law after *Dunlevy* fails to address the issue of when a debt may reasonably be reified. The pattern that emerges does not provide a theoretical basis for distinguishing between different types of stakes. Cases which have followed *Dunlevy* have all been insurance cases with facts similar to *Dunlevy,* and have all typically used broad language in defining interpleader as a personal action.[53] Cases which have either distinguished *Dunlevy* on narrow grounds, or have ignored it, have involved stakes that the courts determined could reasonably be reified to support non-personal jurisdiction,[54] but these cases do not contain any reasoning to justify the reification.

No clear reason seems to exist, therefore, for treating the proceeds of an insurance policy as a personal debt while treating assets such as the proceeds of a bank account as a specific res.[55] Those reasons advanced by the courts thus far are inadequate. For example, courts have attempted to justify applying § 1655 service on the ground that the interpleader action removes a cloud on the stake,[56] but this begs the question of whether the stake itself is property within the jurisdiction capable of supporting non-personal jurisdiction. Nor can the difference be that one type of property is tangible and the other is intangible, because the "distinction between tangibles and intangibles is artificial and has not been relied upon by the courts . . . ."[57]

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52. *See Case of Broderick's Will*, 88 U.S. 503, 519 (1874) ("The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*.").

53. *See supra* notes 25-27 and accompanying text.

54. *Compare* cases cited in note 25 *supra*, which use broad language defining interpleader as a personal action without regard to the nature of the stake, with cases in note 28 *supra*, which limit *Dunlevy* to its specific concern with an insurance policy.

55. The New York Court of Appeals explained why an insurance policy is a personal debt: (1) the purchaser buys the right to a given sum of money at a specified point in time; (2) the purchaser does not deposit a set fund with the insurer to cover the liability; and (3) the insurer charges fees from other purchasers so that it can cover its liabilities when they come due. Hanna v. Stedman, 230 N.Y. 326 (1921). This reasoning indicates that a bank account should be treated like an insurance policy. A bank account is a personal debt between the depositor and the bank. The depositor deposits a fund with the bank but only has a right to the *value* of his deposit; he has no claim on the specific currency he deposited with the bank. Finally, there is no "set fund" representing a deposit which can be identified as a specific res. Rather, the bank uses other customers' deposits to pay back a depositor just like an insurance company uses other customers' fees to pay off matured policies. Attempts by courts to distinguish between the two debts have been unsatisfactory.

56. *See Swan*, 441 F.2d 1082 (5th Cir. 1971); *Garmaise*, 519 F. Supp 682 (S.D.N.Y. 1981).

57. 7 WRIGHT & MILLER, *supra* note 5, § 1711 at 563. A bank account traditionally is considered to be a personal debt between the depositor and the depositee, but

Courts also have used public policy as a way of avoiding the question of whether or not a stake can support reification. The *Garmaise* court, for example, reasoned that because the policy underlying interpleader law is to protect stakeholders from multiple liability, § 1655 service must be applied to interpleader situations to ensure that claimants cannot evade personal service.[58]

> This policy is particularly cogent here, where Bache, a large brokerage house located in New York, an international center of business and commerce available to parties from around the world, is faced with conflicting claims to assets it holds for foreign citizens. To deny interpleader relief to such a stakeholder presages a burgeoning problem whereby persons, however widely dispersed in foreign land, could take advantage of the financial expertise available in New York protecting the New York financial institutions when disputes arise as to the ownership of assets placed in their charge.[59]

Recitations of public policy, however, do not change a stake from being other than a personal debt. Moreover, this reasoning ignores the congressional intent behind the creation of federal interpleader law. As discussed later, Congress enacted interpleader law to solve the *Dunlevy* problem for domestic, interstate interpleading.[60] Congress did not also give the courts power to reach internationally. If courts needed federal legislation to exercise interpleader jurisdiction over claimants residing in other states, when the stake was property incapable of supporting non-personal jurisdiction, logic would suggest they also need Congressional authorization in such circumstances to reach foreign claimants. Thus, the very presence of federal interpleader, with its inherent limitations of jurisdiction,[61] indicates that courts in international interpleader situations must face the *Dunlevy* problem of deciding when it is reasonable to reify a debt, rather than skirt the issue on public policy grounds.

II. Case Law and Trends in the Jurisprudence of Jurisdiction

A number of cases that distinguished *Dunlevy* did so on the ground that subsequent changes in jurisdictional theory had diminished the effect of

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courts have treated bank accounts as a res by arguing that the account is "money in the bank" which is the same thing as a special fund which the bank is ready and willing to pay. *See, e.g.*, U.S. v. Estate of Swan, 441 F.2d 1082 (5th Cir. 1971); Aetna Life Ins. Co. v. Du Roure, 123 F. Supp. 736, 740 (S.D.N.Y. 1954); Republic of China v. American Express Co., 95 F. Supp. 740 (S.D.N.Y. 1951), *aff'd* 195 F.2d 230 (2d Cir. 1952), *on remand* 108 F. Supp. 169 (S.D.N.Y. 1952); Sherman Nat'l Bank v. Shubert Theatrical Co., 238 F. 225 (S.D.N.Y. 1916), *aff'd* 247 F. 256 (2d Cir. 1917) (the court held that a bank account should be viewed as a special fund which the bank is willing and able to pay out upon request and, therefore, is equivalent to specific property).

58. 519 F. Supp at 686.

59. *Id.*

60. *See infra* notes 98, 121-23, 137-45 and accompanying text.

61. See *infra* notes 126-28 and accompanying text for a discussion of the boundaries of federal interpleader's jurisdiction.

its holding.[62] Specifically, power, whether over the persons or the res, had ceased to be the jurisdictional test; the Court was more concerned with the reasonableness of a forum. These cases therefore argued that "distinctions between actions *in personam* and actions *in rem* had deteriorated, making the *Dunlevy* problem irrelevant."[63] This section therefore discusses the history of jurisdictional theory from *Dunlevy* to the present, showing that, despite changes in the theory over time, the *Dunlevy* problem is still relevant.

A. Jurisdictional Theory at the Time of *Dunlevy*

When *Dunlevy* was decided, jurisdictional jurisprudence could be summarized by Justice Holmes's famous quote, "[t]he foundation of jurisdiction is physical power . . . ."[64] *Pennoyer v. Neff*[65] was then the seminal case on jurisdictional theory. *Pennoyer*'s two central concepts were that "every State possesses exclusive jurisdiction and authority over persons or property within its territory,"[66] and that "no state can exercise direct jurisdiction and authority over persons or property without its territory."[67] The critical concern was whether a state possessed jurisdictional power over the defendant; a court did not consider whether an exercise of that power was reasonable. Accordingly, if a defendant's debt could be classified as a res, a court had jurisdictional power over it and could adjudicate the issue whether or not the defendant appeared in court.[68] Thus, when *Dunlevy* was decided, the distinction between personal and non-personal actions was critical. Under a pure power theory, if an interpleader action could be characterized as non-personal, the court could adjudicate claims to the res no matter how limited a claimant's contacts with the forum.[69]

B. Emergence of Reasonableness in Jurisdictional Theory

Pennoyer's power concept began to give way to the concept of reasonableness, throwing into question *Dunlevy*'s concern with the adjudication of personal rights absent a court's jurisdictional power over the defend-

62. *See* 3A MOORE'S FEDERAL PRACTICE, *supra* note 32, 22.04 [2-2]; 7 WRIGHT & MILLER, *supra* note 5, § 1711; von Mehren & Trautman, *supra* note 17.

63. 7 WRIGHT & MILLER, *supra* note 5, § 1711 at 563.

64. McDonald v. Mabee, 243 U.S. 90, 91 (1917) (a personal judgment, rendered on the basis of service by publication in a newspaper, declared void under the fourteenth amendment).

65. 95 U.S. 714 (1877). *Pennoyer* laid out the theoretical framework of territorial jurisdiction—*in personam, in rem, quasi in rem.* These categories still operate under modern principles of jurisdiction and provide the basis upon which courts apply the power test.

66. *Id.* at 722.

67. *Id.*

68. This power theory allowed plaintiffs to exercise *quasi in rem* jurisdiction by attaching a defendant's property as the basis of jurisdiction on a claim unconnected to that property. If the value of the property was less than the amount of the claim asserted, the defendant often chose to default rather than submit to *in personam* jurisdiction. Clermont, *supra* note 4, at 414-15.

69. *Id.*

ant's person.[70] This shift from a theory of jurisdiction based on a power test to one based on a reasonableness test[71] began in *International Shoe Co. v. Washington*[72] and culminated in *Mullane v. Central Hanover Bank & Trust Co.*[73] The reasonableness test, through which courts would "decide jurisdictional issues by balancing the interest of the public, the plaintiff, and the defendant," became the accepted standard in the jurisprudence of jurisdiction, and seemed to render the *Pennoyer* distinctions obsolete.[74]

With the change to a reasonableness test, courts and commentators questioned whether *Dunlevy* still controlled jurisdictional questions in interpleader actions.[75] If reasonableness was the standard, a court seemingly could exercise jurisdiction when the stake was within its forum and the stakeholder needed assurance of being subject to a single liability. Such jurisdiction could be exercised whether or not all the claimants could be served within the forum state.[76]

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70. *See supra* note 62.

71. Clermont, *supra* note 4, at 411, 416-17.

72. 326 U.S. 310 (1945). "[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it *such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'* " 326 U.S. 310, 316, 320 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940) (emphasis added)).

73. 339 U.S. 306 (1950).

> Distinctions between actions *in rem* and those *in personam* are ancient and originally expressed in procedural terms what seems really to have been a distinction in the substantive law of property under a system quite unlike our own . . . . American courts have sometimes classed certain actions as actions *in rem* because personal service of process was not required, and at other times have held personal service of process not required because the action was *in rem*.
>
> . . . .
>
> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Id. at 312-13.

74. According to the Supreme Court in *Mullane*:

> It is not readily apparent how the courts of New York did or would classify the present proceeding, which has some characteristics and is wanting in some features of proceedings both *in rem* and *in personam*. But in any event we think that the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state . . . .

339 U.S. at 312-13. *See also* Clermont, *supra* note 4, at 418 for a recitation and application of the reasonableness test.

75. *See supra* note 62 and accompanying text.

76. *See supra* note 17 and accompanying text for cases where jurisdiction was exercised even though all claimants could not be served within the forum state.

C. Current Jurisdictional Theory: Reasonableness Alone is Insufficient

When *Dunlevy*'s relevance had sunk to the point where courts would either completely ignore it or quickly distinguish it, the Supreme Court revised territorial jurisdiction principles in *Shaffer v. Heitner*.[77] *Shaffer* created a two-step process consisting of both a power and a reasonableness test.[78] Subsequently, the Supreme Court affirmed that neither power nor reasonableness was the sole standard.[79] Thus, a court now uses power as a threshold test; only then does it inquire whether the exercise of that power would be reasonable.

Although the distinction between personal and non-personal actions may not be as important today as it was when *Dunlevy* was decided, it is a distinction still critical to modern jurisdictional theory. The *Dunlevy* problem, therefore, cannot be ignored. A court must determine whether the action is personal or non-personal,[80] and the court must either have power over the persons, if the action is *in personam*, or over the res. In other words, to apply the power test, the court must first determine what it must exercise power over. If the action is non-personal, the court must inquire whether the claim is based upon specific property (*in rem*). If it is not, the court must then determine whether there is a debt that can be reified reasonably to provide *quasi in rem* jurisdiction.[81]

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77. 433 U.S. 186 (1977) (state court tried to compel defendant corporate executives to appear in a shareholder's derivative suit by seizing defendants' corporate stock, defined by a state statute as situs in the state; the court reversed, holding that the exercise of *quasi in rem* jurisdiction was unreasonable, as the property serving as the basis for jurisdiction bore no relation to the plaintiff's cause of action).

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

Id. at 207.

79. "Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1984) (quoting International Shoe, 326 U.S. at 320).

80. For a discussion of whether interpleader actions are always personal, *see supra* notes 24-54 and accompanying text.

81. Interpleader law, *see infra* notes 97-123, impinges on this test without destroying its necessity. Interpleader gives a court the power to move forward in a personal action regarding a stake even though it does not have "power" over all the parties—interpleader law steps in to give the court power and means of service. This does not remove the necessity for solving the *Dunlevy* problem. If the action is non-personal, the court must first have power over the res before it can exercise its power to inter-

III. Jurisdictional Theory for Interpleader

The modern approach for asserting jurisdiction allows certain interpleader actions to support *quasi in rem* jurisdiction. These interpleader actions may thus apply § 1655 non-personal service to quiet the title of the stake. The two jurisdictional inquiries necessary to establish an interpleader situation are reasonableness of reification and reasonableness of forum.

A. Reasonableness of Reification

Reasonableness of reification is simply another means of characterizing the test for whether a court has power over the stake. As Chafee indicated in his writings, when the stake involved in the interpleader action is land, or a chattel physically situated in the district, the court clearly has power over the stake.[82] However, if the stake is a debt, the court must justify treating the debt as if it were a thing. According to conflict of laws theory, the state has power to exercise jurisdiction over an intangible if the intangible is embodied in a document residing in the state.[83] However, many debts, such as bank accounts and insurance policies, are not embodied in a document and, therefore, are not covered by this theory.

A discrete, identifiable fund like assets in a trust account or certain investment accounts, may represent another possibility for a reasonable reification of debt. The New York Court of Appeals, in *Hanna v. Stedman*,[84] held that insurance policy premiums collected by the insurance company and deposited into a general account from which all claims are paid are not represented by any specific property because there is no specific account that represents each policy holder's proceeds.[85] This holding's reasoning would seem to include normal bank deposits, but trust accounts and investment accounts not mixed into a general fund seem to be distinguishable.

In summary, land and chattel physically located in the court's district will meet the requirements of the power test. Debts embodied in a document or represented by discrete identifiable assets, like trust accounts and investment accounts, may meet the requirements of the power test in interpleader actions. Debts that are mere rights to money, payable under a contract but not represented by an identifiable fund,

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plead claimants in other jurisdictions. If the stake is not located within the jurisdiction, or is an intangible that cannot be reified, the court lacks power, and the case cannot go forward in that jurisdiction.

82. *See supra* note 40 and accompanying text. However, if the chattel is moveable, the reasonableness of the forum issue must still be addressed. *See supra* note 41 and accompanying text.

83. RESTATEMENT (SECOND) CONFLICT OF LAWS, § 63 (1971) ("A state has power to exercise judicial jurisdiction to affect interests in an intangible thing embodied in a document which is within the state.").

84. 230 N.Y. 326 (1921).

85. *Id.* at 333-34

will not meet the requirements of the power test and cannot be reified reasonably.

B. Reasonableness of Forum

Once a court satisfies the power test, it is necessary to determine whether the court reasonably can exercise jurisdiction in its forum. The reasonableness of a forum is based upon evaluating "the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, . . . and the shared interest of the several States [and countries] in furthering fundamental substantive social policies."[86] Where the stake is land situated in the forum, courts presume reasonableness because of the impossibility of moving it elsewhere as well as the historical right of states to control property within their territory.[87] If the stake is a moveable chattel or an intangible debt, however, the court should undertake a reasonableness inquiry to ensure that a claimant is not forced into an unfair forum.

In testing the reasonableness of the forum, a court should first inquire as to the claimant's burden in having to litigate the claim in the chosen forum. A court's concern for a defendant's possible burden is not as great in *quasi in rem* interpleader actions as in typical liability suits.[88] In typical liability actions, defendants are dragged into court, sometimes in a distant forum, and thereby forced to incur court fees and attorney costs to defend themselves.[89] In contrast, the claimant in an interpleader action affirmatively seeks to obtain possession of a disputed stake; that claimant will have to litigate in some forum.

One consideration in assessing the claimant's burden is whether, by appearing in the interpleader action, the claimant is thereby being

86. *Rudzewicz*, 471 U.S. 462, 477 (1984). Modern principles of jurisdiction look to see if the reification process in an interpleader action is reasonable rather than whether or not the intangible debt has a definite location.

87. *See, e.g.*, Shaffer v. Heitner, 433 U.S. 186, 207 (1977). The Supreme Court in *Shaffer* stated that "when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction."

88. A foreign claimant may suffer hardship from being forced to travel to the United States, as well as incurring extra litigation expenses by having to prove whether or not foreign law is controlling. Under FED. R. CIV. P. 44.1, the claimants can prove the foreign law to be applied. These burdens do not, however, raise due process concerns.

Another complication when a case involves foreign claimants is that a court may decide, as the *Garmaise* court did, to stay the proceedings until foreign courts have settled the issues in the case that depend upon the application of foreign law. 519 F. Supp. at 688.

89. *Cf.* Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 808 (1985) (personal jurisdiction over absent class members sustained in a class action suit because "[t]he burdens placed by a State upon an absent class-action plaintiff are not of the same order or magnitude as those it places upon an absent defendant").

exposed to any other claims.[90] Courts should take a restrictive approach to allowing cross-claims when the stake is a moveable chattel or an intangible debt. Such a policy encourages non-residents to assert their claims in foreign courts.[91] Furthermore, by protecting claimants from unreasonable exposure to personal liability, courts ensure that their exercise of *quasi in rem* jurisdiction comports with "fair play and substantial justice."[92]

The second consideration in the reasonableness inquiry is the forum state's interest in exercising *quasi in rem* jurisdiction over the stake. A forum state has an interest in providing a forum where all claims to property located in its territory will be adjudicated at one proceeding. The forum state also has an interest in guaranteeing that stakeholders within its boundaries are not subject to multiple liability when they owe only one obligation. If the stake is an intangible or a moveable tangible, however, the stakeholder should not be allowed access to a chosen forum merely because the stakeholder is willing to deposit the stake there. A reasonable connection should exist between the stake and the forum state, such as a bank account where the funds were deposited originally within the state, or a tangible stake received by the stakeholder within the state.[93]

The third consideration in the reasonableness inquiry is the stakeholder's interest in having a court exercise jurisdiction over absent

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90. Hallin v. C.A. Pearson, Inc., 34 F.R.D. 499, 503 (N.D. Cal. 1963). ("[A]llowance of an in personam cross-claim by one claimant against another should rest, not upon the point of appearance but upon a cautious application of Rule 13 (g) in light of the unique service of process feature of [the] Federal Interpleader Act.") *See also* Marine Bank & Trust Co. v. Hamilton Bros., Inc., 55 F.R.D. 505 (D. Fla. 1972) (where defendant in interpleader action was a non-resident who was served under § 2361, codefendant could not maintain cross-claim against defendant even though defendant appeared in court to assert his claim to the stake).

91. Marine Bank & Trust Co. v. Hamilton Bros., Inc., 55 F.R.D. 505 (D. Fla. 1972); *Hallin*, 34 F.R.D. 499, 503 (N.D. Cal. 1963). *See* cases cited *supra* note 90 for examples of courts protecting claimants from unreasonable exposure to personal liability so as not to discourage non-residents from asserting their claims in the United States. This Note proposes changes in interpleader law designed to extend the protection interpleader actions provide for stakeholders to situations involving foreign claimants. However, designating one forum where all claims can be presented and settled will not provide a solution if a foreign court refuses to recognize a judgment of a United States court and if the stakeholder holds assets outside the country which a claimant can attach. It has been stated that "[i]n establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate, and convenient. To a degree it must take into account the views of other communities concerned." von Mehren & Trautman, *supra* note 17, at 1127.

To ensure the highest level of recognition possible for United States interpleader actions, judgments of interpleader actions in which quasi in rem jurisdiction is applied should be limited to the disposition of the stake. Additionally, foreign claimants should be given immunity to service or other claims by parties if *quasi in rem* jurisdiction is applied to interpleader actions. *See* Note, *Quasi In Rem Jurisdiction Over Foreigners*, 12 CORNELL INT'L L.J. 67, 79 (1979).

92. International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

93. Chafee, *Interstate Interpleader*, *supra* note 2, at 699.

claimants. This interest is based on the stakeholder's desire to escape the possibility of multiple liability in regard to a single stake.[94] The stakeholder needs a forum where all adverse parties can be brought together for a single and final resolution of the competing claims. The stakeholder also needs assurance that, once it gives up the stake to the court, the court can ensure that the stakeholder will be immune from any further liability regarding the stake.[95]

The final consideration in the reasonableness inquiry is the shared interest of the several states and countries in furthering substantive social policies. Interpleader actions promote two main goals: minimizing the possibility of multiple litigation and minimizing the threat of inconsistent results.[96] Both of these goals would be advanced by applying § 1655 to certain interpleader actions.

Thus, under modern principles of jurisdiction, a court can apply § 1655 service to some interpleader actions, thereby compelling the claimants to appear in a chosen forum. To assert jurisdiction allowing § 1655 service, the court's connection to the stake must pass both the power and the reasonableness of forum tests. The court passes the power test if the stake is land or chattel physically located in the district, or if debts embodied in a document or represented by discrete identifiable assets reside in the state. The forum is reasonable if the nonresident claimant is not unduly burdened by the choice of forum and the stake has a reasonable connection with the forum.

IV. The Law of Interpleader

Although modern principles of jurisdiction justify the use of § 1655 service in *quasi in rem* interpleader actions, courts and commentators have failed to discuss adequately its use in interpleader. The discussion that has occurred centers on the nature of interpleader and whether *Dunlevy* means that all interpleader actions are *in personam*. More important, however, is when it is unreasonable to reify a debt and thus unreasonable to use a non-personal service statute like § 1655; and what light does the structure and history of federal interpleader law throw upon this problem?

In 1917, soon after the *Dunlevy* decision, Congress passed the Federal Insurance Interpleader Act[97] granting the United States District Courts jurisdiction over bills of interpleader if the adverse claimants

94. *Swan*, 441 F.2d at 1085; *Bache Halsey Stuart Shields, Inc.*, 519 F. Supp. at 687; Pan American Fire & Casualty Co. v. Revere, 188 F. Supp. 474, 480 (E.D. La. 1960).

95. *See* Chafee, *Interstate Interpleader*, *supra* note 2, at 687.

96. *See Bache Halsey Stuart Shields, Inc.*, 519 F. Supp. at 687; Chafee, *Modernizing Interpleader*, *supra* note 2, at 818 (quoting Vice Chancellor Wigram in Crawford v. Fisher (1842, Ch.) I. Hary 436, 441).

97. Act of Feb. 22, 1917, ch. 113, 39 Stat. 929 (repealed 1926).

were citizens of different states.[98] Since 1917, several interpleader statutes have been enacted, the modern versions being codified at 28 U.S.C §§ 1335, 1397, and 2361 ("statutory interpleader").[99] Additionally, in 1938, a liberalized version of the equitable interpleader went into effect through Rule 22 of the Federal Rules of Civil Procedure ("rule interpleader").[100] Thus, modern interpleader law consists of two types of interpleader actions: statutory interpleader[101] and rule interpleader.[102] These two forms of interpleader differ in three principal ways:

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98. Chafee, *Interstate Interpleader*, *supra* note 2, at 722-23. "Insurance companies were singled out as the stakeholders who most solely needed interstate interpleader." *Id.*

99. *See infra* notes 101, 123, and 132 for text of §§ 1335, 1387, and 2361, which are the Interpleader, Venue and Process statutes controlling statutory interpleader. The Act of Jan. 20, 1936, ch. 13, 49 Stat. 1096, expanded the class of parties able to bring interpleader actions to "any person, firm, corporation or society." *See* 7 WRIGHT & MILLER, *supra* note 5, § 1701.

100. Chafee, *Federal Interpleader Since the Act of 1936*, *supra* note 2, at 379.

101. 28 U.S.C. § 1335 (1982) provides:

> (a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if
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> (1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.
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> (b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

102. FED. R. CIV. P. 22 provides:

> (1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.
>
> (2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C. §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.

(1) requirements for subject matter jurisdiction; (2) requirements for territorial jurisdiction and service; and (3) venue. The differences between these two types of interpleader are central in determining whether applying § 1655 to interpleader actions is consistent with the structure and history of federal interpleader law.

A. Subject Matter Jurisdiction Requirements[103]

One difference between rule interpleader and statutory interpleader is their separate and distinct requirements for subject matter jurisdiction. Because Rule 22 has no specific provision governing subject matter jurisdiction, either a federal question must be present,[104] or diversity of citizenship must exist between the stakeholder and the claimants with an amount in controversy in excess of $10,000.[105] Under *Strawbridge v. Curtiss*,[106] § 1332 diversity for rule interpleader must be complete as between claimants and the stakeholder,[107] but diversity among the claimants themselves is unnecessary.[108] For example, the stakeholder may be a citizen of state A and the claimants may be citizens of any state other than A even if they are all citizens of the same state.

For statutory interpleader, however, Congress provided in § 1335 a

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103. Subject matter jurisdiction is controlled by the § 1331 federal question statute and the § 1332 diversity of citizenship statute.

104. 28 U.S.C. § 1331 (1982) provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

105. 28 U.S.C. § 1332 (1982) provides, in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States.

106. 7 U.S. (3 Cranch) 267 (1806). The *Strawbridge* Court stated:

> The words of the act of congress are, "where an alien is a party; or the suit is between a citizen of a state where the suit is brought, and a citizen of another state."
>
> The Court understands these expressions to mean that each distinct interest should be represented by persons, all of whom are entitled to sue, or may be sued in the federal courts. That is, that where the interest is joint, each of the persons concerned in that interest must be competent to sue, or liable to be sued, in those courts.

Id.

107. *See* Travelers Ins. Co. v. First Nat. Bank of Shreveport, 675 F.2d 633, 637, n.9 (5th Cir. 1982); Haynes v. Felder, 239 F.2d 868, 870-76 (5th Cir. 1957) (in statutory interpleader action, sufficient diversity existed when the disinterested plaintiff stakeholder was a citizen of Texas, and one claimant, a citizen of Texas, was opposed by four joint claimants, of whom three were citizens of Texas and one was a citizen of Tennessee); 14 WRIGHT & MILLER, *supra* note 5, § 3636, at 73; Annotation, *Federal Interpleader Proceeding as In Rem or In Personam in Context of Problem of Service of Process Upon Particular Claimant*, 17 A.L.R. FED. 447, 459 (1973).

108. 3A MOORE'S FEDERAL PRACTICE, *supra* note 32, 22.04 [2-1], at 22-17.

specific clause to cover the question of subject matter jurisdiction.[109] Accordingly, § 1335 overrides the §§ 1331 and 1332 provisions governing general federal question and diversity actions that are controlling in rule interpleader. Section 1335 says that subject matter jurisdiction exists if there are "[t]wo or more adverse claimants, of diverse citizenship", the amount in controversy equals or exceeds $500, and the stakeholder has deposited the stake with the court or provided the court with a bond equal to the value of the stake.[110] The Supreme Court has determined that statutory interpleader requires only minimal diversity of citizenship between or among the claimants.[111] Therefore, only one claimant must be a citizen of a different state; diversity among the other claimants or between the claimants is unnecessary.[112]

Because of the different diversity requirements, some cases will meet the requirements of only one of the two interpleader actions.[113] For example, if the citizenship of the stakeholder is necessary to establish diversity because all the claimants are foreigners or citizens of the same state, then only rule interpleader will apply.[114] Determining which interpleader action may be maintained begins, therefore, by examining the citizenship of the parties involved.

B. Territorial Jurisdiction and Service

To maintain an interpleader action a court must have territorial jurisdiction over the parties as well as subject matter jurisdiction. This requirement is another major area where the two types of interpleader actions take different approaches.

In interpleader actions at equity (the forerunner of rule interpleader) territorial jurisdiction existed only over claimants present or domiciled within the forum state who could be served personally or who consented to the court's jurisdiction.[115] In modern rule interpleader,

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109. 14 WRIGHT & MILLER, *supra* note 5, § 3636 at 71.

110. 28 U.S.C. § 1335 (1982).

111. Treinies v. Sunshine Mining Co., 308 U.S. 66, 71 (1939) (diversity met where one group of claimants, all of whom were citizens of Washington State, opposed another group of claimants, all of whom were citizens of Idaho, even though the stakeholder was a citizen of Washington, because the Interpleader Act requires diversity only as between the claimants); Haynes v. Felder, 239 F.2d at 870-76 (*see* comment at note 100).

112. *See* State Farm & Casualty Co. v. Tashire, 386 U.S. 523 (1967); *Felder*, 239 F.2d at 873 (complete diversity is inapplicable to statutory interpleader actions); 14 WRIGHT & MILLER, *supra* note 5, § 3636, at 77.

113. Rule interpleader requires complete diversity and looks only at the relationship between the stakeholder and the claimants, while statutory interpleader requires only minimal diversity among the claimants; *see supra* notes 107 and 112 and accompanying text.

114. Republic of China v. American Express Co., 195 F.2d 230 (2d. Cir. 1952) (all claimants were foreigners); A/S Krediit Bank v. Chase Manhattan Bank, 155 F. Supp. 30 (S.D.N.Y. 1957) (all claimants were foreigners); Consolidated Underwriters of South Carolina Ins. Co. v. Bradshaw, 136 F. Supp 395 (W.D. Ark. 1955) (all claimants were citizens of the same state).

115. 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 556.

Rule 4 (f) of the Federal Rules of Civil Procedure controls service.[116] Rule 4 (f), as originally enacted, continued the equity limitations by restricting service to "anywhere within the territorial limits of the state in which the district court is held. . . ."[117] In 1963, however, Congress amended Rule 4 (e) of the Federal Rules of Civil Procedure to allow district courts to order extraterritorial service "under the circumstances and in the manner" provided by the statutes or rules of the forum state.[118] This amendment expressly allows district courts to use a forum state's long-arm statute to extend service to out-of-state claimants.[119]

This amendment, however, did not solve the *Dunlevy* problem for rule interpleader because state long-arm statutes cannot provide for an unreasonable reification of a debt.[120] In response to the problem of stakeholders serving out-of-state claimants, Congress developed statutory interpleader,[121] which provides for nationwide service[122] pursuant to 28 U.S.C. § 2361.[123] This extension of territorial jurisdiction and service under statutory interpleader did not reject the principle that interpleader is a personal action,[124] but rather aimed at solving the *Dunlevy* problem for interstate interpleading. However, statutory interpleader service is only national, not international.[125] While statutory interpleader solved the *Dunlevy* problem for cases involving claimants domiciled or found in the United States, it did not solve this problem for non-resident or unfound claimants.[126]

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116. FED. R. CIV. P. 4(f); *see* 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 557.

117. *Id.*

118. FED. R. CIV. P. 4(e); 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 558.

119. 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 558.

120. Cordner v. Metro Life Ins. Co., 234 F. Supp. 765, 771-72 (S.D.N.Y. 1964); 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 559, n.17.

121. Federal Insurance Interpleader Act, *supra* notes 97 and 99. *See* 7 WRIGHT & MILLER, *supra* note 5, § 1701 at 486; Chafee, *Interstate Interpleader*, *supra* note 2, at 720-22.

122. Georgia Sav. Bank & Trust Co. v. Sims, 321 F. Supp. 307, 309 (N.D. Ga. 1971) (under the Interpleader Act, process may issue "throughout the United States").

123. 28 U.S.C. § 2361 (1982) provides:

> In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshalls for the respective districts where the claimants reside or may be found.
>
> Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

124. 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 559.

125. *Id.* at 557.

126. Cordner v. Metro Life Ins. Co., 234 F. Supp. at 767, n.2; Kuerschner & Rauchwarenfabrik, A.G. v. New York Trust Co., 126 F. Supp. 684, 689 (S.D.N.Y. 1954); 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 557.

This interpleader jurisdicitonal grant is provided only to federal courts; it does not apply to state courts. The United States Constitution allows Congress to extend federal courts' territorial jurisdiction to the borders of the United States for personal actions, limited only by the due process clause of the fifth amendment.[127] State courts, however, are limited by the fourteenth amendment's due process clause, and cannot assume nationwide jurisdiction and service in personal actions.[128] Hence, only by granting nationwide jurisdiction to federal courts could Congress solve the interstate service problems that may occur in personal interpleader actions.

C. Venue

Venue is the final area where rule and statutory interpleader diverge. Rule 22 of the Federal Rules of Civil Procedure lacks a specific venue provision; it is controlled by the general venue provision in 28 U.S.C. § 1391.[129] Therefore, a rule interpleader action based solely on diversity may be brought where all plaintiffs reside, where all defendants reside, or where the claim arose;[130] a rule interpleader action resting on federal question jurisdiction may be brought where all defendants reside or where the claim arose.[131]

Venue for statutory interpleader is governed by 28 U.S.C. § 1397.[132] A statutory interpleader action may be brought "in the judicial district in which one or more of the claimants reside."[133]

V. Congressional Intent Behind Federal Interpleader Law

As the foregoing discussion demonstrates, the differences between rule and statutory interpleader result in cases where only one type of action is maintainable, cases where both types of actions are maintainable, and cases where neither type of action is maintainable. No action is maintainable, for example, where a claimant cannot be found or is outside

127. 7 WRIGHT & MILLER, *supra* note 5, § 1711, at 560; Clermont, *supra* note 4, at 427.

128. Clermont, *supra* note 4, at 423-26; RESTATEMENT (SECOND) CONFLICT OF LAWS § 24, at 108 (1971).

129. 28 U.S.C. § 1391 (1982) provides, in pertinent part:

> (a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose.
>
> (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

130. 7 WRIGHT & MILLER, *supra* note 5, § 1712, at 567-68.

131. *Id.* at 567.

132. 28 U.S.C. § 1397 provides:

> Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

133. *Id.*

the U.S., thus beyond statutory interpleader personal jurisdiction, and the stake itself is inadequate to support reification thence justifying non-personal service under § 1655. Courts sometimes use § 1655 to attempt to reach this small number of cases.[134] This section argues that the congressional intent behind interpleader law makes such judicial attempts improper.

In developing and revising the Federal Interpleader Act, Congress resolved the jurisdictional questions, associated with interstate interpleading, raised by *Dunlevy*. Statutory interpleader provides for nationwide service and covers claims against virtually any form of property or debt. Only two interpleader situations remain in which claimants cannot resort to statutory interpleader even though subject matter jurisdiction exists: (1) where one or more of the claimants who reside in the United States cannot be served within the United States because they have changed their domicile without reporting it and they do not have an agent who the court may serve; and (2) where one or more of the claimants reside outside of the United States and refuse to enter and to be served.[135] Congress's decision not to extend interpleader dictates against the courts using § 1655 to cover the two situations mentioned above unless the stake can reasonably support non-personal jurisdiction.[136]

The underlying structure of the first interpleader statute assumed that the insurance actions it was meant to cover were personal actions, and therefore a non-personal service statute such as § 1655 would not apply. In explaining the purpose of this first interpleader statute, the Senate Judiciary Committee stated that the forerunner of § 1655 did not apply to the interpleader situations at which that first interpleader statute was aimed.[137]

> The provisions of section 57, in which it is provided that "actions to enforce legal or equitable liens, or to remove any incumbrance, lien, or cloud upon title to real or personal property within the district where the suit is brought, service may be had on nonresident defendants by publication," would be an ample remedy and cure the evil complained of if a policy of life insurance or the proceeds thereof, when contested by rival claimants, were property within the district. The Federal courts in many decisions have determined that neither a policy of insurance nor the proceeds thereof, when contested for by rival claimants was property within the district. Stockbridge v. Insurance Co. (193 Fed., 558); Evans v. Scribners Sons (58 Fed., 303).[138]

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134. The *Garmaise* court is one example.

135. *Id.* at 557.

136. *See* S. REP. No. 660, 64th Cong., 1st Sess., 3 (1915-16).

137. *Id.* The original interpleader statute was limited to insurance companies and fraternal beneficiary societies. It was codified as Judicial Code 911, § 57. As discussed previously, the jurisdictional inquiries for whether the stake can support non-personal jurisdiction is whether there is reasonable reification and a reasonable forum.

138. The Judiciary Committee also cited the district and appellate court opinions in *Dunlevy* as examples of a situation where double recovery against the insurance

The Senate report indicates that Congress realized that a non-personal service statute such as § 1655 cannot be applied to interpleader actions where it is unreasonable to reify a debt and therefore unreasonable to apply non-personal jurisdiction. Congress limited service for statutory interpleader to personal service by United States marshals in the district where a claimant resides or may be found.[139] Congress did not provide for service by publication or for the interpleader action to proceed if the United States marshal could not personally serve the claimant in a United States district. Congress did not provide for service of claimants who could not be served personally within a district of the United States, thus excluding foreign claimants residing outside the United States.

Yet another clue to Congress's understanding of the *Dunlevy* situation can be seen in its 1936 enactment of the Federal Interpleader Act, removing the limitations on the type of companies which could file bills of interpleader.[140] The Senate report explained that this extension of interpleader was meant to provide relief for businesses such as "railroads, warehouses, banks (especially savings banks), and oil companies operating under licenses when ownership of the royalties is disputed or uncertain."[141] This extension suggests that Congress agreed with Professor Chafee's argument that, in terms of whether they can be reified, insurance debts are not fundamentally different from other debts. If Congress believed that only insurance companies faced the *Dunlevy* problem of having a stake incapable of reification, it seems unlikely it would have extended federal interpleader's generous service provisions to cover these new businesses.

The Senate Judiciary Committee based its report on the research and writing of Professor Chafee, who, according to the committee "prepared a monograph on the bill for the section of insurance law of the American Bar Association."[142]

Professor Chafee also drafted the bill which served as the basis of the Federal Interpleader Bill.[143] Thus, Chafee's theories are important not only in and of themselves, but also to help ascertain congressional intent. As discussed above, Chafee believed that a non-personal service statute could be applied only in certain interpleader situations.[144] To use a non-personal service statute, Chafee believed that courts must justify how interpleader of a debt could be non-personal, or rather how the situation facing them is different from that in *Dunlevy*. Essentially, his theory asserts that the reification process must be reasonable and that

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company could result from one obligation. *Id.* The Supreme Court had not rendered its decision in *Dunlevy* when the Senate released its report.

139. Act of Feb. 22, 1917, 39 Stat. 113.

140. Chafee, *The Federal Interpleader Act Of 1936: I*, *supra* note 2, at 966.

141. S. REP. No. 1417, 73d Cong., 2d Sess. (1934).

142. *Id.*

143. H.R. No. 1437, 74th Cong., 1st Sess. (1935).

144. *See supra* notes 40-52 and accompanying text.

the exercise of non-personal jurisdiction in a given forum must be reasonable.

Legislative history indicates that the federal interpleader law was to provide interstate service for situations where a debt's reification was unreasonable and to allow businesses to use the efficient statutory interpleader even where a debt's reification would be reasonable.[145] However, Congress limited service and territorial jurisdiction to situations meeting the requirements for *in personam* actions. This action suggests that Congress was concerned more with reaching situations where a debt could not be reasonably reified than with providing a more convenient method of interpleader for businesses which could already protect themselves from multiple vexation on a single obligation. By thus limiting service, Congress again indicated a belief that many non-insurance debts are, like insurance debts, incapable of reification, and thus inadequate to support non-personal service under § 1655.

VI. Suggestions for Change

Courts have distinguished *Dunlevy* as a case limited to its specific facts and applied § 1655 to interpleader actions without inquiring into the reasonableness of reifying a particular debt. This approach is unsatisfactory. A proper solution requires action on two fronts: (1) courts should apply a reasonableness standard to the reification process; and (2) the Federal Interpleader Act needs minor reform.

To reform the Federal Interpleader Act, Congress should amend § 2361, which now provides for nationwide service, by adding "or served pursuant to Federal Rule of Civil Procedure 4", after the word "found" at the end of the first paragraph. This change would allow federal courts to apply state long-arm statutes and, thus, reach foreigners who fall within those statutes. It would also specifically allow courts to apply § 1655 when the stake can reasonably support non-personal jurisdiction.

VII. Conclusion

Under modern jurisdictional principles, *New York Life Ins. Co. v. Dunlevy*[146] is still good law. Courts may apply non-personal jurisdiction to interpleader proceedings only when the chosen forum is reasonable, and when the stake is a tangible object or can reasonably be reified. Reasonableness depends upon whether the intangible thing is embodied in a document or is represented by specific discrete assets. Whether the exercise of non-personal jurisdiction in a chosen forum is reasonable depends upon the degree of prejudice a claimant would face by having his claims adjudicated in the selected forum, the state's interest in providing a forum for a single and final resolution of the claims to the stake,

145. *See supra* notes 136-43 and accompanying text.
146. 241 U.S. 518 (1916).

the connection between the forum and the stake, the stakeholder's interests in having the claims adjudicated in the selected forum, and the American and international legal systems' interests in furthering the substantive social policies promoted by interpleader law.

Rather than bypassing the *Dunlevy* problem—cases where the stake cannot be reified and the court cannot obtain personal service upon foreign claimants—courts should inquire into the reasonableness of reifying a particular debt. Furthermore, Congress should amend the Federal Interpleader Act to provide for service of process to foreign claimants under Federal Rule of Civil Procedure 4. This change would ensure that, even where the *Dunlevy* problem exists, foreign claimants who could be served under state long-arm statutes, would be under the jurisdiction of federal courts in statutory interpleader actions. These changes would further interpleader's central purpose, namely, insuring that stakeholders have a forum where all parties can be brought together for a single and final resolution of their claims to the stake.

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