

A Lawyer's Handbook for
Enforcing Foreign Judgments
in the United States and Abroad

Robert E. Lutz

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A LAWYER'S HANDBOOK FOR ENFORCING FOREIGN JUDGMENTS IN THE UNITED STATES AND ABROAD

This book assists the practitioner seeking to enforce a foreign judgment in the United States or a U.S.-rendered judgment abroad in navigating the lack of procedural uniformity that exists and in planning strategies likely to ensure effective enforcement. As a handbook, it provides the practitioner with a framework and resources with which to approach and further research the laws of the relevant state or country. In Part One, the guide takes the practitioner chronologically through the process of obtaining a U.S. court's recognition and enforcement of judgments rendered abroad. Part Two takes the practitioner through the process of obtaining an overseas jurisdiction's recognition and enforcement of judgments rendered in the United States. Part Three assesses the current trends in the United States and in the international trade environment regarding enforcement of judgments.

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Preface

This *Handbook* has its genesis in two bibliographies I published in 1993 in *The International Lawyer* on the subject of enforcement of foreign judgments.¹ Those bibliographies were apparently useful to many, so since their publication I have received numerous inquiries from practicing lawyers about the “how to” aspects of enforcing foreign judgments here in the United States and taking U.S.-rendered judgments and having them enforced abroad. Given this interest – and, from my own experience, given that there are quite practical and tactical considerations involved – I decided to put together this *Handbook*.

Because of the press of other demands, this guide at first was just a pile of notes in a folder. Eventually, I developed the notes into a short draft, and then that draft sat gathering dust for almost a decade. Increased opportunities to consult with practitioners about enforcement issues and the added motivation of a publication contract enabled me to revisit and complete the project recently. In doing so, I tried to include the kind of legal and practical guidance that a lawyer initially confronting the prospect of enforcing a foreign judgment would need and find useful. Thus, the guide contains not only “how to” text but also bibliographies that are updated and enlarged from the ones published in 1993, useful forms, and copies of some of the legal instruments (and Web site citations to others).

As Part Three of this *Handbook* demonstrates, the law governing the enforcement of foreign judgments is in flux both in the United States and abroad. While this book attempts to guide practitioners through some of the basic and difficult aspects of inbound and outbound judgment enforcement, the law in this area is experiencing new attention as the globalization of business accelerates. Thus, it is most likely that a book written five years from now will include new issues to which practitioners should be alerted. I am confident,

¹ Robert E. Lutz, *Enforcement of Foreign Judgments, Part I: A Selected Bibliography of U.S. Enforcement of Judgments Rendered Abroad*, 27 INT’L LAW. 471–93 (1993); and Robert E. Lutz, *Enforcement of Foreign Judgments, Part II: A Selected Bibliography on Enforcement of U.S. Judgments in Foreign Countries*, 27 INT’L LAW. 1029–59 (1993).

however, that what is presented here will continue to describe the basic framework and considerations involved in enforcing foreign judgments.

I hope the user will find this volume helpful and will keep it near his or her desk for frequent consultation.

Los Angeles
August 2005

Acknowledgments and Dedication

I am grateful for the assistance provided by Southwestern University School of Law, which has generously supported this project in its various iterations over the last decade. In addition to a summer stipend partially supporting the book's development, it provided research assistance. In that regard, I have been pleased to have many students assist with the development of the bibliographies. At the risk of omitting someone, I express my appreciation for the research assistance with the bibliographies to the following present and former students: Debra Belanger, Patrick Benedek, Bill Danziger, C. B. Everitt, Hamed Ghaemmaghani, Ava Sadripour, Fabienne Struell, Mark Tackitt, and Russell Trice. Several students also contributed significantly to researching substantive portions of the text. I gratefully acknowledge the research, drafting, and editing assistance of Fredrick M. Ray and Anna von Franque.

David McFadden, Southwestern's Senior Reference Librarian, has always cheerfully and ably handled all research tasks asked of him – whether simple or complex – and has contributed significantly to the accuracy of the citations of the sources herein. I thank him for his help. A special expression of appreciation is also due John Berger, Senior Editor at Cambridge University Press and a long-time friend, who encouraged me early on to write a book on the subject of enforcement of foreign judgments and patiently awaited its production over the course of a decade.

Also, I have greatly appreciated the interest in my inquiries about foreign judgment issues shown and the advice offered by the many practitioners with whom I have come into contact over the years. They have contributed greatly to my understanding of the practical and strategic aspects of this subject, whether through educational programs sponsored by the bar or via various consulting assignments in which I have been engaged.

Of course, in all respects, I am responsible for the accuracy of what follows.

Finally, I dedicate this work to my wonderful wife, Colleen, who has encouraged me throughout and without whose love and support I would not have been able to write this book.

Introduction

As world trade steadily increases, transnational corporations proliferate and individuals transact business and personal affairs across borders with increasing frequency. Today's practitioners representing domestic civil litigants face the prospect of guarding against or satisfying judgments rendered by foreign courts. Similarly, these practitioners may seek to obtain and enforce judgments in foreign courts against their clients' foreign adversaries. Practitioners who are in specialties such as bankruptcy, family law, estate planning and probate, personal injury, products liability, intellectual property, and real estate, among others, are likely to encounter the challenge of international recognition and enforcement of judgments. As an aspect of transnational legal practice, international litigation and arbitration have become more complex since the 1960s, when the United States began to emerge from a conflicting and unpredictable common law past to embrace sophisticated uniform statutory approaches¹ to recognition and enforcement of foreign judgments.²

Despite these domestic law developments, the United States is one of the few major industrial nations that has not acceded to any international agreements for the recognition

¹ Although no uniform federal statute governs recognition and enforcement of judgments rendered abroad, many of the 50 states have adopted one or more uniform acts. The acts are the Uniform Foreign Money-Judgments Recognition Act, 13-II U.L.A. 39 (2002 & Supp. 2003) [hereinafter Recognition Act]; the Uniform Enforcement of Foreign Judgments Act, 13-I U.L.A. 155 (2002 & Supp. 2003) [hereinafter Enforcement Act]; and the Uniform Foreign-Money Claims Act, 13-II U.L.A. 13 (2002 & Supp. 2003) [hereinafter Claims Act]. See Part One, Instruments, Laws, and Other Materials texts and the Bibliography to Part One for a list of jurisdictions that have adopted each act. *Always refer to the adopting state's code for any modifications to the model acts.*

² To be enforceable, a foreign judgment must first be recognized. CENTER FOR INTERNATIONAL LEGAL STUDIES, INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS INT-12 (Dennis Campbell & Suzanne Rodriguez eds. 2004) [hereinafter Campbell]. "Recognition" (used here interchangeably with "conversion") refers to the process whereby the petitioner brings an action, files briefs, and presents argument to persuade a court to give collateral estoppel effect to a foreign country judgment creditor's claim. "Enforcement" (used here also as a synonym for "execution") refers to the process whereby a foreign judgment creditor seeks satisfaction for the judgment debt in a foreign country, leading to satisfaction of the judgment creditor's claim by an asset transfer from the judgment debtor to the judgment creditor. The process follows the following steps: recognition/conversion; enforcement/execution; collection. For further discussion of the distinction among these terms, see Ronald A. Brand, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253, 278-80 (1991).

and enforcement of civil judgments.³ Laws of the several states govern recognition and enforcement of civil judgments rendered abroad. However, unlike sister-state judgments rendered in courts in another state jurisdiction, judgments rendered abroad do not enjoy the protection of the U.S. Constitution's Full Faith and Credit Clause.⁴ Conversely, absent federal statute, there is no federal preemption.⁵

This text assists the practitioner seeking to enforce a foreign judgment in the United States or a U.S.-rendered judgment abroad in navigating this lack of uniformity. Providing step-by-step instructions would be foolish and perhaps impossible, since procedures vary from state to state and country to country. Instead, this book describes the general sequence of events, some form of which will take place in a given enforcement scenario. As a "handbook," the text also provides the practitioner with a framework with which to approach and further research the laws of the relevant state or country.

Part One of this guide takes the practitioner chronologically through the process of obtaining a U.S. court's recognition and enforcement of judgments rendered abroad. Although these procedures may vary from state to state, this part of the book includes examples of the procedures common to most states. Strategic considerations are highlighted at each stage of preparation and litigation. These considerations should alert the practitioner to areas in which further state-specific research is necessary. A bibliography of statutes, cases, and commentary, and texts of relevant documents and sample forms follow the text.

Part Two takes the practitioner through the process of obtaining an overseas jurisdiction's recognition and enforcement of judgments rendered in the United States. This section of the book describes and analyzes general approaches and strategies that the practitioner might employ abroad. Although further country-specific research will be necessary, these general approaches are meant to guide the practitioner to identify key issues and potential areas of conflict. A bibliography of country laws, conventions, and commentary, and texts of relevant documents follow the text.

Part Three assesses the current trends in the United States and in the international trade environment regarding enforcement of judgments that may be made by foreign courts. A bibliography of conventions, statutes, and cases follows.

³ American Law Institute, Restatement (Third) of Foreign Relations Law of the United States, ch. 8, Introduction note (1986).

⁴ See *Jaffe v. Accredited Surety and Casualty*, 294 F.3d 584 (2002) (neither the Full Faith and Credit Clause nor the full faith and credit statute apply to judgments issued by a foreign country).

⁵ Brand, *supra* note 2, at 278–80. However, once recognition of the foreign judgment has been obtained, the foreign judgment becomes subject to the Full Faith and Credit Clause and is enforced as a sister-state judgment. The manner of enforcement is not provided in this act. *Id.* at 278.

PART ONE

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in the United States**

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I. OVERVIEW

This part of the guide has two purposes: to walk the U.S. practitioner through the procedural steps and strategies for: (1) converting a foreign country judgment to a domestic civil judgment; and (2) enforcing and executing the judgment. While largely the same throughout the states, the exact procedures for conversion, enforcement, and recognition vary from state to state. The laws of California and New York serve as principal examples, but practitioners in other states should refer to their states' versions of the uniform acts, where codified.¹ In states that have not adopted and codified the uniform acts, practitioners should refer to other recognition statutes and common law.

An important distinction regarding the uniform acts must be drawn at the outset. There are three relevant uniform acts that will be discussed. The Uniform Foreign Money-Judgments Recognition Act (abbreviated as UFMJRA, but hereinafter Recognition Act) proscribes procedures through which a foreign country judgment is converted into a judgment of a U.S. court and receives the same status as a sister-state judgment, thereby becoming enforceable in other U.S. fora under the Full Faith and Credit Clause. The 1964 Uniform Enforcement of Foreign Judgments Act (abbreviated as UEFJA, hereinafter Enforcement Act) creates a registration system for the enforcement of sister-state judgments which, in conjunction with the Recognition Act, can provide for more streamlined enforcement of foreign country judgments in jurisdictions that have adopted both acts.²

Thus, the difference between recognition and enforcement as ways of describing stages in a larger process is not paralleled by the difference between the Recognition Act and the Enforcement Act. Finally, the Uniform Foreign-Money Claims Act (abbreviated as UFM-CA, hereinafter Claims Act) deals with the conversion of foreign country judgment amounts into U.S. dollars.

Focusing on its practical purpose, this guide discusses the historical development of the law on enforcement of foreign judgments and provides more detailed analyses of the enforcement rules only insofar as these discussions are helpful in understanding the practice of enforcement of foreign country judgments. Furthermore, not all recognition and enforcement situations may fit the procedure outlined here, depending on variations in the statutory or common law of the jurisdiction where enforcement is sought. If, however, the practitioner determines that the matter is one of first impression, citation to the uniform acts and sister-state statutory or common law is often persuasive.

Here is a simplified, chronological checklist of the steps required to obtain recognition and enforcement of a foreign judgment. A detailed discussion of each step follows.

1. Choosing a jurisdiction

- Have the parties **expressly agreed to a choice of forum**?
- Does **jurisdiction exist** based on other theories, such as minimum contacts, stream of commerce, *in rem* or quasi-*in rem* jurisdiction, or harmful effects?
- Are there assets of the defendant that can be located and seized?
- Should suit be brought in **federal or state court**?

¹ For the important distinction between the uniform acts and between recognition and enforcement, see generally Part One, Introduction, notes 1 and 2.

² The Recognition Act was recently revised by the National Conference of Commissioners on Uniform State Laws. See *infra* Part Three, IV.

Consider:

- **Diversity**
- **Amount** in controversy
- Docket **backlog**
- **Procedural** differences
- **Court's sophistication**
- **Convenience** to the parties
- **Inconvenient forum** as a possible defense

Strategy: If the amount in controversy and diversity apply under 28 U.S.C. §1332(a)(2)–(3), yet you bring the action in state court, the defendant may remove the action to U.S. District Court, pursuant to 28 U.S.C. § 1441(a). Note also that it might be quite common for a foreign citizen to sue a compatriot (who happens to reside in the United States), for enforcement of a foreign judgment. In such a case, only state court will have subject matter jurisdiction to entertain the suit.

If you can choose among **different forum states**, check the **statute of limitations** in each state for the more liberal statute. You may decide to bring suit in the more liberal state and then enforce the judgment as a sister-state judgment elsewhere.

Exception: New York, California, and Illinois do not apply the Enforcement Act to recognition of foreign judgments. In these states, you must bring an action to obtain a domestic judgment.

2. Authenticating the judgment

- Has the **judgment** been translated and authenticated by the **foreign court**?
- Has the judgment been authenticated by **other** necessary parties?
 - The foreign country's **embassy or consulate in the United States**, or
 - A U.S. diplomatic or consular official posted to the **American Embassy or Consulate in that country**, or
 - By filing an *apostille*³ if the jurisdiction where the judgment was rendered is a party to the Hague Convention on Legalization for Foreign Public Documents⁴

Reminder: Be sure to check the applicable evidence code and local court rules for specific authentication requirements.⁵

Reminder: Be sure that *different people* attest to authentication and issue the authenticating document, whether under chain of authentication or by *apostille*.

3. Determining Whether the uniform acts apply

- Has the state where you seek recognition and enforcement adopted *both*:
 - The Recognition Act, *and*
 - The Enforcement Act, *and*
 - Is *not* New York?

³ See *infra* Part One, II.B.1.a.

⁴ 527 U.N.T.S. 189, T.I.A.S. 10072, 20 I.L.M. 1405–14 (1981) [hereinafter Legalization Convention], available at http://www.travel.state.gov/family/hague_foreign_docs.html. See Part One, Instruments, Laws, and Other Materials.

⁵ See, e.g., FED. R. CIV. P. 44(A)(2); FED. R. EVID. 902(3); CAL. EVID. CODE §§ 1450–4 (West 1987).

- If so, **GO TO STEP 6.**
- Otherwise (most states), **CONTINUE TO STEP 4.**⁶

4. Preparing and filing the complaint (MOST STATES)

- Has the complaint been prepared and filed under the jurisdiction's **statutory or common law framework** for recognition?
- Have you included a prayer for **damages plus interest**?

Consider: If the jurisdiction has adopted the Claims Act, a **foreign-money claim** may be permitted; for example, in California.⁷

5. Anticipating defenses (MOST STATES)

- Is your judgment a *non-conclusive, unenforceable judgment* due to any of the following?
 - No personal jurisdiction
 - No subject matter jurisdiction
 - Court rendering judgment was not impartial or due process violated.
- Could the judge choose not to recognize the judgment on a discretionary basis?
 - Insufficient notice by foreign court.
 - Judgment obtained by fraud.
 - Cause of action violates your state's public policy.
 - Judgment conflicts with another final and conclusive judgment.
 - Foreign proceeding contrary to express agreement between the parties.
 - Seriously inconvenient forum if jurisdiction based only upon personal service.
 - No final judgment rendered.
 - Parallel proceedings in other U.S. courts consolidation/transfer/removal.

6. Moving for summary judgment (MOST STATES)

- Can you show that a **final judgment has been obtained in a foreign court**⁸ and move for summary judgment?
 - If yes, **GO TO STEP 8.**
 - If no, **CONTINUE TO STEP 7.**

Strategy: Courts may deny enforcement of a foreign judgment to protect the state's interest, represented by a domestic defendant's property within the court's

⁶ In California, the Recognition Act, CAL. CODE CIV. PROC. § 1713.3 (West 1987 & Supp. 2005), explicitly prohibits use of the Sister-State Money Judgments Act for registration of foreign country judgments. Instead, you must obtain recognition of the foreign judgment as a domestic judgment. For the importance of the distinction between the uniform acts and between recognition and enforcement generally, *see supra* Part One, Introduction, notes 1 and 2.

⁷ CAL. CODE CIV. PROC. §§ 676–676.1 (West 1987 & Supp. 2005). For other states that have adopted the Uniform Foreign-Money Claims Act, *see* 13-II U.L.A. 13 § 4 (2002 & Supp. 2005).

⁸ The summary judgment motion rests on two theories: vested rights and its derivative theory creating a legal obligation of the court of the plaintiff's forum. Concisely, the two theories seek to achieve stability and continuity by recognizing that a right declared by a foreign court should be binding in the forum court's jurisdiction. Campbell, *supra* Introduction, note 2. These theories have today generally replaced the theory of comity of nations, expressed in *Hilton v. Guyot*, 159 U.S. 113 (1895).

jurisdiction. Therefore, to persuade the court to weigh the competing domestic and foreign interests in the foreign plaintiff's favor, show any or all of the following:

- Defendant had at least minimum contact with the jurisdiction.
- Defendant had other, substantial links to the jurisdiction.
- The subject matter of the litigation centers in the jurisdiction.

7. Litigating

- Have you properly filed an **action for conversion** (recognition)?
- Are you prepared to plead the claim *ab initio*, including anticipating defenses, such as claim or issue preclusion?

Warning: If the **statute of limitations** is about to run, you should plead the underlying cause of action alternatively to the action for conversion of the judgment.

- Have you brought a complaint for **recognition of the judgment debt** under the jurisdiction's statutory or common law framework, including a prayer for damages?

Note: Generally such damages would be in U.S. currency, but the Claims Act⁹ may permit prayer for damages in a foreign currency.

Reminder: Be sure to include interest and reasonable attorney's fees, if appropriate.

8. Filing and executing the judgment

- Have you filed the judgment with the **court clerk** and paid the statutory filing fee?
- Have you waited the **statutory period** before proceeding to execution?
- Have you filed the necessary **motions to prevent removal of assets** and to **seize defendant's assets**?

Exception: If defendant shows that an **appeal** from the foreign judgment is **pending** or will be taken, **enforcement may be stayed** until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

9. Registering the judgment

- Have you **filed** with the court clerk under Enforcement Act §§ 2–3?

Note: Confirm that § 3 of the Recognition Act and common law precedent in your jurisdiction do not exclude use of the Enforcement Act as the enforcement method.

- If satisfaction is not forthcoming, have you obtained a **writ of execution** and conducted discovery, if necessary?
- Have you filed a **lien** on the judgment debtor's assets?
- Once satisfied, have you filed a **satisfaction of judgment**?

⁹ 13-II U.L.A. 13 § 4 (2002 & Supp. 2005).

II. PHASE ONE: BEFORE RECOGNITION

A. CHOOSING A JURISDICTION/LOCATING ASSETS

1. Jurisdiction and Venue

First decide in which state and where in the state to bring the action. Choosing a state in which to enforce your judgment is fairly simple if both the judgment debtor and his assets are in the same state. Even if the judgment creditor does not reside in that state, an enforcement judgment from the debtor's home state will be enforceable in the creditor's home state via Full Faith and Credit. The standard governing all questions of personal jurisdiction is minimum contacts with the forum state, fair play, and substantial justice (the "minimum contacts test"). Although this standard is easily met in the above situation, issues of personal jurisdiction may complicate matters if out-of-state assets are involved.

Since *Shaffer v. Heitner*, 433 U.S. 186 (1977), the minimum contacts standard applies even in *in rem* and quasi-*in-rem* actions. Most *in rem* cases will meet this threshold, and an *in rem* judgment by a court with jurisdiction is valid in all jurisdictions, as the Supreme Court recognized in *Hilton v. Guyot*.¹ Thus, if the judgment will likely be satisfied by the seizure of real property, choose a court in the jurisdiction where the *res* is located. Quasi-*in-rem* bases of jurisdiction – for example, out of state bank accounts, real estate or pension plans – are more problematic. In order to establish personal jurisdiction in a state where such assets are located, it is necessary to establish some other ties between the debtor and the forum state. The court's inquiry into these ties will be the modern, multi-factor minimum contacts test, but it will pragmatically be focused on issues of fairness. If assets are scattered among various jurisdictions, you may now want to skip to Section IV. Phase Three: Executing a Converted Judgment in U.S. Courts and consider what assets are preferable for collection.²

2. Choice of Forum: Federal or State Court

a. Generally: Under the *Erie* doctrine, state common law or the Recognition Act as enacted by the state legislature applies in federal court actions for the enforcement of foreign country judgments.³ You may decide to bring the case for enforcement in federal court after considering the following factors:

- **Diversity**
- **Amount** in controversy
- Docket **backlog**
- **Procedural** differences
- **Court's sophistication**
- Convenience to the parties
- Inconvenient forum as a possible defense

¹ 159 U.S. 113, 167 (1895).

² For guidance as to the law of jurisdiction in various states and in federal courts, see Part One, Bibliography.

³ See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817 (1938).

To do so, you must show diversity of citizenship and amount in controversy exceeding \$75,000.⁴

b. Federal or state court?⁵ The *Erie* doctrine reflects federal policy discouraging forum shopping between federal and state courts, thereby minimizing the differences between the two forums. However, differences between the courts may still influence your forum selection. Selecting federal court might favor the plaintiff's case for enforcement for two reasons: (1) federal courts have had more experience in enforcing foreign judgments; and (2) these courts benefit from informed support from research staff. Before you choose federal court, however, research case law interpretations of your state's recognition law to determine if federal or state courts more consistently favor recognition. California state courts are widely familiar with the adjudication of foreign judgments, but they tend to be more stringent in recognizing⁶ and effectuating such claims.⁷ Furthermore, in dealing with the Recognition Act, the California state courts account for reciprocity as a factor more so than the federal courts.⁸ New York state courts, by contrast, take a more restrictive view of reciprocity as grounds for non-recognition.⁹

c. Burden of proof: Regardless of which forum you select, the judgment creditor has the burden of proving that the court should recognize the foreign judgment.¹⁰ Show that the authenticated foreign judgment confirms that a foreign court had proper jurisdiction; that the judgment debtor received notice; that a final judgment issued; and that there is no public policy conflict. Also argue that reciprocity weighs in favor of recognition.¹¹ For example, the defendant in *Banque Libanaise Pour Le Commerce v. Khreich* argued as an affirmative defense that the recognition of foreign judgments in Abu Dhabi was done at the discretion of the trial judge, and that this was in practice quite rare.¹² Although the court explicitly rejected any notion that reciprocity was a requirement for recognition,¹³ it did consider it in addition to the defendant's due process defense.¹⁴

d. Defenses: If defendant can show that the foreign court had no proper jurisdiction, that the defendant did not receive notice, that no final judgment was issued or that an appeal is pending or anticipated, or that enforcement of the judgment violates public policy,

⁴ 28 U.S.C. § 1332(a).

⁵ For a detailed discussion of forum selection, see ROBERT C. CASAD, JURISDICTION AND FORUM SELECTION, ch. 6 (1988, Supp. 1998); see also DAVID EPSTEIN, JEFFREY L. SNYDER & CHARLES S. BALDWIN IV, INTERNATIONAL LITIGATION: A GUIDE TO JURISDICTION, PRACTICE AND STRATEGY, ch. 6 (1998).

⁶ *Julen v. Larson*, 101 Cal. Rptr. 796 (1972); *In Re Estate of O'Dea's*, 105 Cal. Rptr. 756 (1973).

⁷ *Herczog v. Herczog*, 9 Cal. Rptr. 5 (1960).

⁸ *In Re Estate of Kraemer*, 81 Cal. Rptr. 287 (1969).

⁹ *Cowans v. Ticonderoga Pulp & Paper Co.*, 219 N.Y.S. 284, 286–7 (1927).

¹⁰ *Hernandez v. Seventh Day Adventists*, 54 S.W.3d 335, 335 (2001) (if a foreign judgment is not facially final, the judgment creditor bears the burden of producing evidence demonstrating the judgment is final); *Shen v. Lao A. Daly*, 222 F.3d 472, 476 (2000) (burden of proof of preclusive effect is on the party seeking to have judgment recognized).

¹¹ The reciprocity doctrine, enunciated in *Hilton v. Guyot*, 159 U.S. 113 (1895), is not favored in most states that have adopted the Recognition Act. See *infra* Part One, III.C.8; see also *Nicol v. Tanner*, 310 Minn. 68, 68 (1976) (reciprocity not a prerequisite for enforcement of a foreign judgment if the foreign court had jurisdiction and fully adjudicated the issues).

¹² 915 F.2d 1000, 1005–6 (5th Cir. 1990).

¹³ *Id.* at 1005.

¹⁴ *Id.* at 105, n.4.

the court will likely find the Enforcement Act void on one or more of these grounds. Therefore, plaintiff will have to litigate the claim *ab initio*.

3. Choice of Venue: Defenses

Defendants to enforcement of foreign judgments have two major weapons in their arsenal regarding venue: *forum non conveniens*¹⁵ and transfer between courts in the federal system, assuming no contrary agreement between the parties. Defendants can also seek to have the suit removed to state court, causing delay and expense for plaintiff.¹⁶

4. Preemption

The United States is not a party to any international agreements to enforce foreign judgments, nor are there any relevant federal statutes; therefore, state law, under the *Erie* doctrine, governs foreign country judgments in federal court, as well as state court.¹⁷

B. EVIDENTIARY REQUIREMENTS: COPY OF THE JUDGMENT

1. Authentication

Meeting state evidence code requirements for admissibility of the foreign judgment presents one of the more procedurally complex requirements in enforcing foreign judgments.¹⁸ Generally, federal courts presume that properly attested to foreign documents are authentic.¹⁹ For a foreign public document to be self-authenticating, state and federal statutes require both the attestation of an official of the adjudicating country that the judgment is authentic and a final statement certifying that the signature of the foreign official is valid.²⁰

a. Simplified authentication: If the foreign jurisdiction is a party to the Hague Convention on Legalization of Foreign Public Documents,²¹ completion of a standardized

¹⁵ Discussed *infra* Part One, III.C.2.d. *Chong v. Superior Court of Los Angeles*, 68 Cal. Rptr. 2d. 427 (1997) is an example of the court determining that Hong Kong would be a more suitable forum.

¹⁶ See 28 U.S.C. § 1441, *et seq.*

¹⁷ The argument that federal law should govern the enforcement of foreign country judgments has been unsuccessful, except as applied to the act of state doctrine. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S. Ct. 923 (1964).

¹⁸ For federal courts, refer to FED. R. CIV. P. 44(a)(2) and FED. R. EVID. 902(3).

¹⁹ FED. R. EVID. 902(3).

²⁰ For example, CAL. EVID. CODE § 1530(3) specifies the procedure for obtaining attestation that the copy of the foreign country judgment is a correct copy of the writing or entry. The court generally requires, in addition to the attestation, a final statement certifying the genuineness of the signature. The court may, however, admit the attested copy without the final statement for good cause shown.

²¹ See Part One, I at note 4. The Convention is *in force* for the United States and the following countries and territories: Andorra, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Australia, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Bermuda, Bosnia-Herzegovina, Botswana, British Antarctic Territory, British Virgin Islands, Brunei, Bulgaria, Cayman Islands, Comoros Islands (formerly Moroni), Croatia, Cyprus, Djibouti (formerly Affairs and Issas), Dominica, El Salvador, Falkland Islands, Fiji, Finland, France, French Guiana, French Polynesia, Guadeloupe, Germany, Gibraltar, Greece, Grenada, Guernsey (Bailiwick of), Hong Kong, Hungary, Isle of Man, Israel, Italy, Japan, Jersey (Bailiwick of), Kiribati (formerly

authentication form, called an *apostille*, affixed to the original document in lieu of the generally required chain of authentication, will verify the document's authenticity.²²

b. Procedure

1) **Obtaining authentication:** The seeking party must ascertain whether the jurisdiction requires chain of authentication or whether apostille authentication is sufficient.²³ Be sure that different people attest to authentication and issue the final statement under the chain of authentication, or certify and issue the apostille. The Department of State issues apostilles for documents to be certified through federal agencies on a country-by-country basis. Forms can be obtained from the United States Department of State, Authentications Office, 518 23rd St., N.W., Washington, D.C. 20520 (telephone: 202-647-5002; voice mail with information options: 1-800-688-9889). For authentication of state documents, contact the specific state's Office of the Secretary of State (addresses and other information available at www.travel.state.gov/family/hague_foreign_docs.html).

2) **Seal:** The seal of the issuing country or one of its public entities must appear on the authenticating document. The seal is presumed genuine if the United States recognizes that nation.²⁴

3) **Translations:** There are no "official" translations in U.S. courts; usually, a translation will be accepted as accurate. Some courts, however, have refused to accept a translation of an official document without admissible evidence that the translation is correct.²⁵ To avoid this problem, you can: (1) have the diplomatic official who issues the final statement attest to and certify the translation of the copy of the judgment together with the copy of the judgment and/or; (2) obtain a translation from a translator with whom the court is familiar and whom it knows to be reliable.

4) **Proof of service:** In addition to submitting proof of service of the complaint in the U.S. jurisdiction, you should also submit proof of service in the foreign jurisdiction, such as a copy of the summons and documents showing receipt (and translation, if applicable) together with a copy of the judgment and translation.²⁶ Note that the translation of the service of process itself may become an issue in assessing the adequacy of service. In *Jules v. Larson*, the California Court of Appeals found that the defendant had not been properly served in a Swiss lawsuit because the documents of service were in German.²⁷

Gilbert Islands), Latvia, Lesotho, Liechtenstein, Luxembourg, Macao, Macedonia, Malawi, Malta, Marshall Islands, Martinique, Mauritius, Mexico, Montserrat, Mozambique, Netherlands, Netherlands Antilles (Curacao, Bonaire, St. Martin, St. Eustatius, and Saba), New Caledonia, Norway, Panama, Portugal, Reunion, Russian Federation, St. Christopher (Kitts) and Nevis, St. Georgia and South Sandwich Islands, St. Helena, St. Lucia, St. Pierre and Miquelon, St. Vincent and the Grenadines, San Marino, Seychelles, Slovenia, Solomon Islands (formerly British Solomon Islands), South Africa, Spain, Suriname, Swaziland, Switzerland, Tonga, Turkey, Turks and Caicos, Tuvalu (formerly Ellice Islands), United Kingdom, Vanuatu (formerly New Hebrides), Wallis, and Futuna.

²² See Part One, Instruments, Laws, and Other Materials for the *apostille* form.

²³ See BRUNO RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE 341–45 (2000) [hereinafter RISTAU]; see generally *Hernandez v. Seventh Day Adventist Corp., Ltd.*, 54 S.W.3d 335 (2001) (authentication is a prerequisite to recognition proceedings).

²⁴ See, e.g., CAL. EVID. CODE § 1452 (West 1995 & Supp. 2005).

²⁵ *Smith v. California Portland Cement Co.*, 134 Cal. App. 630, 632, 25 P.2d 1013, 1013 (1933).

²⁶ See, e.g., 101 Cal. Rptr. 796 (not sufficient service if not translated); but see *Tahan v. Hodgson*, 66 F.2d 862 (1981) (service not translated but sufficient because in accordance with domestic law).

²⁷ 101 Cal. Rptr. 796, 797 (1972).

The court stressed that the service papers did not “give notice of the [legal] nature of the documents,” were not “informative,” and were therefore “ineffective.”²⁸ In *Tahan v. Hodgson*, however, a District of Columbia Court of Appeals sustained a default Israeli judgment against a man who had been served with documents written in Hebrew.²⁹ Although the defendant could not read Hebrew, the court stressed that the defendant “had done business in Israel for many years” and should have been able to deduce the legal nature of the documents.³⁰ Moreover, the court reasoned that it would be “insulting” to require Israeli lawyers to translate such documents.³¹

²⁸ *Id.* at 798.

³⁰ *Id.* at 865.

²⁹ 662 F.2d 862, 865 (1981).

³¹ *Id.*

III. PHASE TWO: CONVERTING THE JUDGMENT

A. CONVERSION METHODS UNDER THE RECOGNITION ACT

The following material explores the various methods for obtaining recognition of a foreign judgment. Inasmuch as 29 states, Washington, D.C., and the Virgin Islands have adopted the Recognition Act at this writing,¹ the Act is the principal enforcement vehicle. The discussion also explores alternative strategies for use either in the absence of or in conjunction with pleading under the Act.

1. Conversion Under the Uniform Foreign Money-Judgments Recognition Act: Introduction

The Recognition Act² converts foreign country money judgments, excluding tax and domestic relations judgments, and penalties, into judgments entitled to the same recognition as those of sister states, under the Full Faith and Credit Clause.³ The Recognition Act codifies common law on recognition of judgments, so the Act's elements, and their requirements and interpretation will be relevant to any pleading for recognition of a judgment rendered abroad. Note that the Recognition Act applies to judgments rendered by foreign courts outside the United States and its territories, commonwealths, districts, or other possessions.⁴ However, Recognition Act § 7 does not prevent the recognition of judgments that do not fall within the Act, at the jurisdiction's discretion.⁵

2. Conversion by Common Law Action

In states that have not adopted the uniform act, a plaintiff may bring an action under common law to enforce a foreign country money judgment. If the action succeeds, the court will recognize the judgment. A judgment obtained by a common law action, in which the judgment debtor receives notice and can raise grounds for non-recognition as well as all defenses, can then be enforced in other domestic jurisdictions based on extension of full faith and credit to sister-state judgments.⁶

¹ See Part One, Bibliography. If you seek recognition and enforcement in Puerto Rico of a judgment rendered abroad, see Part Two, Enforcing Foreign Judgments Abroad, for a discussion of the *exequatur* procedure (requiring a petition to a special court with exclusive jurisdiction of recognition proceedings); see also 31 P.R. LAWS ANN. § 7 (2002). If you seek recognition and enforcement in Guam of a judgment rendered abroad, see 6 GUAM CODE ANN. § 4214–15 (2003).

² The first step in selecting a recognition strategy is to check the forum state's statute of limitations. If the statute has or will shortly run in the first choice state, you may be able to bring suit in another state with a more liberal statute. The most recent proposed revision draft of the Recognition Act contains a 15-year statute of limitation, or the time period in which the judgment is enforceable in the rendering country, whichever is earlier. You can then enforce any judgment you obtain as a sister-state judgment under the Full Faith and Credit Clause, except in New York, California, and Illinois, where you must bring an action to obtain a domestic judgment. On the other hand, if significant time remains before the statute runs, it may be wise to plead under the Recognition Act only. If only a short time remains, you should consider pleading in the alternative.

³ Brand, *supra* Introduction, at note 2.

⁴ See Part One, Instruments, Laws, and Other Materials.

⁵ The most recent proposed revision of the Recognition Act makes clear, however, that the law is to apply to only foreign *country* judgments. National Conference of Commissioners on Uniform State Laws, Uniform Foreign Country Money Judgments Recognition Act (2005) [hereinafter Revised Recognition Act]. See Part One, Instruments, Laws and Other Materials.

⁶ U.S. CONST. ART. IV, § 1; 28 U.S.C. § 1738 (1982).

A common law action is the only way to obtain recognition and to enforce a foreign country money judgment in states that have not adopted both the Recognition and Enforcement Acts. Nonetheless, in states that have adopted both Acts, a judgment creditor may still bring an action for recognition. If the judgment creditor has brought an unsuccessful summary judgment motion, the underlying cause of action will have to be litigated in order to obtain an enforceable judgment.

3. Conversion by Registration

In states that have adopted both the Recognition Act and the Enforcement Act,⁷ simplified procedures under the Enforcement Act are available for registering a foreign judgment under the Recognition Act, § 3.⁸ Generally, the Act provides for registration of a foreign country money judgment, according to the state's version of the uniform act. Registration under the Enforcement Act allows the judgment creditor to attach a specified form to the authenticated judgment and to file it with the court clerk. If a state has not adopted the Recognition Act, the only means of obtaining and enforcing a domestic judgment is by bringing a common law action for enforcement.⁹

a. The California and New York exceptions: California¹⁰ (which has a statute similar to the Enforcement Act) and New York¹¹ have adopted non-uniform versions of the Recognition Act, which in § 3 specifically prohibit using this simplified procedure for foreign country money judgments. The California act provides that foreign country money judgments cannot be entered and enforced as sister-state judgments. Rather, a judgment creditor must bring an action in California to obtain a domestic judgment.¹² If successful, the money judgment may be entered in a foreign currency, under the Claims Act.¹³

In New York, a judgment creditor cannot apply the Enforcement Act's registration procedures to foreign-country money judgments. The judgment creditor must bring a plenary action or a motion action, even if the foreign judgment was entered on default for defendant's failure to appear.¹⁴

⁷ At this writing, Alaska, Colorado, Connecticut, Delaware, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virgin Islands, Virginia, and Washington.

⁸ Be certain to confirm that your state's version of § 3 of the Recognition Act does not limit use of Enforcement Act procedures to sister-state judgments only, and that case law interpreting this simplified procedure has not narrowed or proscribed its use. Grounds for limiting use of the Enforcement Act registration procedure include, among others, denial of due process. *See, e.g., Don Dockstader Motors, Ltd. v. Patal Enter., Ltd.*, 794 S.W.2d 760, 761 (1990). The proposed revision of the Recognition Act, however, explicitly rejects recognition by registration, stating that the policies weighing in favor of this process between sister-states are inapplicable to foreign country judgments. *See* Draft Revised Recognition Act, *supra* note 5, at Reporter's Notes for § 5.

⁹ *Id.*

¹⁰ CAL. CODE CIV. PROC. § 1713.3 (West 1987 & Supp. 2005). *See* Part One, Instruments, Laws, and Other Materials.

¹¹ N.Y. C.P.L.R. § 5303 (McKinney 1997 & Supp. 2005).

¹² *Supra* note 10. *See also* RICK SCHWARTZ & ALAN M. AHART, CALIFORNIA PRACTICE GUIDE: ENFORCING JUDGMENTS AND DEBTS, ch. 6 (1988, Supp. 2003) [hereinafter SCHWARTZ & AHART].

¹³ CAL. CODE CIV. PROC. § 676, *et seq.* (West 1987 & Supp. 2005). *See generally* discussion at I. Overview, *supra*.

¹⁴ N.Y. C.P.L.R. §§ 5401, 3213 (West 1997).

B. THE COMPLAINT

In states that have not adopted any of the uniform acts, or that have adopted both, requirements for the complaint are dictated by the common law or uniform acts, respectively. In states that have adopted that Recognition Act but not the Enforcement Act (e.g., California and New York), the complaint for conversion of the foreign judgment to a domestic judgment must identify:

- Parties
- Name and place of the foreign court
- Cause of action
- Time, place, and amount of judgment
- Amount outstanding on the judgment¹⁵

Be sure to attach an authenticated copy of the judgment or an apostille if the country that adjudicated the underlying cause of action is a party to the Hague Legalization Convention.¹⁶

Once in court, plaintiff should move for summary judgment on the pleadings. If the court denies the motion, plaintiff will have to litigate it on the merits.

C. SELECTED KEY PROVISIONS OF THE RECOGNITION ACT

1. Conclusiveness Requirement

a. Plaintiff: Under the Act,¹⁷ the foreign judgment must be conclusive, as determined by the law of the foreign jurisdiction.¹⁸ Therefore, plaintiff must plead and prove that the foreign judgment is entitled to recognition. A judgment creditor may satisfy this requirement simply by the judgment being facially final under the law of the foreign state, as was the case in *Hernandez v. Seventh Day Adventist Corp., Ltd.*¹⁹ In that case, a Texas Court of Appeals held that, absent convincing evidence from the defendant as to the judgment's invalidity, the judgment was to be considered conclusive.²⁰ Proof of a foreign judgment's finality may also require further evidence. For example, in *Black Clawson v. Kroenert*, the Eighth Circuit recognized a German settlement agreement as a final judgment after plaintiffs presented proof of a German court's "accepting the settlement agreement and dismissing the [original German] case with prejudice."²¹

¹⁵ See generally John J. Baer, *Strategies in Framing Pleadings under the Uniform Foreign Money Recognition Act*, ENFORCEMENT IN CALIFORNIA OF JUDGMENTS RENDERED ABROAD (International Law Section, State Bar of California 1988). See also Uniform Foreign-Money Claims Act, *supra* Part One, Introduction, at note 1.

¹⁶ See *supra* Part One, III.B.

¹⁷ Recognition Act; CAL. CODE CIV. PROC. § 1713 (West 1987 & Supp. 2005), *et seq.*

¹⁸ See *Alberta Securities v. Ryckman*, 30 P.3d 121, 126 (2001) (conclusiveness is a requirement for recognition and enforcement); *Nicor International v. El Paso*, 292 F. Supp. 2d 1357, 1365 (2003) (conclusiveness is a requirement for recognition); *Gonzalez v. Lebensversicherung A.G.*, 761 N.Y.S.2d 3, 3 (2003) (considering the finality of a judgment under Spanish law).

¹⁹ 54 S.W.3d 335, 337 (Tex. App. 2001).

²⁰ *Id.* at 337.

²¹ 245 F.3d 759, 764 (8th Cir. 2001).

A foreign judgment that is final and conclusive between the parties will be enforceable even if an appeal will be taken or is pending in a foreign jurisdiction.²² The revised Recognition Act²³ emphasizes, however, that conclusiveness, finality, and enforceability are three *separate* requirements that must be established under the laws of the foreign country.

b. Defendant: Defendant may have to move to stay the proceeding because an appeal will be taken or is pending in a foreign jurisdiction.²⁴ In doing this, the defendant should argue that the “final and conclusive” standard is set by the country whose laws categorize cases on which appeals are pending as inconclusive. The defendant in *Korea Water Resources v. Lee* argued unsuccessfully that such a Korean Civil Code standard should preclude enforcement of a Korean judgment in California until all Korean appeals were concluded.²⁵ In *Mayekawa v. Sasaki*, however, the Washington Court of Appeals held that a Japanese judgment that was enforceable – but still not conclusive under the Japanese Civil Code – did not meet the conclusiveness requirement, and stayed enforcement proceedings.²⁶

The court has the power to stay the proceeding on these grounds until the appeal has been determined or until a sufficient amount of time to prosecute the appeal expires, provided that the delay does not prejudice plaintiff. Defendant may have to provide adequate security for payment of the judgment, should the foreign court affirm the judgment.²⁷ However, a judgment subject to modification by the foreign court will probably not meet the conclusiveness requirement.²⁸

c. Mandatory non-recognition: Under the Recognition Act,²⁹ a U.S. court must find that a foreign country judgment is not conclusive and, therefore, not entitled to recognition, on three grounds:

Firstly, if the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with due process of law, the foreign judgment would not be conclusive and entitled to recognition.³⁰ In making this determination, courts will not inquire into whether specific proceedings conformed with U.S. Due Process standards, but rather into the country’s judiciary system as a whole.³¹ If the defendant in the foreign

²² But see *Mayekawa v. Sasaki*, 888 P.2d 183, 186–8 (1995); 76 Wash. App. 791, 797–8 (1995) (notwithstanding that Japanese preliminary judgment on promissory notes was immediately enforceable in Japan, foreign judgment was not “final and conclusive” under Japanese civil code as required for enforcement under Recognition Act).

²³ See *supra* note 5.

²⁴ *Id.*

²⁵ 8 Cal. Rptr. 3d 853, 859 (Cal. App. 2004).

²⁶ 888 P.2d at 186–8.

²⁷ See Recognition Act §6. See, e.g., CAL. CODE CIV. PROC. §1713 (West 1987 & Supp. 2005), *et seq.*

²⁸ See generally *Herczog v. Herczog*, 9 Cal. Rptr. 5 (1960).

²⁹ Recognition Act § 4; CAL. CODE CIV. PROC. § 1713.4 (West 1987 & Supp. 2005).

³⁰ See Jay Conison, *What Does Due Process Have to Do with Jurisdiction?* 46 RUTGERS L. REV. 1073 (1994); see, e.g., *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1411 (1995) (foreign default judgments against sister of former Shah of Iran would not be enforced, since she could not have obtained fair trial in courts of Iran at time of judgments); *S.C. Chimexim v. Velco*, 36 F. Supp. 2d 206 (1999) (discussing impartiality of tribunal of former communist country); *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 140 (2000) (voluntary participation in proceedings of foreign court does not estop the defense that the foreign court was unfair or not impartial); *Society of Lloyd’s v. Ashenden*, 233 F.3d 473, 476–7 (2000) (impartiality and uniform act concept of due process are not equivalent to the U.S. concept of Due Process).

³¹ *Society of Lloyds v. Mullins*, 255 F. Supp. 2d 468, 472 (2003) (Recognition Act required a “panoramic exam” of English judiciary).

action did not receive timely notice or if the judgment was obtained by extrinsic fraud, the U.S. court will find that the foreign judgment was not conclusive. For example, the defendant in *Srichanchao v. Reedstrom* made an extrinsic fraud argument claiming that “the parties Polupeï counsel colluded against respondent.”³² In *de la Mata v. American Life Ins.*, the defendant successfully precluded recognition by arguing that the plaintiff’s failure to tell a Bolivian court about her waiver of all claims under the insurance policy at issue in the Bolivian suit constituted extrinsic fraud.³³ However, courts will generally not inquire into fairness; rather, the defendant must raise fairness or impartiality as a defense.³⁴ For example, the defendant could argue that fairness does not allow *res judicata* to bar suit subsequent to a default judgment.³⁵

Secondly, if the foreign court did not have personal jurisdiction over the defendant, the foreign judgment is not conclusive and would not be entitled to recognition and/or enforcement.³⁶ The Recognition Act § 5(a)³⁷ lists six alternative mandatory bases on which the U.S. court shall base a finding of the foreign court’s personal jurisdiction:

- (1) The defendant was personally served in the foreign state;
- (2) The defendant voluntarily appeared and submitted to personal jurisdiction;³⁸
- (3) The defendant agreed to submit before the proceeding to the foreign court’s jurisdiction regarding the subject matter (e.g., in a contract clause);
- (4) The defendant was domiciled or was a corporate defendant incorporated or with headquarters in the jurisdiction;
- (5) The defendant had a business office in the foreign state and the cause of action arose from defendant’s business done through that office in the foreign state; or
- (6) The defendant was operating a vehicle or airplane in the foreign jurisdiction and the cause of action arose from that operation.

Thirdly, if the foreign court did not have subject matter jurisdiction, the foreign judgment is not conclusive and is not entitled to recognition and/or enforcement.³⁹ Most courts have continued to recognize additional bases for jurisdiction. A Texas district court found subject matter jurisdiction in an English action regarding the expropriation of an American-owned oil concession in Libya based on the English court’s general jurisdiction.⁴⁰ Be sure to research your jurisdiction’s case law before asserting or countering any defenses.

³² 1997 W.L. 461176 (Minn. App. 1997, *5).

³³ 771 F. Supp. 1375 (D.C. Del. 1991).

³⁴ Campbell, *supra* Introduction, note 2 at US-9, n.32.

³⁵ Van Den Biggelaar v. Wagner, 978 F. Supp. at 856 (D.C.N. Ind. 1997).

³⁶ See, e.g., CIBC Mellon Trust v. Mora Hotel, 762 N.Y.S.2d 5, 10–11 (2003) (corporations’ voluntary appearance in English court subjected them to personal jurisdiction in England); Wimmer Canada v. Abele Tractor, 750 N.Y.S.2d 331, 333 (2002) (Quebec court had personal jurisdiction over defendant who purposefully transacted business in Canada and there was a direct nexus between the business and the claim).

³⁷ See also CAL. CODE CIV. PROC. § 1713.5(a) (West 1987), see Part One, Bibliography.

³⁸ See Citadel Management v. Hertzog, 703 N.Y.S.2d 670, 671 (1999) (individual defendant’s voluntary appearance in foreign proceeding constituted submission to jurisdiction and removed any jurisdictional barrier to granting recognition to foreign country judgment).

³⁹ However, the New York Act, codified in N.Y. C.P.L.R. § 5304(b)(1) (McKinney 1997) and the Restatement (Third) of Foreign Relations § 482 [hereinafter Restatement (Third)] list lack of subject matter jurisdiction as a permissive ground for non-recognition.

⁴⁰ Hunt v. BP, 492 F. Supp. 885 (D.C. Tex. 1980).

d. Permissive non-recognition: A U.S. court need not recognize a foreign judgment if the proceeding involved:

- Insufficient notice to defendant;⁴¹
- Obtaining the judgment by fraud;⁴²
- A judgment repugnant to public policy in the domestic state jurisdiction;⁴³
- A judgment that conflicts with another final and conclusive judgment;⁴⁴
- A foreign court proceeding contrary to the parties' agreement to settle the dispute in question in another forum;⁴⁵ or
- A seriously inconvenient forum for the trial of the action.

2. Permissive Non-Recognition: Defenses and Strategies

This section offers strategies for defendants in foreign judgment recognition actions and caveats for plaintiffs, in their original foreign adjudication, for ultimately avoiding non-recognition in the domestic jurisdiction.

a. Sufficient notice:

- A domestic court has discretion not to recognize a foreign judgment if the defendant did not receive notice of the action in the foreign forum in sufficient time to enable him to defend.⁴⁶ Note that appearance in court does not necessarily preclude this basis for non-recognition. In *Gondere v. Silberstein*, a New York District Court held that, although defendant's filing of an opposition constituted an appearance under French law, this was only one factor to consider in defendant's claim of insufficient notice, and was not a waiver of it.⁴⁷

Standard: U.S. Constitution, amendment V; federal and state rules of civil procedure.

General test: How offensive to due process requirements of the U.S. Constitution were the foreign notice procedures?⁴⁸

⁴¹ See *Kam Tech Systems v. Yardene*, 774 A.2d 644, 653–4 (2001) (defendant's claim that he did not receive proper notice of Israeli action negated by his participation in that action).

⁴² See *Society of Lloyd's v. Mullins*, 255 F. Supp. 2d 468, 473 (2003) (although defendant claimed to have been fraudulently induced to sign a contract, he provided no proof that the English judgment was obtained fraudulently, and it was therefore enforceable).

⁴³ See, e.g., *id.* at 475–6 (enforcement of “pay-now-sue-later” clause in English contract action not repugnant to Pennsylvania public policy); but see *Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme*, 169 F. Supp. 2d 1181 (2001) (French judgment could not be enforced because of conflict with First Amendment guarantees).

⁴⁴ See *AAR Int'l. v. Nimelias*, 250 F.3d 510, 517–8 (2001) (under the *Colorado River* doctrine, a court must look for exceptional circumstances in deciding to abstain from exercising jurisdiction due to a pending parallel proceeding).

⁴⁵ See *The Courage Co. v. Chemshare*, 93 S.W.3d 323 (Tex. App. 2002) (judgment not recognizable under the uniform act where parties had agreed to arbitrate disputes).

⁴⁶ Recognition Act § 4(b)(1); CAL. CODE CIV. PROC. § 1713.4(b)(1) (West 1987 & Supp. 2005).

⁴⁷ 744 F. Supp. 429, 431–2 (U.S.D.C. E.D.N.Y. 1990).

⁴⁸ But see 233 F.3d at 476–7 (impartiality and uniform act concept of due process are not equivalent to the U.S. concept of Due Process).

Specifically: Defendant should receive notice

- With as much time for answering as is available in the foreign jurisdiction;
- In the language of the jurisdiction where defendant is served;⁴⁹
- That defendant is being sued;
- Of the nature of the lawsuit and amount involved;
- Of the time and place of the hearing;
- Of the deadline for response;
- Of the consequences of not appearing.⁵⁰

b. Service Under the Hague Convention: Notice in the foreign jurisdiction will be sufficient if it complied with the terms of the Hague Service Abroad Convention.⁵¹ The Convention provides for international service of process for civil and commercial matters for parties in signatory countries. In the United States, the Federal Rules of Civil Procedure provide for service under the Convention.⁵² Each country establishes a “Central Authority” that must receive service and that may send service to other Central Authorities, and provides model forms for request for service and proof of service. In the United States, the Department of Justice is the Central Authority, and you can obtain the “Request for Service Abroad of Judicial or Extrajudicial Documents” form⁵³ from the Offices of United States Marshals. Any sheriff, marshal, or court officer (including attorneys) may request that the Central Authority serve documents. Many countries require translation of the documents. Service may also be available under the local rules of the country of service informally, by a specified method, or by certain alternate methods.

c. Lack of personal jurisdiction: Lack of jurisdiction as defined by the United States Supreme Court is the most powerful weapon a defendant has against recognition, and it is the most common ground for refusal of recognition. Personal jurisdiction should be based upon residency, situs of the cause of action, or business or personal contacts consistent with the *International Shoe*⁵⁴ line of cases.⁵⁵

⁴⁹ *But see Tahan v. Hodgson*, 662 F.2d 862, 865 (1981). ⁵⁰ 101 Cal. Rptr. at 798.

⁵¹ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 658 U.N.T.S. 163 (Nov. 15, 1965) [hereinafter Hague Service Convention], *supplemented by* Conclusions and Recommendations Adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions, Oct. 28–Nov. 4, 2003, *reprinted in* 2 RISTAU, *supra* Part One, II, note 23, at A-11; *see also* 36 I.L.M. 516 (1997) for parties to the Convention. The United States is a party to the Hague Service Convention.

⁵² FED. R. CIV. P. 4; *see also* 28 U.S.C. §§ 1696 (service in foreign and international litigation) and 1782 (assistance to foreign and international tribunals and to litigants before such tribunals). *See* RISTAU, *supra* Part One, II, note 23 at 145–232, for details of the Hague Service Convention.

⁵³ U.S. Department of Justice, Civil Division, Office of International Judicial Assistance, Washington, D.C. 20530. For a complete list of Central Authorities *see* Part One, Instruments, Laws, and Other Materials (also available at the Hague Conference on Private International Law Web site http://www.hcch.net/index_en.php?act=conventions.authorities&cid=17). For the “Request for Service Abroad of Judicial or Extrajudicial Documents” form (U.S. Marshals form USM-94), *see also* Part One, Instruments, Laws, and Other Materials (also available at <http://www.usdoj.gov/marshals/forms/usm94.pdf>).

⁵⁴ 326 U.S. 310 (1945).

⁵⁵ *But see* 202 F. Supp. 2d at 909–10 (assignee of Australian court’s judgment not required to establish basis for district court’s exercise of personal jurisdiction over corporation in action seeking recognition and enforcement of judgment since assignee was not seeking any new relief from corporation, and most devices for enforcement of judgment would have operated *in rem* against corporation’s property). For a discussion of personal jurisdiction of the recognizing court, *see supra*, Part One, II.A.1.

Authorities disagree as to whether the enforcing court should judge personal jurisdiction in the underlying adjudication by U.S. standards or the laws of the original court's jurisdiction. In *CIBC Mellon Trust v. Mora Hotel*,⁵⁶ for example, the court held that any bases of jurisdiction recognized by internal New York law would be acceptable bases of personal jurisdiction in a foreign suit seeking enforcement in the U.S. system.⁵⁷ It perhaps is noteworthy that the court did not, however, state that such bases were the exclusive bases recognizable under the law.

Usually, the foreign forum will have personal jurisdiction over the defendant, although lack of jurisdiction issues may arise if the defendant did not appear and a default judgment was issued in the foreign forum. A U.S. enforcing court, however, is likely to be concerned if the foreign court rendering the judgment exceeded its exercise of personal jurisdiction over the defendant according to standards acceptable in the United States.⁵⁸ The Restatement (Third) § 482(1)(b) suggests that *both* U.S. and foreign forum personal jurisdiction requirements must be met. Note that the Recognition Act specifies circumstances in which personal jurisdiction cannot be found lacking and, arguably, suggests that the enforcing court should not test the rendering forum's personal jurisdiction over the defendant by its standards of jurisdiction.⁵⁹

d. Inconvenient forum To defeat recognition of a foreign judgment under the Recognition Act, defendant must show that, even if jurisdiction was based on personal service, the foreign country forum was seriously inconvenient.⁶⁰ U.S. courts generally recognize personal jurisdiction based on the fact that the legal basis was fair – for example, defendant appeared and unsuccessfully challenged jurisdiction or conducted business in the forum that was the subject of the litigation.⁶¹ In contrast, courts will scrutinize jurisdictional determination on the merits if jurisdiction rested on questions of law or law and fact.⁶² However, if plaintiff can show that defendant traveled previously to the forum or could have done so with relative ease, this defense will fail.⁶³

3. Default Judgments and Foreign Long-Arm Statutes

a. Default judgments: Default judgments in foreign country courts create a conversion problem for United States courts because jurisdiction over the defendant may not have

⁵⁶ 743 N.Y.S.2d 408 (N.Y. App. Div. 2002).

⁵⁷ *Id.* at 420.

⁵⁸ For example, transient or tag jurisdiction may present a problem. See EPSTEIN & SNYDER, *supra* Part One, II, note 5, at 6.04[3]; see also Eric Fastiff, Note, *The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch Reynolds Jurisdiction and Enforcement Problems*, 28 CORNELL INT'L L.J. 469 (1995); but see *Flores v. Melo-Palacios*, 921 S.W.2d 399, 402–3 (1996) (where other factors existed and “tag” jurisdiction did not offend due process).

⁵⁹ See GEORGE A. BERMAN, *TRANSNATIONAL LITIGATION*, 339 (2003). Interestingly, the New York Supreme Court (i.e., New York's trial court) held in *Lechysyn v. Pelko Elec.*, 723 N.Y.S.2d 285, 288 (S. Ct. N.Y. 2001) that personal jurisdiction over parties to a judgment in the United States was immaterial to recognition.

⁶⁰ CAL. CODE CIV. PROC. § 1713.4(b)(6) (West 1987 & Supp. 2005); N.Y. C.P.L.R. § 5304(b)(7) (McKinney 1997).

⁶¹ See, e.g., *DSQ Property Co. v. DeLorean*, 1989 WL 161032 *11 (E.D. Mich. 1989) (rejecting defendant's argument for non-recognition of a London court's judgment because jurisdiction was not based on personal service alone, but on “actions both inside and outside the U.K.”).

⁶² Restatement (Third) § 482 cmt. c. (1987).

⁶³ *Bank of Montreal v. Kough*, 612 F.2d 467 (1980).

been proper and the jurisdictional question may not have been adjudicated.⁶⁴ A questionable jurisdictional basis coupled with a default judgment is a powerful argument against enforcement. An example is presented by the case of *Bank Melli v. Pahlavi*⁶⁵ in which an Iranian bank was unable to enforce a default judgment against the sister of the former Shah based on the additional concerns of due process in the Iranian proceeding.⁶⁶ Specifically, the defendant was unable to travel to the prior proceeding without placing herself in physical danger and the Iranian proceedings at the time were highly politicized, which was especially prejudicial to the defendant.⁶⁷ Furthermore, a U.S. court may hesitate to recognize a default judgment primarily because the underlying merits were not adjudicated.⁶⁸

b. Foreign long-arm or exorbitant jurisdiction statutes: Long-arm statutes,⁶⁹ like personal jurisdiction, raise special personal jurisdiction problems. Just as the U.S. Constitution defines the outer limits of personal jurisdiction in domestic cases, so does it define the outer limits of personal jurisdiction for U.S. courts that are determining whether the foreign court properly asserted personal jurisdiction. If defendant can successfully argue that a foreign court exercised exorbitant jurisdiction by U.S. standards, the U.S. court is likely to refuse recognition based on violations of due process or takings protection. In *Falcon Mfg. Ltd. v. Ames*,⁷⁰ for example, the court refused to recognize a Canadian judgment for lack of due process.⁷¹ The applicable Canadian long-arm statute permitted the Canadian court to exercise personal jurisdiction over defendant, whose only contact with the foreign forum was a letter placing an order mailed to the Canadian plaintiff.⁷²

Other plaintiffs have argued with mixed success that foreign state long-arm statutes would have permitted personal jurisdiction in the underlying adjudication. In *Siedler v. Jacobson*,⁷³ the defendant's purchases during a week's visit in Austria was insufficient nexus for enforcing a default judgment, although the New York long-arm statute would have permitted personal jurisdiction over the defendant in the same circumstances. In *Nippon v. Emo Tran*,⁷⁴ however, a shipping company had sufficient contacts with Japan under New York's long-arm statute where only one percent of the shippers' business was done with Japan, earning gross annual revenues of \$600,000. A commentator has proffered that once a defendant has lost a personal jurisdiction challenge and proceeds to litigate on the merits, a U.S. court will likely find personal jurisdiction and recognize the foreign judgment.⁷⁵

⁶⁴ See *Somportex, Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435 (3d Cir. 1971), cert. denied, 405 U.S. 1017 (1972).

⁶⁵ 58 F.3d at 1411–13 (9th Cir. 1995).

⁶⁶ *Id.* at 1411–13.

⁶⁷ *Id.* at 1411–12.

⁶⁸ *Falcon Mfg. Ltd. v. Ames*, 53 Misc.2d 332, 278 N.Y.S.2d 684 (1967). Courts in jurisdictions that have not enacted the Recognition Act have more discretion under a “comity” analysis to refuse to recognize foreign judgments; however, even under the Recognition Act, U.S. courts can summon public policy or due process violations as bases for denying recognition.

⁶⁹ See John Fitzpatrick, *The Lugano Convention and Western European Integration: A Comparative Analysis of Jurisdiction and Judgments in Europe and the United States*, 8 CONN. J. INT’L L. 695 (1993). See this article for a discussion of exorbitant jurisdiction (“assertions of jurisdiction that are not generally recognized by accepted principles of international law”); *id.* at 703; and a comparison between United States and European Community approaches, *Id.* at 723–7.

⁷⁰ *Falcon Mfg. Ltd. v. Ames*, *supra* note 68.

⁷¹ *Id.* at 687.

⁷² *Id.*

⁷³ 383 N.Y.S.2d 833 (1976).

⁷⁴ 744 F. Supp. 1215 (E.D.N.Y. 1990).

⁷⁵ Campbell, *supra* Introduction, note 2, at US-17.

Based on the outcome of *Nippon*, a defendant who defaults by not appearing in the foreign forum may have a better chance of persuading a U.S. court to deny recognition of the foreign judgment than a defendant who unsuccessfully challenges jurisdiction and then appears to litigate. The reasoning was as follows:

If a defendant genuinely has no significant contacts with a particular forum, then it can challenge jurisdiction there and safely default on the merits; presumably, the judgment will be meaningless in the foreign country . . . since the defendant has no assets there and such a judgment will be enforced in New York.⁷⁶

As a federal case interpreting New York law, *Nippon* may nonetheless be of limited persuasive value in other U.S. jurisdictions.⁷⁷

The Recognition Act also provides a discretionary basis for denying enforcement if the jurisdiction was based on transient or tag jurisdiction. The test for exorbitant jurisdiction in this case rests on whether the forum was seriously inconvenient if personal service was the only basis for jurisdiction. As noted by the New Jersey Superior Court in *El-Maksoud v. El-Maksoud*,⁷⁸ the Recognition Act allows for such jurisdiction and “any unfairness to the defendant can be addressed by the application of the doctrine of *forum non-conveniens*.”

Thus, absent case law on point, the better practice is to combine this argument with other, established defenses to jurisdiction.

4. Non-Judicial Dispute Resolution Clauses

A U.S. court may not recognize a foreign judgment if it was based upon breach of an agreement between the parties providing for non-judicial resolution of disputes generally, or for a particular type of dispute-resolution process regarding the dispute at issue.⁷⁹ Certainly the modern trend is for courts to honor forum-selection clauses in contracts where a U.S. court would otherwise have jurisdiction, as the U.S. Supreme Court has noted in particular with respect to international arbitration.⁸⁰ If the contract requires arbitration, the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards⁸¹ provides for enforcement of arbitration awards. Furthermore, the New York Convention and the underlying Federal Arbitration Act prohibit U.S. courts from enforcing a foreign country judgment that violates the parties’ prior agreement to arbitrate.

5. Public Policy

a. Generally: A foreign country judgment may not be recognized under the Recognition Act if it is “repugnant to the public policy of this state.”⁸² Although public policy violations

⁷⁶ *Id.* at 1225.

⁷⁷ As of the date of this writing, there has been very little use of this case at all. *CIBC Mellon v. Mora Hotel*, 762 N.Y.S.2d 5 (2003) is the only case to discuss it in relation to this issue.

⁷⁸ 568 A.2d 140, 144 (1989).

⁷⁹ CAL. CODE CIV. PROC. § 1713.4(b)(5) (West 1987 & Supp. 2005); N.Y. C.P.L.R. § 5304(b)(6) (McKinney 1997).

⁸⁰ *Scherk v. Alberto-Culver*, 417 U.S. 506 (1979); see also *The Bremen v. Zapata Off-shore Co.*, 407 U.S. 1, (1972). Many state courts have also followed this trend. See, e.g., *Smith, Valentino & Smith, Inc. v. Superior Court*, 551 P.2d 1206, (Cal. 1976).

⁸¹ The New York Convention is codified as the Federal Arbitration Act, 9 U.S.C. § 201, *et seq.*

⁸² CAL. CODE CIV. PROC. § 1713.4(b)(3) (West 1987 & Supp. 2005); N.Y. C.P.L.R. § 5304(b)(4) (McKinney 1997).

are undefined in the Act or state codification, courts have generally held that differences between jurisdictions' laws or the non-existence of a cause of action in the U.S. jurisdiction⁸³ are not sufficient to trigger this catch-all defense.⁸⁴ The proposed revision of the Recognition Act makes clear that the substantive law on which the judgment is based must violate public policy, not the specific judgment.⁸⁵ It also emphasizes that the policy exception will apply only in a small category of cases. However, some courts have denied recognition of foreign country judgments based on unfairness to one of the parties if the judgment were held to be conclusive.⁸⁶

The Third Circuit has held that a foreign country judgment violates a state's public policy if the judgment is injurious to public health, public morals, or public confidence "in the purity of the administration of the law" or must undermine the public's sense of security for individual rights.⁸⁷ The Texas Supreme Court has held that foreign laws violate Texas public policy if they are "inimical to good morals, natural justice, or the general interests" of the state's citizens.⁸⁸ A New York state court refused to enforce a libel judgment by a British court because it would be contrary to First Amendment protection of free speech.⁸⁹ In addition, the California Supreme Court ruled that a judgment of a foreign court could never have greater force in California than where it was pronounced.⁹⁰ Therefore, the courts will prevent foreign judgments from undermining public policy while at the same time ensuring that there are no additional incentives to enforcing such claims.

b. Combination with other defenses: In practice, U.S. courts find that few foreign country judgments violate state public policy as the sole grounds for refusing recognition. However, when combined with other defenses, such as jurisdiction or due process violations, courts may refuse to recognize a foreign country judgment.⁹¹ For example, a California court refused to recognize a Mexican judgment that required spousal support payments to a divorced wife even after her remarriage because the judgment conflicted with fundamental California public policy ending such support upon a spouse's remarriage.⁹²

⁸³ See Winston Anderson, *Enforcement of Foreign Judgments Founded upon a Cause of Action Unknown in the Forum*, 42 INT'L & COMP. L.Q. 697 (1993).

⁸⁴ See *Lloyd's v. Webb*, 156 F. Supp. 2d 632, 639–40 (2001) (English judgment was not unenforceable even though pretrial discovery was barred and procedures used in English courts were not identical to American procedures, as long as the proceedings of the foreign judgment were fundamentally fair); see also *Southwest Livestock v. Ramon*, 169 F.3d 317, 320–1 (1999) (underlying action of foreign judgment must violate public policy of receiving court).

⁸⁵ See *supra* note 5 at § 3 and Reporters' Notes to § 3.

⁸⁶ R. Doak Bishop & Susan Burnette, *United States Practice Concerning the Recognition of Foreign Judgments*, 16 INT'L LAW. 425 (1982).

⁸⁷ *Somportex*, *supra* note 64 at 443 (quoting *Goodyear v. Brown*, 155 Pa. 514, 518 (1893)).

⁸⁸ *Gutierrez v. Collins*, 583 S.W.2d 312, 322 (Tex. 1979).

⁸⁹ *Bachachan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (1992).

⁹⁰ *In re Cleland's Estate*, 258 P.2d 1097 (1953); accord *Weiss v. La Suisse*, 161 F. Supp. 2d 305 (2001).

⁹¹ Campbell, Introduction, *supra* note 2, at US-26. For a detailed treatment of the public policy defense, see Wanda Ellen Wakefield, Annotation, *Judgment of Court of Foreign Country as Entitled to Enforcement or Extraterritorial Effect in State Court*, 13 A.L.R. 4th 1109 (1982).

⁹² *Pentz v. Kuppinger*, 31 Cal. App.3d 590, 107 Cal. Rptr. 540 (1973); CAL. FAM. CODE § 4337 (West 1994).

A New York court held a Thai judgment unenforceable based on the public policy of “enforcing letters of credit agreements according to their terms.”⁹³

c. Corrupt judicial system: Under both the American Law Institute’s International Jurisdiction and Judgments Project and the efforts to revise the Recognition Act⁹⁴ a court “must deny recognition to a foreign country judgment if ‘the judgment was rendered under a judicial system which does not provide impartial tribunal or procedures compatible with the requirements of due process of law.’”⁹⁵ Thus, a defensive claim that a corrupt judicial system rendered the judgment sought to be enforced is similar to the separate defensive ground that the judgment was the result of unfair procedures, but it is different in that it requires a showing that corruption was involved in the specific litigation on which the judgment in question is based.⁹⁶

6. Parallel Proceedings

a. *Res judicata*/collateral estoppel: A U.S. court need not recognize a foreign country judgment if it conflicts with another final and conclusive judgment⁹⁷ entitled to recognition.⁹⁸ U.S. courts will generally allow foreign default judgments to have *res judicata* effect, but a *res judicata* defense to recognition could trigger issues of the foreign court’s personal jurisdiction over the defendant, as was the case at the sister-state level in *Covington Indus. v. Restinex*.⁹⁹

The court has discretion, based on the facts, to recognize the later inconsistent judgment, the earlier inconsistent judgment, or neither. It should be noted, however, that in assessing the *res judicata* effect of a judgment, U.S. courts will not apply foreign theories of *res judicata*. For example, a Greek action involving the death of a Greek seaman did not have binding effect in subsequent U.S. litigation, despite the binding effect it would have had in Greek courts.¹⁰⁰

Thus, a defendant in a foreign country action may bring suit in the United States while the foreign action is pending to block enforcement of an unfavorable judgment on *res judicata* or collateral estoppel grounds.¹⁰¹ The District of Columbia Court of Appeals held, for example, that a U.S. claim could go forward despite a pending English suit brought for the sole purpose of precluding U.S. jurisdiction over the matter.¹⁰²

⁹³ *AG Zurich v. Bangkok Bank*, 681 N.Y.S.2d 21, 22 (1998).

⁹⁴ See *supra* note 5 and *infra* Part Three, IV for the Proposed Revision of the Uniform Foreign Money-Judgment Recognition Act. The ALI International Jurisdiction and Judgments Project is available at <http://www.ali.org>. For additional discussion of this project, see *infra* Part Three, III.

⁹⁵ See Revised Recognition Act, *supra* note 5, at § 3(c)(7); and ALI Project, *supra* note 94 at § 5(a)(ii). The ALI Project’s language is: “A foreign judgment shall not be recognized or enforced in a court in the United States if the party resisting recognition or enforcement establishes that: . . . (ii) the judgment was rendered in circumstances that raise substantial and justifiable doubt about the integrity of the rendering court with respect to the judgment in question.”

⁹⁶ See ALI Project, *supra* note 94, at Reporters’ Notes 3 to § 5.

⁹⁷ CAL. CODE CIV. PROC. § 1713.4(b)(4) (West 1987 & Supp. 2005); N.Y. C.P.L.R. § 5304(b)(5) (McKinney 1997).

⁹⁸ Restatement (Third) § 482(2)(e). ⁹⁹ 629 F.2d 730 (2d Cir. 1980).

¹⁰⁰ *Zorgias v. SS Helenic Star*, 370 F. Supp. 591 (D.C. E.D. La. 1972).

¹⁰¹ See generally Margarita Trevino, *Stay, Dismiss, Enjoin or Abstain?: A Survey of Foreign Parallel Litigation in the Federal Courts of the United States*, 17 B.U. INT’L. L.J. 79 (1999).

¹⁰² *Laker Airways Ltd. v. Sabena*, 731 F.2d 909 (1984).

b. Rules and proposed strategies: The parallel proceeding rule in the United States allows proceedings to continue until judgment is reached in one case,¹⁰³ thereby subsequently precluding adjudication of other cases. This rule may present strategic options for defendants in major transnational litigation.

Defendant's Strategy:

- After the original suit is filed in a foreign jurisdiction, counter sue in the United States to enjoin the foreign country litigation and to seek a decision on the merits.
- If plaintiff is successful in the foreign country litigation and seeks U.S. recognition of the foreign country judgment, request a stay in the recognition proceedings or seek judicial abstention until the domestic countersuit is concluded.
- If favorable judgment in the domestic countersuit is reached first, argue *res judicata* to prevent recognition of the foreign country judgment.

Plaintiff's Strategy:

- The best defense to parallel litigation in the U.S. is to argue that comity¹⁰⁴ requires that the court dismiss the suit because the overseas adjudication was filed first and, furthermore, that dismissal is in the interests of judicial economy and fairness.¹⁰⁵

c. American Bar Association proposal: The American Bar Association (ABA) proposed a Conflict of Jurisdiction Model Act as a solution to parallel proceedings problems.¹⁰⁶ At this writing, only Connecticut has adopted the Model Act.¹⁰⁷ The Act discourages parallel proceedings by requiring that a party to both proceedings apply to the court for designation of an adjudicating forum within six months of reasonable notice of the proceedings or of selection of an adjudicating forum. The adjudicating forum selection is presumed valid if the decision determining the forum evaluated the statutory factors. The judgment of the adjudicating forum is then binding on enforcement of all other judgments in the same matter, regardless of when rendered.

¹⁰³ See Louise E. Teitz, *Taking Multiple Bites of the Apple: A Proposal to Resolve Conflicts of Jurisdiction and Multiple Proceedings*, 26 INT'L LAW. 21 (1992) [hereinafter *Multiple Bites*]; and Louise E. Tietz, *Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation*, 10 ROGER WILLIAMS UNIV. L. REV. 1 (2004).

¹⁰⁴ The Supreme Court, in *Hilton v. Guyot*, *supra*, Part One, I, at note 8, defined comity as neither a matter of absolute obligation . . . nor of mere courtesy and good will. . . . 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.

¹⁰⁵ See *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). This argument has been successful in inducing U.S. court abstention, for example in *Turner Enter.Co. v. Degeto Film GmB*, 25 F.3d 1512, 1518 (11th Cir. 1994), in which the Eleventh Circuit stated that "In some private international disputes the prudent and just action is to abstain from the exercise of jurisdiction." However, *Quackenbush v. Allstate*, 517 U.S. 706, 719–22, held that federal courts may not abstain in common law actions for damages. Thus, it is unclear whether a federal suit may be dismissed on the basis of comity due to pending foreign proceedings. See also *Goldhammer v. Dunkin Donuts*, 59 F. Supp. 2d 248, 252 (D. Mass. 1999).

¹⁰⁶ See Teitz, *Multiple Bites*, *supra* note 103, at 56–64.

¹⁰⁷ CONN. GEN. STAT. § 50a-200 (Supp. 2005), *et seq.*; see also articles by Tietz, *supra* note 148.

7. Extrinsic and Intrinsic Fraud

The Recognition Act provides that a foreign judgment need not be recognized if it was obtained by fraud, without distinguishing between extrinsic and intrinsic fraud.¹⁰⁸ Extrinsic fraud concerns non-litigated matters, whereas intrinsic fraud concerns the successful party's improprieties during trial, resulting in obtaining a judgment.¹⁰⁹ If defendant can show that plaintiff engaged in extrinsic fraud by misrepresenting or concealing a claim, thus causing defendant to default or consent to judgment, or depriving defendant from fairly or entirely presenting his case, defendant may be able to attack the foreign country judgment collaterally in an independent proceeding in a U.S. court. For example, the court in *de la Mata v. American Life Insurance*¹¹⁰ the court found the plaintiff's failure to inform the Bolivian court of her waiver of all claims under the insurance policy at issue was extrinsic fraud and precluded recognition.

Intrinsic fraud, on the other hand, involving perjury in the proceedings where defendant has had an opportunity to present defenses, is not fatal to subsequent recognition. A Louisiana Federal District Court, for example, enforced an English judgment despite evidence of intrinsic fraud, stating that intrinsic fraud is "an on-the-merits defense which does not preclude the enforcement of the [foreign] . . . judgment."¹¹¹

Be sure to check common law or state statutes barring recognition based on fraud.¹¹²

8. Reciprocity

The common law reciprocity defense may block recognition of a foreign country judgment as non-conclusive if the foreign forum does not reciprocally recognize judgments rendered in similar proceedings in U.S. courts.¹¹³ Today, U.S. courts in states that have adopted the Recognition Act no longer follow this doctrine, although it has not been overruled.¹¹⁴ Although some cases have required reciprocity and denied enforcement based on its absence, those cases usually involved other bases for non-recognition as well.¹¹⁵ The Act itself has no reciprocity provision, although several states have modified the Act to include lack of reciprocity as a ground for permissive non-recognition.¹¹⁶ In both California and New York, although the state Recognition Acts do not provide for a lack of

¹⁰⁸ The proposed revised version in the Reporter's Notes, however, confirms that only extrinsic fraud – "conduct of the prevailing party that deprived the losing party of an adequate opportunity to present his case" – is a ground for non-recognition. See Revised Recognition Act, *supra* note 5 at Reporter's Notes for § 4 (c)(2).

¹⁰⁹ See generally *Rondette v. Peterson*, 518 So.2d 1183 (1988) (intrinsic v. extrinsic fraud); 255 F. Supp. 2d 468 (extrinsic v. intrinsic fraud).

¹¹⁰ 771 F. Supp. 1375 (D. De. 1991).

¹¹¹ *Standard SS Owners Protection & Indemn. Ass'n v. C&G Manne Svcs.*, 1992 WL 11186, *3 (E.D. La. 1992).

¹¹² CAL. CODE CIV. PROC. § 1713.4(b)(2) provides discretionary non-recognition based on extrinsic fraud. See also *Los Angeles Airways, Inc. v. Hughes Tool Co.*, 156 Cal. Rptr. 805, 808 (1979) (discussing the "extrinsic/intrinsic fraud rule"); *Fairchild, Arabatzis & Smith, Inc. v. Prometco Co., Ltd.*, 470 F. Supp 610 (S.D.N.Y. 1979). See generally RUSSELL J. WEINTRAUB, INTERNATIONAL LITIGATION AND ARBITRATION 217 (1994, Supp. 2003).

¹¹³ *Hilton*, *supra*, Part One, I, note 8, at 227–8.

¹¹⁴ See, e.g., *Bank of Montreal v. Kough*, 612 F.2d 467 (9th Cir. 1980); *Nicol v. Tanner*, 310 Minn.68 (1976).

¹¹⁵ See, e.g., *Ogden v. Ogden*, 159 Fla. 604 (1947).

¹¹⁶ Massachusetts, Georgia, Texas, Idaho, Maine, North Carolina, and Florida. Georgia lists lack of reciprocity as a mandatory basis for non-recognition. New Hampshire, which has not adopted the Act, provides reciprocity for Canadian judgments to the extent that Canada recognizes New Hampshire judgments. Campbell, *supra* Introduction, note 2, at US-9, n.23.

reciprocity defense, the common law reciprocity rule often applies if the defendant is a U.S. citizen.¹¹⁷

D. OTHER CONVERSION METHODS

1. Common Law Recognition

In states that have not adopted the Recognition Act, the judgment creditor must bring an action to obtain a domestic judgment based on the state's common law. The common law rule enunciated in *Hilton v. Guyot*¹¹⁸ is still good law today.¹¹⁹ The rule provides that if courts in the foreign adjudicating jurisdiction give conclusive effect to U.S. judgments and the circumstances of the judgment are not offensive to the U.S. court,¹²⁰ the U.S. court will recognize the foreign country judgment.

2. Other Recognition Statutes

A few states that have adopted the Recognition Act nonetheless have modified their statute to incorporate unique approaches to recognizing foreign country money judgments.¹²¹ If your state has not adopted the Recognition Act, check other statutes concerning recognition of foreign (sister-state or foreign country) judgments first before drafting a complaint based on the common law approach.

3. New Complaint

A complaint for recognition not based on the Recognition Act should plead and prove the underlying cause of action *ab initio*.¹²² However, be aware of pitfalls in pleading the underlying cause of action: defendant can use the defense of *res judicata* or collateral estoppel, based on the foreign trial, or plaintiff might have to retry the entire case. However, if the statute of limitations will soon run, you should consider pleading the underlying cause of action alternatively in case the foreign judgment is not recognized in the conversion action, assuming there is proper jurisdiction. Alternatively, the judgment creditor may file a writ of execution of the judgment debt if the state's recognition act permits filing of the foreign country judgment to obtain recognition.¹²³

¹¹⁷ *Hilton*, *supra* Part One, I, note 8.

¹¹⁸ *Id.*

¹¹⁹ *Hilton* was a pre-*Erie* case; subsequent federal court decisions have held that the law of the state in which the federal court sits controls. *Somportex*, *supra* note 64. You should be familiar with case law precedents interpreting the law of recognition and enforcement of foreign judgments in the jurisdiction where you are seeking recognition.

¹²⁰ The reasons set forth in *Hilton* for denying recognition, which are the basis for similar provisions in the Recognition Act, are: unfairness in the underlying proceedings; the foreign court's lack of personal or subject matter jurisdiction; fraud in the proceedings; or violation of public policy.

¹²¹ For example, New Hampshire. See *supra* note 116.

¹²² For example, in a negligence cause of action, the complaint would set out the facts as they occurred in the foreign country to show duty, breach, causation, and damages. Similarly, a contract cause of action should set out facts to show an enforceable agreement between the parties, breach and damages.

¹²³ Campbell, *supra* Introduction, note 2, at US-33-5.

Review: Verify what the foreign country judgment recognition and execution procedures are in the jurisdiction where execution will occur. Determine if the jurisdiction will grant recognition based on

- filing of the authenticated foreign country judgment (if Recognition Act applies;
- complaint for conversion of the foreign country judgment (if Recognition Act does not apply); or
- complaint for the underlying cause of action, *ab initio* (if Recognition Act does not apply).

4. Action for Conversion in Other Jurisdictions: Strategy

If circumstances in the state where you are ultimately seeking conversion do not favor recognition, an alternative strategy to obtaining direct recognition is to seek a judgment in another state under that state's foreign country judgment recognition procedures, and then establish the recognized domestic judgment in your state as a sister-state judgment entitled to full faith and credit. In most states, enforcement of sister-state judgments falls under the Enforcement Act.¹²⁴

E. CURRENCY OF DAMAGES

1. Generally

U.S. courts usually require that judgments be rendered in U.S. currency, unless the parties agree otherwise. If the parties have not agreed to satisfy the judgment in a foreign currency, U.S. courts will follow the common law by applying either the "breach day" rule or the "judgment day" rule for converting foreign currency judgments into U.S. dollars.¹²⁵ California determines which rule to apply by determining whether the obligation or cause of action arose entirely under foreign law or American law. If the obligation or cause of action arose entirely under foreign law, California applies the judgment day rule; whereas, if the obligation or cause of action arose entirely under American law, California applies the breach day rule.¹²⁶ Additionally, if the state has adopted the Claims Act,¹²⁷ the court will follow the Act's provisions. In states that have not adopted the Claims Act, the court will also follow the common law breach day or judgment day rule. Be sure to check state common law or secondary sources to determine which rule your state applies.

¹²⁴ See *supra* Part One, Introduction, note 1. The states that *have not* adopted the Act are California, Indiana, Massachusetts, and Vermont.

¹²⁵ For a discussion of breach day and judgment day rules, see *generally* *Manches v. Gilbey*, 646 N.E.2d 646 (1995).

¹²⁶ See B. E. WITKIN, CALIFORNIA PROCEDURE § 421A (1985, Supp. 2004) [hereinafter WITKIN]. The general rule derives from *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926); *Pecaflor Construction, Inc. v. Landes*, 198 Cal. App.3d 342, 345–6, 243 Cal. Rptr. 605, 607 (1988).

¹²⁷ 13-II U.L.A. 13 (2002 & Supp. 2003). As of this writing, twenty-three jurisdictions have adopted the Claims Act: California, Colorado, Connecticut, D.C., Delaware, Hawaii, Idaho, Illinois, Minnesota, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Utah, Virgin Islands, Virginia, Washington, Wisconsin. See Part One, Instruments, Laws, and Other Materials for the full text of the Act.

2. “Breach Day” and “Judgment Day” Rules

The breach day rule allows the court to convert the foreign currency at the exchange rate prevailing on the date the legal obligation arose, whereas the judgment day rule requires the court to apply the exchange rate in effect on the date the judgment was entered. New York nominally follows the breach day rule, but it converts the foreign currency at the exchange rate prevailing on the date the obligation became due, in some cases the date of entry of judgment.¹²⁸ In *Comptex v. LaBow*,¹²⁹ for example, New York law required payment of the amount specified in the U.S. enforcement judgment, not the one listed in the original English lawsuit.

California, on the other hand, applies the general rule of *Deutsche Bank Filiale Nurnberg v. Humphrey*,¹³⁰ which provides that the judgment day rule applies if the obligation arose entirely under foreign law, but that the breach day rule applies if the obligation arose under American law. This general rule neither favors judgment creditors nor judgment debtors insofar as exchange rate fluctuations might affect the value of the judgment. Both bear the risk equally under this rule.

The debate about which rule to apply has become important only since floating exchange rates replaced fixed exchange rates in the 1970s. In following the general rule, courts do not have to ascertain whether the foreign and U.S. currencies have appreciated or depreciated relative to each other, nor do they then have to balance the interests of the judgment creditor and judgment debtor to avoid unfairness.¹³¹ Moreover, in California, this rule avoids forum-shopping.¹³²

3. Uniform Foreign-Money Claims Act

a. Pleadings: California enacted the Claims Act in 1991,¹³³ and by its terms it applies to actions commenced on or after January 1, 1992. The Act provides that the prayer for damages may be pled in any currency according to the following criteria: (1) the money regularly used between the parties in their regular course of dealing;¹³⁴ (2) the money used at the time of the international trade transaction;¹³⁵ or (3) the money in which the loss will ultimately be felt or incurred by the claiming party.¹³⁶ The Act also adopts a third rule for converting a foreign currency judgment into U.S. dollars: the “payment day” rule. The payment day rule provides for converting the foreign currency based on the exchange rate on the date the judgment is paid.¹³⁷ In allocating the risk of exchange rate fluctuations between the judgment creditor and the judgment debtor, the Act provides that the judgment creditor is entitled to receive the amount due in his own currency or the currency in which the loss was suffered.¹³⁸ The Massachusetts Supreme Court applied this rule in *Manches v. Gilbey*¹³⁹ to the enforcement of an English judgment because

¹²⁸ Monroe Leigh, *Enforcement of Foreign Judgments*, 80 AM. J. INT’L L. 958, 959 (1986) (analyzing the court’s decision in *Comptex, S.A. v. LaBow*, 783 F.2d 333 (1986), to convert an English judgment on date of entry of judgment).

¹²⁹ 783 F.2d 333 (2d. Cir. 1986).

¹³¹ Leigh, *supra* note 128.

¹³³ CAL. CODE CIV. PROC. § 676 (West 1987), *et seq.*

¹³⁵ CAL. CODE CIV. PROC. § 676.4(b)(2) (West 1987).

¹³⁷ CAL. CODE CIV. PROC. § 676.5(a) (West 1987).

¹³⁹ 646 N.E.2d 86, 87 (Mass.1995).

¹³⁰ *Deutsche Bank*, *supra* note 126.

¹³² WITKIN, *supra* note 126.

¹³⁴ CAL. CODE CIV. PROC. § 676.4(b)(1) (West 1987).

¹³⁶ CAL. CODE CIV. PROC. § 676.4(b)(3) (West 1987).

¹³⁸ WITKIN, *supra* note 126, § 423B.

the plaintiff was “entitled to be restored to the position in which it would have been if the defendants had paid their obligations, but is not entitled to more.” The court added that “the payment day rule achieves this result.” The parties are always free, however, to agree before or after the action has commenced as to the currency that will apply in their transaction.¹⁴⁰

Thus, the following are the Claims Act’s major provisions:

- The Act’s provisions may be varied by agreement of the parties; parties to a contract can agree on the currency of judgment if a dispute arises.
- If the plaintiff does not assert a claim in a specified foreign money, the claim will be in U.S. dollars.
- The currency of the claim may be the currency of the transaction, the currency the parties usually use in their course of dealing, or the currency in which the loss was suffered.
- If the judgment debtor pays the claim in another currency, the payment day rule determines the conversion rate, as the closing exchange rate on the day before payment. The judgment debtor has the option of paying the judgment in U.S. dollars based on this conversion rate.
- Foreign-money claims must be asserted in the pleadings in the foreign currency; otherwise, claims will be in U.S. dollars. Determination of the proper currency of the claim is a question of law; defendant may allege and prove that the claim is in a different currency from that which the plaintiff alleged.
- Judgments bear interest at the rate applicable to judgments in the state where recognition is sought. Prejudgment interest is determined as a matter of law governed by state laws.

b. Defenses: The determination of the proper money is a threshold question, which the court determines, if contested, according to the following factors: factual issues regarding expenditures, custom, usage, or course of dealing.¹⁴¹ Furthermore, if the transaction impacts more than one area, the court may render judgment in more than one currency.¹⁴²

Under the Act, a defendant may assert and prove the following defenses:

- That all or part of the claim is in a different money than that asserted by plaintiff;
- That there is a setoff, recoupment or counterclaim in any money regardless of the money of the other claims;
- That the determination of the proper money is a question of law.

¹⁴⁰ Claims Act § 3; CAL. CODE CIV. PROC. § 676.3 (West 1987). For in-depth background and analysis of the Act, see Fairfax Leary & Howard T. Rosen, *The Uniform Foreign-Money Claims Act*, 12 U. PA. J. INT’L BUS. L. 51 (1991).

¹⁴¹ CAL. CODE CIV. PROC. § 676.6 (West 1987).

¹⁴² WITKIN, *supra* note 126, § 423F.

IV. PHASE THREE: EXECUTING A CONVERTED JUDGMENT IN U.S. COURTS

Once you have pursued a recalcitrant defendant halfway around the world to obtain a valid foreign judgment, you must still employ judicial means to enforce and execute the judgment. A general summary of execution procedures, which may vary from U.S. jurisdiction to U.S. jurisdiction, follows.

A. PLAINTIFF: LOCATING AND FREEZING ASSETS

If you have followed the checklist in Part One Section I, you will have located defendant's assets in the jurisdiction that can be used to satisfy the judgment, through private investigation and judicial discovery. State procedural rules govern execution of a judgment, so you should follow the procedure for execution of civil judgments in your state. For example, in California, a judgment creditor may apply to have a judgment debtor appear before the court to provide information in executing the judgment, by obtaining from the court an order to show cause.¹ Be aware that, under The Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters,² if the defendant is a national of a signatory country, a U.S. court may request through letters rogatory that documents or information be provided. However, California courts may now accord less deference to the foreign defendant's special protection under the Evidence Convention, based upon a U.S. Supreme Court decision.³ The Supreme Court held that the Convention does not provide either exclusive or mandatory procedures for obtaining documents from a foreign party located in a foreign jurisdiction. Rather, a court may choose to apply the Convention's provisions as an optional procedure. Thus, a foreign judgment debtor may be subject to the same jurisdictional reach as a domestic judgment debtor.

Importantly, the Supreme Court did not find that the language or intent of the Hague Evidence Convention preempted state law in obtaining evidence from parties under the court's personal jurisdiction. Consequently, in New York and under the Federal Rules of Civil Procedure, the judgment creditor may compel disclosure of assets from any person including the judgment debtor.⁴ In fact, the court in *Societe Nationale*⁵ held that discovery against a French defendant could take place according to the Federal Rules of Civil Procedure without using the Hague processes, despite a French statute weighing in favor of compliance with the Evidence Convention.

Once the court has handed down the judgment, the judgment creditor files it with the court clerk and serves the judgment debtor, the judgment creditor may want to take

¹ CAL. CODE CIV. PROC. § 708.110(a) (West 1987 & Supp. 2005).

² 1970 Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, 23 UST 2555, 847 UNTS 231 [hereinafter Evidence Convention]; see also 28 U.S.C. § 1781 (regarding transmittal of letters rogatory or requests).

³ ROBERT I. WEIL & IRA A. BROWN, JR., CIVIL PROCEDURE BEFORE TRIAL, ch. 8:50 (1995), citing *Société Nationale Industrielle Aérospatiale v. U.S. District Court for the Southern District of Iowa*, 482 U.S. 522 (1987); see generally SCHWARTZ & AHART, *supra* Part One, III, note 12; Patrick J. Borchers, *The Incredible Shrinking Hague Evidence Convention*, 38 TEX. INT'L L.J. 73 (2003).

⁴ N.Y. C.P.L.R. § 5223 (McKinney 1997 & Supp. 2005); FED. R. CIV. P. 69.

⁵ See *Societe Nationale*, *supra* note 3 at 544 n. 29 and 544–6.

steps to restrain the judgment debtor from transferring target assets.⁶ Under state law, the procedure for enforcing a money judgment is generally by writ of execution, which allows the judgment creditor to obtain discovery from any person, including the judgment debtor,⁷ about the location of assets within the court's jurisdiction. This is only an intermediate step, however, which creates no interest in the frozen assets.

Thus, after ascertaining the extent and location of the judgment debtor's assets and obtaining the judgment, the judgment creditor may want to perfect a lien on the defendant's target assets, which is generally the quickest and least expensive method for obtaining an interest in the judgment debtor's assets. In California, the judgment creditor files the judgment with the court, obtains a writ of execution, and then levies on the asset, creating an execution lien whose duration is two years from the writ's issuance date, unless the judgment is satisfied sooner.⁸ The judgment creditor perfects the lien by filing it with the state secretary of state and/or the county clerk where the property is located.⁹ In New York, a copy of recognition of the judgment must be filed within 90 days of authentication, along with an affidavit stating the amount not yet paid.¹⁰ This entitles the judgment to the same treatment that a New York judgment would receive.

B. COLLECTING THE JUDGMENT

The next step is the transfer of assets from the judgment debtor to the judgment creditor. If the judgment debtor still refuses to convey the property, the judgment creditor may petition to the court to issue a writ of execution of *feri facias*.¹¹ The writ of execution will levy on certain property, usually real property but also personal property, by describing the property to be seized. The court clerk forwards the writ to the sheriff, who then levies by seizing the property. The sheriff then sells the property and turns the proceeds over to the judgment creditor.

In New York, for example, the judgment creditor has an alternative to the writ of execution: the "turnover order," whereby the court will order the judgment debtor to turn over the property to the judgment creditor for satisfaction of the judgment.¹² The court may hold the judgment debtor in contempt for failure to comply with the order.

C. FILING SATISFACTION OF JUDGMENT

Once the judgment creditor has received the entire amount of the judgment, the court may require some notice that the judgment has been satisfied. If the judgment was satisfied by writ of execution, notice will usually have been met because the court directed the sale; however, if the judgment debtor satisfied the judgment voluntarily, the judgment creditor may have to file a satisfaction of judgment with the court.¹³

⁶ N.Y. C.P.L.R. § 5222 (McKinney 1997 & Supp. 2005).

⁷ FED. R. CIV. P. 69(a).

⁸ CAL. CODE CIV. PROC. § 697.710 (West 1987 & Supp. 2005); WITKIN, *supra* Part One, III. note 126, § 247A.

⁹ Editor's Notes to CAL. CODE CIV. PROC. § 697.670 (West 1987 & Supp. 2005). See generally 9 THEODORE EISENBERG, DEBTOR-CREDITOR LAW, ch. 37A (1988).

¹⁰ N.Y. CPLR § 5402 (McKinney 1997 & Supp. 2005). ¹¹ *Id.*

¹² N.Y. C.P.L.R. § 5225 (McKinney 1997 & Supp. 2005).

¹³ CAL. CODE CIV. PROC. § 724.010 (West 1987 & Supp. 2005), *et seq.*

V. CONCLUSION

State law generally governs recognition, enforcement, execution, and satisfaction in the United States of a judgment rendered abroad. Many states have adopted and codified the uniform acts treating recognition, enforcement, and foreign-money claims, while others follow common law. Even among those states adopting one or more of the uniform acts, legislatures may have modified the acts' provisions to accord with state procedure or public policy. As in any other areas of practice, the transnational law practitioner must become familiar with the governing state and federal codes and rules of procedure, case law, and international agreements affecting recognition and enforcement in the United States of judgments rendered abroad. Where a jurisdiction's law is unclear, you, as a practitioner, will have the opportunity to persuade the court to follow another jurisdiction favorable to your client, thus creating new law in your jurisdiction.

Bibliography

INTRODUCTION

This is a selected bibliography of primary and secondary materials on the recognition and enforcement in the United States of foreign country judgments. The time span represented by the cited publications is the nineteenth century through June 2004, with an emphasis on works published in the last three decades.¹ Works regarding enforcement of money judgments handed down from courts form the core of the bibliography. Therefore, although some general and introductory materials concerning non-money judgments (such as family law matters) and arbitral awards are included, an exhaustive listing of those materials is beyond the scope of this bibliography.

Only materials published in English are included, with the exception of a few materials in German. The anticipated user of this bibliography is a legal practitioner who seeks to enforce foreign judgments in the United States.

In each section the materials are divided by type, beginning with the primary materials and followed by secondary materials. Each type of material is subdivided into topics, with general topics presented first and specific topics following. The overall organization of materials in each section, as well as the order of citations in each topic area, follows rule 1.4 of *A Uniform System of Citation*. Citation forms are, wherever possible, in *Bluebook* format with additional information provided where available, such as city and publisher.

Every effort was made to confirm sources cited. In order to provide the most complete listing, however, some citations have been taken from bibliographical listings of other materials and therefore may be subject to error from multiple transpositions. The author invites readers to bring to his attention citation errors and other useful sources.

A. APPLICABLE LAWS AND OTHER LEGAL INSTRUMENTS

1. Federal Laws

a. Jurisdiction

Federal Question, 28 U.S.C. § 1331 (2000).

Diversity of Citizenship; Amount in Controversy; Costs, 28 U.S.C. § 1332(a)(2) (2000).

¹ All primary treaty materials and secondary materials are cumulative (i.e., they are listed, although they may be subsequently superseded or outdated) with the exception of those treaties that have revised editions, in which case the most recent edition found is listed. U.S. statutes and foreign statutes are those in effect in 2004.

b. Service of Process

Service in Foreign and International Litigation, 28 U.S.C. § 1696 (2000).

Summons; Service with Complaint; By Whom Made, FED. R. CIV. P. 4(c) (2004).

Service upon Individuals in a Foreign Country, FED. R. CIV. P. 4(F) (2004).

Service upon Foreign, State, or Local Governments, FED. R. CIV. P. 4(j) (2004).

c. Pleadings of Special Matters

Judgment, FED. R. CIV. P. 9(e) (2004).

d. Judicial Procedure

Foreign Official Documents, 28 U.S.C. § 1741 (2000).

Proof of Official Record, FED. R. CIV. P. 44 (2004).

Full Faith and Credit, 28 U.S.C. § 1738 (2005)

e. Registration of Judgment

Registration of Judgments for Enforcement in Other Districts, 28 U.S.C. § 1963 (2000).

f. Relief from Judgment or Order

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc., FED. R. CIV. P. 60(b) (2004).

g. Stay of Proceedings to Enforce Judgment

Stay of Proceedings to Enforce a Judgment, FED. R. CIV. P. 62 (2004).

2. State Laws (including District of Columbia)²

| | |
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| Alabama | Ala. Code 1975 §§ 6-9-230 to 6-9-238 [UEFJA] |
| Alaska | A.S. 09.30.100 to 09.30.180 [UFMJRA] 09.30.200 to 09.30.270 [UEFJA] |
| Arizona | A.R.S. §§ 12-1701 to 12-1708 [UEFJA] |
| Arkansas | A.C.A. §§ 16-66-601 to 16-66-608 [UEFJA] |
| California | West's Ann. Cal. C.C.P. §§ 676 to 676.16 [UFM-CA] §§ 1713 to 1713.8 [UFMJRA] |

² Abbreviations used in this subsection are as follows: Uniform Foreign Money-Judgments Recognition Act = UFMJRA; Uniform Enforcement of Foreign Money Judgments Act = UEFJA; Uniform Foreign-Money Claims Act = UFM-CA; Justice of Peace = JOP.

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| Colorado | West's C.R.S.A. §§ 13-62.1-101 to 13-62.1-118 [UFM-CA] §§ 13-62-101 to 13-62-109 [UFMJRA] §§ 13-53-101 to 13-53-108 [UEFJA] |
| Connecticut | C.G.S.A. §§ 50a-50 to 50a-65 [UFM-CA] §§ 50a-30 to 50a-38 [UFMJRA] §§ 52-604 to 52-609 [UEFJA] |
| Delaware | 10 Del. C. §§ 5201 to 5215 [UFM-CA] §§ 4801 to 4808 [UFMJRA] §§ 4781 to 4787 [UEFJA] |
| District of Columbia | D.C. Official Code, 2001 ed. §§ 15-901 to 15-914 [UFM-CA] §§ 15-381 to 15-388 [UFMJRA] §§ 15-351 to 15-357 [UEFJA] |
| Florida | West's F.S.A. §§ 55.601 to 55.607 [UFMJRA] §§ 55.501 to 55.509 [UEFJA] <i>Fla. Stat. Ann.</i> 55.605 (West 1994 & Supp. 2004) |
| Georgia | O.C.G.A. §§ 9-12-110 to 9-12-117 [UFMJRA] §§ 9-12-130 to 9-12-138 [UEFJA] <i>Ga. Code Ann.</i> 9-12-114 (1993) |
| Hawaii | HRS §§ 658C-1 to 658C-9 [UFMJRA] §§ 658B-1 to 658B-14 [UFMCA] §§ 636C-1 to 626C-8 [UEFJA] |
| Idaho | I.C. §§ 10-1501 to 10-1517 [UFM-CA] §§ 10-1401 to 10-1409 [UFMJRA] §§ 10-1301 to 10-1308 [UEFJA] <i>Idaho Code</i> 10-1404 (Michie 2004) |
| Illinois | S.H.A. 735 I.L.C.S. 5/12-630 to 5/12-645 [UFM-CA] 5/12-618 to 5/12-626 [UFMJRA] 5/12/650 to 5/12-657 [UEFJA] |
| Iowa | I.C.A. §§ 626B.1 to 626B.8 [UFMJRA] §§ 626A.1 to 626A.8 [UEFJA] |
| Kansas | K.S.A. §§ 60-3001 to 60-3008 [UEFJA] |
| Kentucky | K.R.S. 426.950 to 426.975 [UEFJA] |

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| Louisiana | L.S.A.-R.S. 13:4241 to 13:4247 [UEFJA] |
| Maine | 14 M.R.S.A. §§ 8501 to 8509 [UFMJRA] §§ 8001 to 8008 [UEFJA] <i>Me. Rev. Stat. Ann. tit. 14</i> , 8505 (West 2003) |
| Maryland | Maryland Code, Courts, and Judicial Proceedings, §§ 10-701 to 10-709 [UFMJRA] §§ 10-801 to 10-807 [UEFJA] |
| Massachusetts | M.G.L.A. ch. 235, § 23A [UFMJRA] Mass. Gen. Laws. Ann. ch. 235, 23A (West 2000) |
| Michigan | M.C.L.A. §§ 691.1171 to 691.1179 [UEFJA] §§ 691.1151 to 691.1159 [UFMJRA] |
| Minnesota | M.S.A. §§ 548.40 to 548.53 [UFM-CA] §§ 548.35 [UFMJRA] §§ 548.26 to 548.33 [UEFJA] |
| Mississippi | Miss. Code 1972 §§ 11-7-301 to 11-7-309 [UEFJA] |
| Missouri | V.A.M.S. §§ 511.770 to 511.787 [UFMJRA] V.A.M.S. §§ 511.760 [UEFJA – 1948 Act] V.A.M.R. Civ. Proc. R. 74.14 [UEFJA – 1964 Act] |
| Montana | M.C.A. §§ 25-9-601 to 25-9-609 [UFMJRA] §§ 25-9-701 to 25-9-715 [UFM-CA] §§ 25-9-501 to 25-9-508 [UEFJA] |
| Nebraska | R.R.S. 1943 §§ 25-1587.01 to 25-1587.09 [UEFJA] |
| Nevada | N.R.S. §§ 17.410 to 17.660 [UFM-CA] §§ 17.330 to 17.400 [UEFJA] |
| New Hampshire | R.S.A. 524-A:1 to 524-A:8 [UEFJA] |
| New Jersey | N.J.S.A. §§ 2A:49A-1 to 2A:49A-15 [UFM-CA] §§ 2A:49A-16 to 2A:49A-24 [UFMJRA] §§ 2A:49A-25 to 2A:49A-33 [UEFJA] §§ 2A:82-4 to 2A:82-4.7 |
| New Mexico | N.M.S.A. 1978 §§ 39-4C-1 to 39-4C-16 [UFM-CA] §§ 39-4B-1 to 39-4B-9 [UFMJRA] §§ 39-4A-1 to 39-4A-6 [UEFJA] |

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| New York | McKinney's C.P.L.R. 5301 to 5309 [UFMJRA] 5401 to 5408 [UEFJA] |
| North Carolina | G.S. §§ 1C-1820 to 1C-1834 [UFM-CA] §§ 1C-1800 to 1C-1808 [UFMJRA] §§ 1C-1701 to 1C-1708 [UEFJA] N.C. <i>Gen. Stat.</i> 1C-1804 (2003) |
| North Dakota | N.D.C.C. 32-41-01 to 32-41-13 [UFM-CA] 28-20.1-01 to 28-10.1-08 [UEFJA] 28-20.2-01 to 28-20.2-06 [UFMJRA] |
| Ohio | R.C. §§ 2337.01 to 2337.15 [UFM-CA] §§ 2329.90 to 2329.94 [UFMJRA] §§ 2329.021 to 2329.027 <i>Ohio Rev. Code Ann.</i> 2329.92 (West 2004) |
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| West Virginia | W. Va. Code 55-14-1 to 55-14-8 [UEFJA] |
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