

## University of Miami Law School Institutional Repository

---

University of Miami Inter-American Law Review

---

6-1-1972

# Recognition and Enforcement of Foreign Decrees: Argentina, A Case Study

T.J. Skola

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

---

### Recommended Citation

T. J. Skola, *Recognition and Enforcement of Foreign Decrees: Argentina, A Case Study*, 4 U. Miami Inter-Am. L. Rev. 206 (1972)  
Available at: <http://repository.law.miami.edu/umialr/vol4/iss2/3>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## RECOGNITION AND ENFORCEMENT OF FOREIGN DECREES: ARGENTINA, A CASE STUDY

THOMAS J. SKOLA\*

### INTRODUCTION

The recognition of a foreign judgment by a domestic court and granting it the same executory force as a domestic decision is commonly referred to in civil and common law systems alike as an *exequatur* proceeding. *Exequatur* proceedings contrast sharply with procedures surrounding the introduction of a foreign judgment into a domestic court to serve as a public document for purposes of evidence or information in another judicial proceeding since only in the former do treaty provisions, the requirements of reciprocity and comity and other varied prerequisites of domestic law become significant.

Technological innovation and the resulting commercial sophistication and mobility of merchants has greatly increased the reliance of plaintiffs on *exequatur* proceedings as a means of seeking otherwise unobtainable claims. This resort to *exequatur* proceedings in the adjudication of claims between people of different legal systems has been footnoted by many attempts to secure some type of consensus on the concepts and procedures practiced in this general area of the law.<sup>1</sup> A recent application of these efforts in New York State is the incorporation into that State's law of the "Uniform Foreign Money Judgments Recognition Act" (CPLR Art. 53), which codifies existing decisional law respecting the recognition of foreign country money judgments. Said uniform act has also been adopted by seven other States of the Union.

Any treatment of a legal device applying the procedural intricacies of many different legal systems leads to myriad conflicts of law considerations and must for practical reasons be limited in scope and substance. Such limitation of scope and substance should isolate the principal legal issues of an *exequatur* proceeding without sacrificing the practical

---

\*Associate, Curtis, Mallet-Prevost, Colt & Mosle, New York City; B.A. University of Rochester, 1965; Facultad de Derecho, Universidad de Chile, 1965-66; Universidad de Madrid, 1966-67; J.D., Columbia University Law School, 1970.

value of the resulting analysis. The hypothetical problem approach appears to achieve these objectives. Accordingly, I have chosen to confine myself to an analysis of *exequatur* as it applies to an attachment order issued by a New York federal court for recognition and execution in the Republic of Argentina. An attachment order has been chosen as the object of the hypothetical *exequatur* proceeding even though the contrived factual situation somewhat complicates the resulting legal analysis of the Argentine *exequatur* provisions in order to emphasize more cogently some of the underlying policy and conceptual issues related thereto. The objective throughout, nevertheless, remains a detailed presentation of the factors which an Argentine court takes into consideration when requested to recognize and execute a foreign court's pronouncement.

### HYPOTHETICAL SITUATION

A situation has been created in which the Plaintiff plans to initiate a lawsuit in a New York federal court against an Argentine national who has bank accounts in the United States and other assets located in Argentina. The Argentine citizen is believed to be in the process of transferring the funds in his United States bank accounts to Argentina and secreting them along with his other Argentine assets in the event that the Plaintiff successfully initiates and pursues said lawsuit in the United States and seeks to enforce the resulting judgment in Argentina through Argentine judicial channels.

For analytical purposes it has been assumed that the underlying cause of action is based on default of payment on a properly executed promissory note and that the Plaintiff is hesitant to initiate a lawsuit directly in the Argentine courts due to the prohibitory costs of local Argentine counsel, the lack of familiarity with and confidence in the judicial system of the Defendant's place of domicile and the relatively small amount of the claim being litigated. It has also been assumed that the Defendant has no other assets in the United States except the cited bank accounts and that he had succeeded in transferring said bank accounts from New York City to Argentina after the issuance of the preventive attachment order by the New York federal court, but before said attachment order was levied by the United States Marshal.

### *Issue*

Given these circumstances, the principal concern of the Plaintiff is that even if he is ultimately successful in his New York federal court

action the Defendant's lack of assets in New York State will prevent execution there of such a judgment and said judgment will remain illusory unless an *exequatur* proceeding on the same is initiated in Argentina. The resulting delay would give the Defendant sufficient time to secrete his property in Argentina so as to make remote even the successful execution of a favorable *exequatur* proceeding on the judgment in Argentina. Time being of crucial significance, therefore, the Plaintiff's problem becomes one of determining the quickest way of enforcing his issued but unlevied attachment order as a provisional remedy in Argentina.

The direct initiation of a preventive attachment proceeding in Argentina remains an alternative. The Plaintiff's factual situation appears to qualify under the requirements set forth in Art. 209(2) or (3)<sup>2</sup> and perhaps 212(3)<sup>3</sup> of the Argentine Code of Civil and Commercial Procedure (CCP), although the latter depends upon whether the order of attachment in the United States is considered a judgment (*sentencia*) for purposes of Argentine law thereunder (see subsequent discussion.) There is also some doubt whether such a preventive attachment action could be brought in Argentina as a provisional remedy without also initiating there the primary suit. The first paragraph of Art. 196<sup>4</sup> of the CCP states that Argentine judges should refuse to rule on such provisional remedies when the underlying action does not lie within their jurisdiction. The choice of verb, *deberán* (*abstenerse*) in particular, suggests a stringent interpretation, although the last two inserts do treat the exception.

Another alternative is to petition the New York federal court which issued the attachment order to send letters rogatory to an Argentine judge in Buenos Aires requesting that he, pursuant to Art. 131<sup>5</sup> or 517<sup>6</sup> of the CCP, levy said previously issued order of attachment. Although it is not common practice to resort to this device to levy orders of attachment, experience under the Montevideo Treaty and the possibility of an expansive interpretation of "request" in Title 28 USC 1781<sup>7</sup> as a result of new legislation proposed in the area of international cooperation appear to warrant such an effort.

Under New York State law [Art. 64 of The Federal Rules of Civil Procedure (FRCP) provides that federal courts will follow the law of the State in which they sit in attachment proceedings] an attachment lien comes into existence when the order of attachment is delivered to the sheriff by the court.<sup>8</sup> Thus the Plaintiff had a lien on the Defendant's bank accounts before the Defendant removed them from New York City and would appear to qualify for letters rogatory treatment under Title 28

USC 1781. Furthermore, Art. 26(b) of the FRCP and Art. 6220 of the Civil Practice Law and Rules (CPLR) could be utilized by the Plaintiff to petition the court to compel the Defendant's New York City banks "at any time after the granting of an order of attachment and prior to the judgment" to disclose all information necessary to the enforcement of such an order of attachment.

Assuming that the New York federal court decides that such letters rogatory are warranted under Title 28 USC 1781, and the disclosure provisions succeed in gathering sufficient detail as to the nature and location of the Defendant's assets in Buenos Aires, the crucial issue thus becomes: Should Argentine judges execute requests for the extra-territorial levy of attachments on assets located within their territory when such requests are made by judges of a foreign jurisdiction? This issue, in turn, encompasses the question of whether the jurisdiction and competence of the foreign court should be reviewed on the merits by the Argentine court in the *exequatur* proceedings, and if so, whether the jurisdiction and competence of the requesting court should be determined by standards set by Argentine law.

### *Analysis*

#### The Great Debate

Much controversy has ranged over the scope of *exequatur* proceedings in the "international order" and to what degree Argentine judges will permit the forced execution of foreign resolutions that are not satisfied voluntarily by the Defendant without reviewing the merits of the foreign cause of action (*revision au fond*.) Lazcano, Podetti and Moreno adhere to the more traditional view which gives the *exequatur* proceeding more range and relies upon a strict construction of Art. 1 of the CCP<sup>9</sup> and Art. 10 and 11 of the Argentine Civil Code (CC)<sup>10</sup>—thereby merging choice of law and jurisdiction concepts—to review the jurisdiction and competence of the foreign judge on the merits. Couture and three fairly recent Argentine cases dealing with Uruguayan<sup>11</sup> and Paraguayan<sup>12</sup> letters rogatory and a Brazilian attachment<sup>13</sup> regard *exequatur* proceedings less stringently and emphasize the "international order" and ideas of comity and international cooperation. The principal points of argument and their rebuttals can be summarized as follows:

I. The failure to review on the merits prevents Argentina from exercising "its eminent right of safeguard over the property of the individual which has its juridical location within the territory."<sup>14</sup> In arguing that

the sovereignty of the nation is inalienable and constitutes the very source of jurisdiction, Lazcano stresses Art. 1 of the CCP—the jurisdiction of Argentine courts cannot be extended except in matters exclusively patrimonial, but even in these cases it cannot be extended to foreign judges who act outside the Republic—and Art. 10 and 11 of the CC—Argentine law governs over property located in Argentina.

Couture answers such an argument by stressing the juridical nature of attachment: (i) it does not purport to enforce the rights of ownership to such assets, but is merely a limitation on the rights of the owner to dispose of his property; (ii) it guarantees the efficiency and superiority of the judicial function by keeping judicial acts from becoming illusory.<sup>15</sup>

II. The failure to review on the merits contravenes the public order, public policy and security of the Nation.

Rebuttal of this point includes the following arguments: (i) the power of eminent domain is not diminished; (ii) it is a mere temporary, provisional remedy; (iii) attachment simply prevents the debtor from changing the location of his assets; (iv) there remains the safeguard afforded by allowing domestic creditors priority over foreign creditors.

III. The failure to review on the merits disrupts the general principle that the power of foreign judges cannot be extended over objects outside their forum.

The opposing view contends that: (i) the judge who orders the writ of attachment neither judges nor prejudices the primary action; (ii) the sale of the attached object remains valid; (iii) the assets were within the jurisdiction of the forum when the order was issued.

Recent cases involving Argentina and countries signatory to the Montevideo Treaty tend to ignore reviewability on the merits. A summary of Argentina's experience in this area under the treaty may serve as common ground upon which to base some substantive conclusions of law.

#### Experience under the Treaty of Montevideo

The Treaty of Montevideo contains two provisions which give letters rogatory and judgments of the signatory countries—Peru, Paraguay, Uruguay, Bolivia and Argentina—an advantage over those of non-member countries. Art. 5 declares that all judgments of all member countries should have the same effect as in the country where issued and Art. 11-13 outline the necessary procedures and stress the goal of international cooperation with respect to the issuing and processing of letters rogatory. Couture points

out that the various purposes for which letters rogatory may be used thereunder are not exhaustive and thus concludes that there was an assumption that common practices pre-existed the treaty and were necessarily incorporated into it.<sup>16</sup> These provisions have been interpreted by Argentine courts to mean no review on the merits, only on the formal procedures followed, except in the areas where international jurisdiction has been specifically reserved to the Argentine courts.

A compelling reason for extending similar *exequatur* guidelines to nonsignatory countries is the reference by Rocca and Griffi, in their commentary<sup>17</sup> on the amended articles of the CCP treating *exequatur* (Art. 517-519) to the rationale offered by Judge Teran in the *Banco de Crédito* case as the prevailing authority in this general area. Said rationale expressly rejected review on the merits of Uruguayan letters rogatory. Furthermore, Art. 517-519 of the CCP are no longer dependent upon the principle of reciprocity for their effectiveness, Art. 517 making specific provision for countries with which treaties have not been signed.

One must take into account, however, the traditional tendency of Argentine courts to restrict application of the Montevideo Treaty to matters falling strictly within it. Likewise, Argentine judges themselves are accustomed to taking the procedural steps necessary therein and tend to think of the problem of international procedure as one of cooperation among judicial officials. In the United States, on the other hand, the parties themselves, through their attorneys, are accustomed to taking the appropriate procedural steps and the problems of international procedure is presented more in terms of territorial limitations on judicial jurisdiction and international cooperation. These basic conceptual differences may impede attempts to stretch Argentine judicial administration under the treaty into a universal practice.<sup>18</sup>

#### No Review on the Merits

*Augusto de Lisi v. Vincente Silenzi* [Civil Chamber (22) of the Capital, 46 Jur. Arg. 365; 9/12/34] supports the view that Argentine courts will not review a foreign judgment on the merits. In this particular case, an Argentine court refused to review a New York judgment on the merits, even though the underlying cause of action was based on a contract executed in violation of Art. 1193 of the Argentine Civil Code (CC).<sup>19</sup> Therefore, for purposes of this particular subdivision, we shall assume that both the issuance of letters rogatory and the issuance of the order of attachment by the New York federal judge will not be reviewed on the merits by the Argentine court. There still remains, however, the question

of whether such a request meets the requirements of the *exequatur* provisions, as set forth in Art. 517 of the CCP.

There is much doubt, at a preliminary level, whether the order of attachment would be considered a judgment for purposes of Art. 517 of the CCP and thus even subject to the requisites set forth thereunder. If such an order of attachment is not deemed to be a judgment under Argentine law, then the letters rogatory would appear to be governed solely by Art. 131 of the CCP<sup>20</sup> and the corresponding undefined ideas of international assistance which surround it. Goldschmidt generalizes about letters rogatory and states that they are usually honored in Argentina if: (i) they are duly authenticated (according to the procedures of the forum); (ii) the Court issuing them is a court of competent jurisdiction; and (iii) enforcement does not violate Argentine public order.<sup>21</sup> The *Banco de Crédito* case supports this approach by drawing a distinction between a judgment and a precautionary measure which does not affect any rights and which can be challenged by the debtor in the lawsuit that motivated it.

Nevertheless, for analytical purposes hereunder and in an effort to achieve the hereinabove stated objective of delineating the Argentine legal provisions governing *exequatur*, it is assumed that the New York federal court's attachment order will be considered a judgment for purposes of Art. 517 of the CCP and thus subject to the stipulations contained therein before it may be executed in Argentina.

The first point of analysis under Art. 517 of the CCP is its requirement that the judgment be the result of an *in personam* action or of an *in rem* action if it concerns personal property which has been transferred to Argentina during or *after* the lawsuit initiated abroad. Since we have already stipulated that the Defendant transferred his bank accounts to Argentina after the issuance of the attachment order, but before said order was levied by the United States Marshal, there remains little doubt that the personal property in the instant situation (bank accounts) left New York City *after*, or at least during the attachment action initiated in New York City. There is a remote possibility, however, that the last sentence of Art. 517(1) may be construed to require that the bank accounts be transferred *during* or *after* the primary lawsuit, that is to say, the default payment lawsuit, is initiated in the New York federal court in order for the attachment order issued thereunder to qualify for *exequatur* treatment in Argentina. Nevertheless, I conclude that the phrase *juicio tramitado en el extranjero* refers to the attachment action itself and that this particular condition of Art. 517(1) is properly met in the instant situation.

In addition thereto, Art. 517(1) also stipulates that the judgment be



*res judicata* (con autoridad de cosa juzgada en el estado en que se ha pronunciado) in the foreign jurisdiction. An order of attachment is normally considered a "provisional remedy," offering only temporary relief thereunder and subject to modification by the issuing court, and thus the instant order does not appear to be *res judicata* for purposes hereof. Nevertheless, assuming that the time during which the Defendant may move to vacate or modify said order of attachment has elapsed and the Plaintiff has already initiated the primary lawsuit in the New York federal court, the Plaintiff may have some basis upon which to convince the Argentine court that the attachment order has become *cosa juzgada* in New York State since the attachment action itself has terminated and the order resulting thereof can only be annulled "by operation of law if the primary action abates or is discontinued, or if final judgment is rendered for the Defendant or judgment for the Plaintiff is fully satisfied."<sup>22</sup> In all events, this point remains a definite obstacle to any recognition and enforcements of the attachment order in Argentina pursuant to Art. 517 of the CCP.

The necessity of personally serving (*personalmente citada*) the Defendant under Art. 512(2) of the CCP does not appear to be a source of concern in the instant situation, since the inclusion in the first paragraph of Art. 517 of an *in rem* action on personal property removed from the foreign jurisdiction appears to support the position that the Plaintiff does not have to personally notify the Defendant of such an event before the subsequent order was issued in order to qualify thereunder. It appears sufficient for purposes thereof that the Plaintiff personally notifies the Defendant of the attachment action at any time before said order is levied by the appropriate Argentine judicial officials. This construction is based, in part, on the fact that service or notice in civil law countries is normally a procedural step and not a primary base of jurisdiction. Therefore, it appears that the Plaintiff's jurisdictional base is furnished by Art. 517(1) of the CCP and that the Plaintiff must merely comply with the notification provisions of Art. 339-345 of the CCP<sup>23</sup> in order to meet the notice condition of Art. 517(2) of the CCP.

The requirement in Art. 517(3) of the CCP that the obligation upon which the foreign lawsuit is based be valid under Argentine law referred, in its previous context, exclusively to foreign legal obligations which were against Argentine public policy (Art. 14 of the CC) and did not necessarily require a review of the underlying obligation on the merits.<sup>24</sup> If this construction still obtains, however, the inclusion of a specific public policy provision in Art. 517(4) of the amended CCP would appear to be redundant and unnecessary in this context. No new cases have been uncovered which suggest that Argentine courts will construe Art. 517(3) and (4)

together, as amended, any differently than they construed the previous public policy provisions. Nevertheless, neither the obligation underlying the attachment and summary actions nor the order of attachment issued thereunder appear to be against the public policy of Argentina in this particular instance.

Art. 517(5) of the CCP provides that the judgment be valid in the foreign forum. There is little doubt in the instant case that the cited order of attachment is valid in the New York federal court since it was filed timely by the Plaintiff and not opposed by the Defendant. Likewise, it is assumed that there is no prior or simultaneous legal action pending in Argentine courts by third parties claiming an interest in the Defendant's assets [Art. 517(6) of the CCP].

#### Review on the Merits

In the event that the Argentine judge also decides to review the request to levy the order of attachment on the merits, he must first determine whether the New York federal judge was competent to order such a writ of attachment under standards of Argentine law. Argentine legal provisions concerning jurisdiction and competence thus become significant. Art. 6 of the CCP clearly states that the judge of the primary lawsuit shall be competent in matters involving the enforcement and effect of judgments and the issuance of preliminary or provisional remedies.<sup>25</sup> Similarly, Art. 5(2) of the CCP provides that in *in rem* actions the judge of the Defendant's domicile or the judge where said property is located shall have jurisdiction thereof.<sup>26</sup>

Jurisdiction and competence in the underlying cause of action based on default of payment on a properly executed promissory note appear to be governed by Art. 5(3) of the CCP<sup>27</sup> and Art. 1216 of the CC.<sup>28</sup> Art. 5(3) of the CCP provides that jurisdiction shall lie with the judge of the place of performance of the obligation and, failing this, at the option of the Plaintiff, with the judge in either the Defendant's domicile or where the contract was executed, provided that the Defendant is present at the time of service. Art. 1216 of the Civil Code permits the Plaintiff to initiate an action in the Defendant's domicile or in the place of contractual performance, even though the Defendant may not be present. Commentary by Roca and Griffi on Art. 1 of the CCP<sup>29</sup> is as follows: "In international type negotiations—import-export—it is frequent that the Argentine courts will defer consideration of the contracts to other courts."<sup>30</sup>

There does not appear, therefore, to be much basis upon which an Argentine court can decide that the New York federal judge was incom-

petent to issue the order of attachment or letters rogatory. Not only was said judge a member of the same court which may entertain jurisdiction in the primary lawsuit, but the property, object of the preventive attachment order was within the jurisdiction of the New York federal court when it issued said order of attachment. Likewise, it has been assumed that the cited promissory note was to be paid by the Defendant in New York City.

Choice-of-law considerations should likewise not prove to be an obstacle in the instant situation since Art. 1205 of the CC states that all contracts entered into abroad shall be governed by the law of the place of execution.<sup>31</sup> Even if the Argentine court should decide for one reason or another to apply Argentine substantive law to a review on the merits, the Defendant's promissory note should be sufficient under Art. 616-624 of the CC,<sup>32</sup> Title X of the Commercial Code<sup>33</sup> and Art. 209(2) (3) and 212(3) of the CCP<sup>34</sup> to overcome any attempt thereunder to deny enforcement of the order of attachment.

#### CONCLUSION

Since the expense of Argentine counsel and unfamiliarity with the Argentine legal system rule against initiating the primary action directly in Argentina, and due to the uncertainty of successfully maintaining a preventive attachment action in Argentina while at the same time continuing the primary lawsuit in a New York federal court, the best alternative available in the instant situation appears to be to petition the New York federal court to issue letters rogatory to a judge in Argentina whereby said judge is requested to levy the order of attachment handed down by this same New York federal court. The Argentine judge should be requested to levy said attachment order pursuant to Art. 131 of the CCP, rather than in accordance with Art. 517 of the CCP, since considerable doubt has been raised with respect to the scope of the definitions of judgment and *res judicata*, as used therein, and it is highly probable that said order of attachment would neither be subject to nor qualify under the stipulations contained therein. On the other hand, the undefined scope of Art. 131, together with the recent trend by Argentine courts under the Montevideo Treaty to seek international assistance within an atmosphere of international cooperation, provide stronger basis for an Argentine court to recognize and enforce such an order thereunder. Even if the attachment action and the primary lawsuit are reviewed on the merits, it is unlikely that either will be rejected on jurisdictional or competency grounds. In summary, letters rogatory are an unusual device to use under these particular circumstances, and may be more dilatory than initiating a preventive

attachment action directly in Argentina, and less certain than initiating the primary action in Argentina, but appear the more legally prudent and economically practical of the alternatives presented above.

### NOTES

1. See, among others, Uniform Foreign Money Judgments Recognition Act, Uniform Enforcement of Foreign Judgments Acts, and the Treaty of Montevideo.
2. Art. 209. *Procedencia.*— Podrá pedir embargo preventivo el acreedor de deuda en dinero o en especie que se hallare en alguna de las condiciones siguientes:
  - 2) Que la existencia del crédito esté demostrada con instrumento público o privado atribuido al deudor, abonada la firma por información sumaria de dos testigos.
  - 3) Que fundándose la acción en un contrato bilateral, se justifique su existencia en la misma forma del inciso anterior, debiendo en este caso probarse además sumariamente el cumplimiento del contrato por parte del actor, salvo que éste ofreciese cumplirlo, o que su obligación fuese a plazo.
3. Art. 212. *Proceso pendiente.*— Durante el proceso podrá decretarse el embargo preventivo:
  - 3) Si quien lo solicita hubiese obtenido sentencia favorable aunque estuviere recurrida.
4. Art. 196. *Medida decretada por juez incompetente.*— Los jueces deberán abstenerse de decretar medidas precautorias cuando el conocimiento de la causa no fuese de su competencia.  
 Sin embargo, la medida ordenada por un juez incompetente será válida siempre que haya sido dispuesta de conformidad con las prescripciones de este capítulo, pero no prorrogará su competencia.  
 El juez que decretó la medida, inmediatamente después de requerido remitirá las actuaciones al que sea competente.
5. Art. 131. *Oficios y exhortos dirigidos a jueces de la República.*— Toda comunicación dirigida a jueces nacionales por otros del mismo carácter, se hará mediante oficio. Las dirigidas a jueces provinciales por exhorto.  
 Podrán entregarse al interesado, bajo recibo en el expediente, o remitirse por correo. En los casos urgentes, podrán expedirse o anticiparse telegráficamente.  
 Se dejará copia fiel en el expediente de todo exhorto u oficio que se libre.
6. Art. 517. *Procedencia.*— Las sentencias de los tribunales extranjeros tendrán fuerza ejecutoria en los términos de los tratados celebrados con el país de que provengan.  
 Cuando no hubiese tratados, serán ejecutables si concurrieren los siguientes requisitos:
  - 1° Que la sentencia, con autoridad de cosa juzgada en el estado en que se ha pronunciado, emane de tribunal competente en el orden internacional y sea consecuencia del ejercicio de una acción personal, o de una acción real sobre un bien mueble, si éste ha sido trasladado a la República durante o después del juicio tramitado en el extranjero.
  - 2° Que la parte condenada, domiciliada en la República, hubiese sido personalmente citada.
  - 3° Que la obligación que haya constituido el objeto del juicio sea válida según nuestras leyes.

4° Que la sentencia no contenga disposiciones contrarias al orden público interno.

5° Que la sentencia reúna los requisitos necesarios para ser considerada como tal en el lugar en que hubiere sido dictada, y las condiciones de autenticidad exigidas por la ley nacional.

6° Que la sentencia no sea incompatible con otra pronunciada, con anterioridad o simultáneamente, por un tribunal argentino.

7. 28 USC 178, as interpreted in *The Signe* (37 F. Supp. 819, D.C. La., 1941), defines letters rogatory as:

One country, speaking through its courts, requests another country acting through its courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country, and such requests are usually granted by reason of the comity existing between nations in ordinary peaceful times. CPLR #3108 also defines letters rogatory as:

A method of obtaining testimony by appeal to a tribunal in a foreign country to examine the witness and report back the information obtained.

An important distinguishing consideration between the two definitions is that the federal concept of letters rogatory encompasses any general "request" while the CPLR appears to confine said device to a specific type of request, to wit: "a method of obtaining testimony."

8. CPLR Section 6203.
9. Art. 1. Carácter.— La competencia atribuida a los tribunales nacionales es improrrogable. Sin perjuicio de lo dispuesto por el artículo 12, inciso 4, de la ley 48, exceptuase la competencia territorial en los asuntos exclusivamente patrimoniales, que podrá ser prorrogada de conformidad de partes, pero no a favor de jueces extranjeros o de árbitros que actúen fuera de la República.
10. Which basically state that Argentine law governs over property located in Argentina.
11. *Banco de Crédito v. La Téxtila S.A.*, CN Comm., Sala A, 86 La Ley 32 (1956).
12. (Autos "J.A. y O.J.D. sobre Ejec. sent."; fallo del 24 de abril de 1968).
13. *Rappaport v. Sociedad São Miguel Filmes do Brasil Ltda.* CN Comm., Sala A, 106 La Ley 78 (1961).
14. Lazcano, "La excepción de sin competencia en exhortos extranjeros", J.S. de sept. 8, 1953. No. 5427.
15. Couture, "Observaciones en el Informe sobre Uniformidad de Legislación Relativa a la Cooperación Internacional en Asistencia Judicial", Pan American Union Document CIJ-26 (1953).
16. *Ibid.*
17. Rocca, I. and Griffi, Omar, *Teoría y Práctica del Código Procesal Civil y Comercial de la Nación* (1969).
18. Report on the Uniformity of Legislation in International Cooperation in Judicial Procedures, Inter-American Juridical Committee, Pan American Union (1963).
19. Requiring that all contracts exceeding a certain value be in writing.
20. *Op. Cit.*, Note 5.
21. Goldschmidt and Novas, *Bilateral Studies of American-Argentine Private International Law*, Parker School of Corporate Law (1966).

## 22. CPLR #6224

23. Art. 339. Demandado domiciliado o residente en la jurisdicción del juzgado.— La citación se hará por medio de cédula que se entregará al demandado en su domicilio real, si aquél fuere habido, juntamente con las copias a que se refiere el artículo 120.

Si no se lo encontrare, se le dejará aviso para que espere al día siguiente y si tampoco entonces se le hallare, se procederá según se prescribe en el artículo 141.

Si el domicilio asignado al demandado por el actor fuere falso, probado el hecho, se anulará todo lo actuado a costa del demandante.

- Art. 340. Demandado domiciliado o residente fuera de la jurisdicción.— Cuando la persona que ha de ser citada no se encontrare en el lugar donde se le demanda, la citación se hará por medio de oficio o exhorto a la autoridad judicial de la localidad en que se halle sin perjuicio, en su caso, de lo dispuesto en la ley de trámite uniforme sobre exhortos.

- Art. 341. Provincia demandada.— En las causas en que una provincia fuere parte, la citación se hará por oficios dirigidos al gobernador y al fiscal de estado o funcionario que tuviere sus atribuciones.

- Art. 342. Ampliación y fijación de plazo.— En los casos del artículo 340, el plazo de quince días quedará ampliado en la forma prescripta en el artículo 159.

Si el demandado residiese fuera de la República, el juez fijara el plazo en que haya de comparecer, atendiendo a las distancias y a la mayor o menor facilidad de las comunicaciones.

- Art. 343. Demandado incierto o con domicilio o residencia ignorados.— La citación a personas inciertas o cuyo domicilio o residencia se ignorare se hará por edictos publicados por dos días en la forma prescripta por los artículos 145, 146 y 147.

Si vencido el plazo de los edictos no compareciere el citado, se nombrará al defensor oficial para que lo represente en el juicio. El defensor deberá tratar de hacer llegar a conocimiento del interesado la existencia del juicio y, en su caso, recurrir de la sentencia.

- Art. 344. Demandados con domicilios o residencias en diferentes jurisdicciones.— Si los demandados fuesen varios y se hallaren en diferentes jurisdicciones, el plazo de la citación sólo se considerara vencido a los efectos legales con respecto a todos, cuando venza para el que se encontrare a mayor distancia.

- Art. 345. Citación defectuosa.— Si la citación se hiciera en contravención a lo prescripto en los artículos que preceden, será nula y se aplicará lo dispuesto en el artículo 149.

24. *Op. Cit.*, Note 21.

25. Art. 6. Reglas Especiales. A falta de otras disposiciones será juez competente:

1. En los incidentes, tercerías, citación de evicción, cumplimiento de transacción celebrada en juicio, ejecución de sentencia, regulación y ejecución de honorarios y costas devengadas en juicio, obligaciones de garantía y acciones accesorias en general, el del proceso principal.

4. En las medidas preliminares y precautorias, el que deba conocer en el proceso principal.

26. Art. 5. Reglas Generales. Con excepción de los casos de prórroga expresa o tácita, cuando procediere, y sin perjuicio de las reglas contenidas en este Código o en otras leyes, será juez competente:

2. Cuando se ejerciten acciones reales sobre bienes muebles, el del lugar en que se encuentren o el del domicilio del demandado, a elección del actor. Si la acción versare sobre bienes muebles e inmuebles conjuntamente, el del lugar donde estuvieran situados estos últimos.

27. Art. 5. Reglas Generales. Con excepción de los casos de prórroga expresa o tácita, cuando procediere, y sin perjuicio de las reglas contenidas en este Código o en otras leyes, será juez competente:
3. Cuando se ejerciten acciones personales, el del lugar en que deba cumplirse la obligación y, en su defecto, a elección del actor, el del domicilio del demandado o el del lugar del contrato, siempre que el demandado se encuentre en él, aunque sea accidentalmente, en el momento de la notificación.
- El que no tuviere domicilio fijo podrá ser demandado en el lugar en que se encuentre o en el de su última residencia.
28. Art. 1216. Si el deudor tuviere su domicilio o residencia en la República, y el contrato debiese cumplirse fuera de ella, el acreedor podrá demandarlo ante los jueces de su domicilio, o ante los del lugar del cumplimiento del contrato, aunque el deudor no se hallase allí.
29. *Op. Cit.*, Note 9.
30. *Op. Cit.*, Note 17.
31. Art. 1205. Los contratos hechos fuera del territorio de la República serán juzgados, en cuanto a su validez o nulidad, su naturaleza y obligaciones que produzcan, por las leyes del lugar en que hubiesen sido celebrados.
32. Treating obligations to pay a sum of money.
33. Treating letters of credit and promissory notes.
34. *Op. Cit.*, Notes 2 and 3.