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United States Practice Concerning the Recognition of Foreign Judgments

Introduction

The laws of the various jurisdictions in the United States are far from uniform concerning the effect to be given foreign-country judgments and the elements that must be proved to support or defeat their recognition. This article will survey the common law of this country and compare it to both the Uniform Foreign Money-Judgments Recognition Act[1] and the *Second Restatement of Conflict of Laws*. It will also suggest a method for allocating the burden of proof between the parties advocating the recognition or nonrecognition of a judgment from a foreign nation.

1. *Distinction Between Full Faith and Credit and Comity*

The U.S. Constitution requires each state to give full faith and credit to the public acts, records and judicial proceedings (including judgments)[2] of every other state,[3] but this provision does not give any right, privilege, or immunity to the judgments of courts of foreign countries.[4] While not directly applicable to the judgments of other nations, the full faith and

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[1]13 U.L.A. 417 (1980) [hereinafter cited as the Uniform Foreign Judgments Recognition Act].

[2]U.S. CONST. art. 4, § 1.

[3]28 U.S.C.A. § 1738 (1966); Titus v. Wallick, 306 U.S. 282 (1939).

[4]Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185, 190 (1912). *See also* Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Schoenbrod v. Siegler, 20 N.Y.2d 403, 230 N.E.2d 638, 640 (1967); Christopher v. Christopher, 31 S.E.2d 818, 827 (Ga. 1944); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98, comment b (1971) [hereinafter cited as RESTATEMENT].

credit clause has certainly influenced the development of American recognition practice.[5] Some U.S. courts have even talked loosely of giving full faith and credit to foreign-country judgments,[6] and one court even awarded a Costa Rican judgment full faith and credit *and* comity.[7]

The overwhelming majority of courts in the country hold that the recognition of foreign judicial acts is governed by the doctrine of comity.[8] The Supreme Court defined *comity* in 1895:

> *Comity*, in the legal sense, is neither a matter of absolute obligation on the one hand, nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.[9]

The New York Court of Appeals modified this definition thirty-one years later when it defined comity in the following terms:

> Comity is not a rule of law, but it is a rule of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question.[10]

This definition was explained and elaborated upon most recently by the Third Circuit Court of Appeals:

> Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.[11]

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[5]Compagnie du Port de Rio de Janeiro v. Mead Morrison Mfg. Co., 19 F.2d 163, 166 (D. Me. 1927) (the full faith and credit clause establishes comity between states); Neporany v. Kir, 5 App. Div. 2d 438, 173 N.Y.S.2d 146, 149 (1st Dep't 1958), *appeal dismissed*, 7 App. Div. 2d 836, 184 N.Y.S.2d 559 (1st Dep't 1959); Smit, *International* Res Judicata *and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44, 45-46 (1962).

[6]*E.g.*, Scott v. Scott, 331 P.2d 641, 643 (Cal. 1958); Willson v. Willson, 55 So.2d 905, 906 (Fla. 1951); Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121, 124 (1926).

[7]Atlantic Ship Supply, Inc. v. M/V Lucy, 392 F. Supp. 179, 183 (M.D. Fla. 1975), *aff'd per curiam*, 553 F.2d 1009 (1977).

[8]*See, e.g.*, Hilton v. Guyot, 159 U.S. 113, 163, 228 (1895); Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Perrin v. Perrin, 408 F.2d 107, 109 (3d Cir. 1969); Yoder v. Yoder, 24 Ohio App. 2d 71, 263 N.E.2d 913, 914-15 (1970).

[9]Hilton v. Guyot, 159 U.S. 113, 163-64 (1895).

[10]Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121, 123 (1926) [citation omitted].

[11]Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

The U.S. Supreme Court based its view of comity upon the concept that international law is founded upon mutuality and reciprocity,[12] but this basis has found scant support with later authorities. Modern cases have said that comity rests rather upon the persuasiveness of the foreign judgment and the policy of discouraging repeated litigation of the same matters.[13]

Recently, the United States has attempted to provide a firmer basis for the recognition and enforcement of foreign-country judgments by negotiating its first treaty covering this subject. The Convention Between the United Kingdom and the United States for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters[14] was initialed by the parties in October 1976.[15] The primary impetus for this Convention resulted from the discrimination against American judgments mandated by the European Economic Community's Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.[16] It was hoped that the U.S.-U.K. treaty would eliminate such discrimination on a bilateral basis and would become the model for bilateral treaties with other nations.[17] Because of adverse comments received in each country, the treaty has been renegotiated and has not yet come into force. Moreover, the prospects for early ratification of the Convention have been dimmed by the passage in Great Britain of the Protection of Trading Interests Act of 1980.[18]

2. *Distinction Between Recognition and Enforcement*

Traditionally, litigants have not been able to enforce foreign-nation judgments directly in this country; they have first been required to persuade a U.S. court to recognize the judgment.[19] Recognition occurs when one court concludes that a certain matter has already been decided by another court's

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[12]Hilton v. Guyot, 159 U.S. 113, 228 (1895).

[13]*E.g.*, Johnston v. Compagnie Generale Transatlantique, 152 N.E. 121, 123 (1926); RESTATEMENT § 98, comment b (1972), Smit, *supra* note 4, at 56; Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, 72 COLUM. L. REV. 200, 239–248 (1972).

[14]16 INT'L LEGAL MATERIALS 71 (1977).

[15]Smit, *The Proposed United States-United Kingdom Convention on Recognition and Enforcement of Judgments: A Prototype for the Future?*, 17 VA. J. INT'L L. 443 (1977); Hay & Walker, *The Proposed Recognition-of-Judgments Convention Between the United States and the United Kingdom*, 11 TEX. INT'L L.J. 421, 422–23 (1976).

[16]*See* Hay & Walker, *The Proposed U.S.-U.K. Recognition-of-Judgments Convention: Another Perspective*, 18 VA. J. INT'L L. 753, 757–58 (1978); Smith, *supra* note 15, at 445, 468. *See also* Herzog, *The Common Market Convention on Jurisdiction and the Enforcement of Judgments: An Interim Update*, 17 VA. J. INT'L L. 417, 441–42 (1977).

[17]*See* Hay & Walker, *supra* note 16, at 767–68; Smit, *supra* note 15, at 445, 468; Hay & Walker, *supra* note 15, at 423, 450–451.

[18]*See generally* Rosen, *The Protection of Trading Interests Act*, 15 INT'L LAW. 213 (1981); Gordon, *Extraterritorial Application of United States Economic Laws: Britain Draws the Line*, 14 INT'L LAW. 151 (1980).

[19]Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 360 N.E.2d 386, 390 (1977); von Mehren, *Enforcement of Foreign Judgments in the United States*, 17 VA. J. INT'L L. 401, 402, 404 (1977).

judgment and will not be litigated further.[20] The court then enters its own judgment based on the foreign decree. A judgment is enforced when a party is accorded the relief that he seeks.[21]

Recognition is a prerequisite to enforcement of a foreign judgment, but it does not necessarily mean that the judgment is entitled to enforcement. For example, in *164 East Seventy-Second Street Corporation v. Ismay*,[22] a California court distinguished between the right to procure and the right to enforce a judgment and stated that whether or not one is entitled to enforce an existing judgment does not affect the right to maintain an action to procure a new one.[23]

The drafters of the Uniform Foreign Judgments Recognition Act and the Uniform Enforcement of Foreign Judgments Act[24] intended them to alter the traditional rule. One of the comments to the Uniform Foreign Judgments Recognition Act states that it is intended to be enforced by the methods provided in the Uniform Enforcement Act,[25] the latter providing for registration of foreign judgments without the necessity for filing a new suit to obtain recognition.[26] This view is confirmed by a close reading of the two acts. The Uniform Enforcement Act states that a "foreign judgment" means one "that is entitled to full faith and credit,"[27] and the Uniform Foreign Judgments Recognition Act provides that a foreign-country judgment is to be enforced in the same way as a sister state judgment that is entitled to full faith and credit.[28]

Despite these indications of intent, some courts have refused to permit the registration of foreign-nation judgments by the methods set out in the Uniform Enforcement Act.[29] Although these rulings provide no rationale for the failure to give effect to the drafters' intent, they can be justified on practical grounds. Foreign-country judgments cannot be enforced in an American jurisdiction without first being translated from the foreign currency into U.S. dollars. Neither the Uniform Foreign Judgments Recognition Act nor the Uniform Enforcement Act address this problem, and without some guidance as to the date for determining the exchange rate, the clerk cannot register the judgment and translate it into domestic currency.

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[20]von Mehren & Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 L. & POL'Y IN INT'L BUS. 37, 38 (1974).

[21]*Id.* Recognition is only the first step in the process of enforcement. Biel v. Boehm, 94 Misc. 2d 946, 406 N.Y.S.2d 231, 233 (1978); Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 NOTRE DAME LAW. 734 (1978).

[22]151 P.2d 29 (Cal. App. 1944).

[23]*Id.* at 30.

[24]13 U.L.A. 173 (1980) [hereinafter cited as the Uniform Enforcement Act].

[25]13 U.L.A. 420 (1980).

[26]Uniform Enforcement Act § 2.

[27]*Id.* at § 1.

[28]Uniform Foreign Judgments Recognition Act § 3.

[29]Biel v. Boehm, 94 Misc. 2d 946, 406 N.Y.S.2d 231, 233 (1978); Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 360 N.E.2d 386, 390 (1977); Hager v. Hager, 1 Ill. App. 3d 1047, 274 N.E.2d 157, 160 (1971).

Therefore, recognition still remains a prerequisite to enforcement even in states that have adopted the Uniform Acts.

3. *Choice of Law: Federal or State*

The Supreme Court has not yet decided whether federal or state law governs the recognition of foreign-nation judgments. At present, no treaty or federal statute preempts state authority in this area. Despite the decision of the Supreme Court in *Hilton v. Guyot*,[30] most state[31] and federal[32] courts that have faced the question have held that state, rather than federal, law applies to the recognition and enforcement of foreign-country judgments.

Should it be faced with the issue, the Supreme Court may decide that enforcement of judgments is a matter within state control.[33] On the other hand, it may decide that state courts are intruding into the field of foreign affairs when they decide whether the judgments of other countries should be enforced, as Oregon's courts did in interpreting state inheritance reciprocity requirements.[34] The federal government is preeminent in the field of foreign affairs; and "in respect of our foreign relations generally, state lines disappear."[35] A different route by which the court could decide that federal law should control the question is suggested by the court's federalization of the act of state doctrine.[36]

Substantive Requisites for Recognition and Enforcement

The basic requirements to be met before an American court will recognize and enforce a judgment rendered in a foreign country were laid down 87 years ago in *Hilton v. Guyot*:

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[30]159 U.S. 113 (1895).

[31]Hyde v. Hyde, 562 S.W.2d 194, 198 (Tenn. 1978); Nicol v. Tanner, 256 N.W.2d 796, 800–801 (Minn. 1976); Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818, 827 (1944); 164 East Seventy-Second Street Corp. v. Ismay, 151 P.2d 29, 30 (Cal. 1944); Smith v. Smith, 72 Ohio App. 203, 50 N.E.2d 889, 893 (1943); Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121, 123 (1926); RESTATEMENT § 98, comment e (1971).

[32]Her Majesty, Queen in Right of British Columbia v. Gilbertson, 597 F.2d 1161, 1163 (9th Cir. 1979); Sangiovanni Hernandez v. Dominicana de Aviacion, C. por A., 556 F.2d 611, 614 (1st Cir. 1977); British Midland Airways Ltd. v. International Travel, Inc., 497 F.2d 869, 871 (9th Cir. 1974); Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Toronto-Dominion Bank v. Hall, 367 F. Supp. 1009, 1011-12 (E.D. Ark. 1973); Svenska Handelsbanken v. Carlson, 258 F. Supp. 448, 450 (D. Mass. 1966).

[33]Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). On the question of whether there should be a federal common law governing the recognition and enforcement of foreign-country judgments, *see generally* von Mehren, *supra* note 19, at 406-8.

[34]Zschernig v. Miller, 389 U.S. 429, 441 (1968); von Mehren & Patterson, *supra* note 20, at 40.

[35]United States v. Belmont, 301 U.S. 324, 331 (1937) (states may not refuse to honor federal international compacts and agreements).

[36]Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964).

> When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court havng jurisdiction of the cause and of the parties, and upon due allegations and proofs and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law and by the comity of our own country it should not be given full credit and effect.[37]

These requirements have been adopted almost verbatim by many American courts,[38] and the *Hilton* language still remains the predominant statement of the elements which must exist before a foreign-country judgment will be recognized in the United States. Most of these same elements have been encompassed in the *Second Restatement of Conflict of Laws*.[39]

But putting all the factors relevant to recognition of foreign judgments in one general statement has led some courts to confuse defenses with the elements of a prima facie case. For example, the absence of fraud has been listed by a few courts as part of the plaintiff's case.[40] This, of course, is unfortunate, because fraud is generally regarded as an affirmative defense. In addition, violation of the public policy of the forum and lack of reciprocity should also be considered as affirmative defenses; otherwise, the plaintiff would be required to prove a negative. Furthermore, such an ordering of the case is consistent with the language in *Hilton* that a foreign judgment satisfying the first stated requirements would be held conclusive "unless some special ground is shown for impeaching" it.[41]

In addition to *Hilton*'s requirements, a judgment must generally be final

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[37] 159 U.S. 113, 205-6 (1895).

[38] *See, e.g.* Her Majesty, Queen in Right of British Columbia v. Gilbertson, 597 F.2d 1161, 1163 n.4, (9th Cir. 1979); John Sanderson & Co. (Wool) Pty. Ltd. v. Ludlow Jute Co., Ltd., 569 F.2d 696, 697 (1st Cir. 1978); Sangiovanni Hernandez v. Dominicana de Aviacion C. por A., 556 F.2d 611, 615 (1st Cir. 1977); Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Toronto-Dominion Bank v. Hall, 367 F. Supp. 1009, 1012 (E.D. Ark. 1973); Leo Feist, Inc. v. Debmar Publishing Co., 232 F. Supp. 623, 624 (E.D. Pa. 1964); *In re* Aktiebolaget Kreuger & Toll, 20 F. Supp. 964, 969 (S.D.N.Y. 1937), *aff'd*, 96 F.2d 768 (2d Cir. 1938); Northern Aluminum Co. v. Law, 147 A. 714 (Md. 1929); Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711, 714 (1915).

[39] A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned. RESTATEMENT § 98 (1971).

> A judgment is valid if: (a) the state in which it is rendered has jurisdiction to act judicially in the case; and (b) a reasonable method of modification is employed and a reasonable opportunity to be heard is afforded to persons affected; and (c) the judgment is rendered by a competent court; and (d) there is compliance with such requirements of the state of rendition as are necessary for the valid exercise of power by the court.

Id. § 92.

[40] *See, e.g.*, Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 894 (N.D. Tex. 1980); Royal Bank of Canada v. Trentham Corp., 491 F. Supp. 404, 406 (S.D. Tex. 1980).

[41] Hilton v. Guyot, 159 U.S. 113, 205-6 (1895).

before it will be enforced in the United States.[42] Judgments subject to modification in the country where rendered do not lack finality when the subsequent suit is brought to enforce only amounts that have already accrued under the judgment.[43] In child custody cases a material change of circumstances will always allow for modification of a court order, and U.S. courts have felt free to consider the change of circumstances in a suit brought to enforce a foreign custody decree.[44]

A California statute allows recognition of a foreign-country judgment if it is final, if it has been rendered by a tribunal of a foreign country, and if the tribunal had jurisdiction according to the laws of its own country.[45] The Uniform Foreign Judgments Recognition Act, which has been adopted in twelve states,[46] provides recognition to a foreign-country judgment granting or denying recovery of a sum of money[47] if the judgment is final, conclusive and enforceable where rendered.[48] In addition, the Uniform Act lists three mandatory grounds for nonrecognition—lack of personal jurisdiction, lack of subject matter jurisdiction, and the rendering of the judgment under a legal system which does not provide impartial tribunals or procedures compatible with due process.[49] Although this is an awkward way of saying it, the intention is to establish these things as elements of the plaintiff's case. But the other seven grounds for nonrecognition found in a separate subdivision of the Act (such as fraud, conflict with the forum's public policy, and lack of reciprocity, among others) are permissive or discretionary only.[50] Thus, they should be regarded as affirmative defenses.

At common law under the holding of *Hilton*, the elements of the plaintiff's case are:

1. a final judgment;
2. subject matter jurisdiction;
3. jurisdiction over the parties or the *res*;
4. timely and proper notice of the proceedings;
5. an opportunity to present a defense to an unbiased tribunal; and

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[42]Coulborn v. Joseph, 25 S.E.2d 576, 581 (Ga. 1943); Kordoski v. Belanger, 160 A. 205 (R.I. 1932); Growe v. Growe, 2 Mich. App. 25, 138 N.W.2d 537, 540–541 (1965); Uniform Foreign Judgments Recognition Act § 2. *See generally* von Mehren & Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601, 1656-60 (1968).

[43]Coulborn v. Joseph, 25 S.E.2d 576, 581 (Ga. 1943); Growe v. Growe, 2 Mich. App. 25, 138 N.W.2d 537, 540–541 (1965). *But see* Kordoski v. Belanger, 160 A. 205 (R.I. 1932).

[44]Adamsen v. Adamsen, 195 A.2d 418, 421 (Conn. 1963); Willson v. Willson, 55 So.2d 905, 906 (Fla. 1951); Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 439 (D.C. Ct. App. 1972). *See* Adra v. Clift, 195 F. Supp. 857, 866 (D. Md. 1961).

[45]CAL. CODE CIV. PROC. § 1915 (West Supp. 1972).

[46]Alaska, California, Colorado, Illinois, Maryland, Massachusetts, Michigan, New York, Oklahoma, Oregon, Texas, and Washington.

[47]Uniform Foreign Judgments Recognition Act § 1(2). The Act excludes judgments for taxes, fines or penalties, and support in matrimonial or family matters. *Id.*

[48]*Id.*

[49]*Id.* § 4(a)(1)-(3).

[50]*Id.* § 4(b)(1)-(7).

6. regular proceedings conducted according to a system of civilized jurisprudence.

The plaintiff's burden under the Uniform Act is to establish:

1. a final judgment, conclusive and enforceable where rendered;
2. subject matter jurisdiction;
3. jurisdiction over the parties or the *res*; and
4. regular proceedings conducted under a system that provides impartial tribunals and procedures compatible with due process.

Jurisdiction

U.S. courts generally will not recognize or enforce foreign-nation judgments from courts that did not have jurisdiction of the parties[51] or the subject matter.[52] *Hilton* required an "opportunity for a . . . trial abroad before a Court of competent jurisdiction, . . . after due citation or voluntary appearance of the defendant,"[53] and the Court further stated that "[e]very foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings and due notice."[54] A foreign judgment is not conclusive under the Uniform Foreign Judgments Recognition Act if the court rendering it did not have personal jurisdiction over the defendant or jurisdiction over the subject matter.[55] The courts of this country apply U.S. standards of due process when determining whether the foreign court had jurisdiction to render the judgment.[56]

A general appearance in a foreign court gives the court in personam jurisdiction over the defendant.[57] In accordance with *International Shoe*[58] and its progeny, personal jurisdiction can also be obtained by consent[59] or by proper service on a party that has minimum contacts with the jurisdiction rendering judgment.[60] For example, an American resident entering into a contract in Canada has been held subject to the jurisdiction of the

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[51] RESTATEMENT § 104 (1971).

[52] *Id.* § 105.

[53] Hilton v. Guyot, 159 U.S. 113, 202 (1895).

[54] *Id.* at 166–67.

[55] Uniform Foreign Judgments Recognition Act § 4(a)(2)-(3).

[56] Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 895 (N.D. Tex. 1980); Royal Bank of Canada v. Trentham Corp., 491 F. Supp. 404, 406 (S.D. Tex. 1980); Cherun v. Frishman, 236 F. Supp. 292, 296 (D.D.C. 1964); Boivin v. Talcott, 102 F. Supp. 979, 981 (N.D. Ohio 1951); Compagnie du Port de Rio de Janiero v. Mead Morrison Mfg. Co., 19 F.2d 163, 166-67 (D. Me. 1927); Davidson & Co. v. Allen, 508 P.2d 6, 7–8 (Nev. 1973); Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 437 (D.C. Ct. App. 1972).

[57] Sugg v. Thornton, 132 U.S. 524, 530 (1889); Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711 (1915); Uniform Foreign Judgments Recognition Act § 5(a)(2); RESTATEMENT § 33 (1971).

[58] International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[59] National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311, 315–16 (1964); Uniform Foreign Judgments Recognition Act § 5(a)(3); RESTATEMENT § 32 (1971).

[60] *See* Uniform Foreign Judgments Recognition Act § 5(a)(1); RESTATEMENT § 28 (1971).

Canadian courts even though he was never in Canada and was personally served in California.[61]

The Uniform Foreign Judgments Recognition Act provides that a foreign court can obtain personal jurisdiction if the defendant was personally served in the foreign country; the defendant voluntarily appeared in the proceedings; the defendant consented to the jurisdiction of the foreign court; the defendant was domiciled in the foreign state; the defendant corporation had its principal place of business, was incorporated, or had acquired corporate status, in the foreign country; the defendant had a business office in the foreign country and the proceedings involved business conducted through that office; or the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved the vehicle or airplane.[62] The Act permits state courts to recognize other bases of jurisdiction.[63] The *Restatement of Conflicts* also reflects the expanding scope of personal jurisdiction.[64]

An appearance by a defendant merely to contest the jurisdiction of the court over him will not give the foreign court personal jurisdiction under the Uniform Act.[65] If the defendant did not appear in the foreign action, then he will be allowed to contest the issue of jurisdiction when the judgment is presented for recognition by an American court.[66] Recent cases have suggested that if the defendant contested the jurisdiction of the foreign court abroad, he will not again be allowed to do so in a U.S. court where the foreign judgment is sought to be enforced.[67] While this is in line with the Supreme Court's holding in domestic cases,[68] it may mean that a foreign-nation judgment will not be measured by our due process standards. One court has recently held that raising the jurisdictional question abroad followed by participation in a trial on the merits will not be considered a waiver of Fourteenth Amendment due process rights or a consent to the foreign court's jurisdiction.[69]

The Uniform Act does not address the question of in rem jurisdiction. In rem jurisdiction can be defined as the power to adjudicate all rights with respect to a thing.[70] *Hilton v. Guyot* noted in dicta that in rem judgments

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[61]Bank of Montreal v. Kough, 430 F. Supp. 1243, 1250 (N.D. Cal. 1977). *But cf.* Boivin v. Talcott, 102 F. Supp. 979, 981 (N.D. Ohio 1951) (notice by publication); Compagnie du Port de Rio de Janeiro v. Mead Morrison Mfg. Co., 19 F.2d 163, 167–68 (D. Me. 1927) (company not doing business).

[62]Uniform Foreign Judgments Recognition Act § 5(a).

[63]*Id.* § 5(b).

[64]RESTATEMENT §§ 24–52 (1971).

[65]Uniform Foreign Judgments Recognition Act § 5(a)(2).

[66]Royal Bank of Canada v. Trentham Corp., 491 F. Supp. 404, 406 (S.D. Tex. 1980).

[67]Sprague & Rhodes Commodity Corp. v. Instituto Mexicano del Cafe, 566 F.2d 861, 863 (2d Cir. 1977); Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co., Ltd., 470 F. Supp. 610, 615 (S.D.N.Y. 1979).

[68]Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522 (1931).

[69]Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 895 (N.D. Tex. 1980).

[70]von Mehren, *supra* note 19, at 409.

were considered conclusive everywhere with respect to the rights in the thing.[71] The property must be within the territorial jurisdiction of the court and must be actually attached, however, before the court acquires in rem jurisdiction to enter a judgment with respect to the property.[72] Furthermore, an in rem judgment is conclusive only as to the property actually involved in the foreign suit[73] and the property must have minimum contacts with the action in order to support in rem jurisdiction.[74] Monetary judgments are generally considered in personam rather than in rem.[75] Accordingly, a court cannot, incidentally to an in rem decree, grant an award of money without having obtained personal jurisdiction of the parties.[76]

Defenses

1. *Fraud*

American courts generally hold fraud to be a defense to the recognition of a foreign-nation judgment.[77] Not every species of fraud, however, is a defense. Intrinsic fraud, such as fraud in the underlying transaction or in the trial itself (i.e., perjury or false documents), is no defense.[78] The fraud must be extrinsic, that is, fraud that deprives a party of an opportunity to present adequately his claim or defense.[79] The distinction is based on the assumption that the foreign court had an opportunity to pass on the probity and veracity of the evidence before it and has already determined the matters raised by a plea of intrinsic fraud.[80] Extrinsic fraud must be proved by clear and convincing evidence,[81] and the claim of extrinsic fraud must not have been presented to the court at the original trial.[82] One court has held

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[71] 159 U.S. 113, 167 (1895).

[72] Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711, 713 (1915).

[73] Flota Maritima Browning de Cuba, S.A. v. Motor Vessel Ciudad de la Habana, 218 F. Supp. 938, 943 (D. Md. 1963), *aff'd*, 335 F.2d 619 (4th Cir. 1964).

[74] Shaffer v. Heitner, 433 U.S. 186, 207-9, 212 (1977).

[75] Cherun v. Frishman, 236 F. Supp. 292, 294 (D.D.C. 1964).

[76] China Mut. Ins. Co. v. Force, 36 N.E. 874, 876 (N.Y. Ct. App. 1894).

[77] *See, e.g.*, Hilton v. Guyot, 159 U.S. 113, 205 (1895) (dicta); Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 442 (1971), *cert. denied*, 405 U.S. 1017 (1972); Uniform Foreign Judgments Recognition Act § 4(b)(2); RESTATEMENT § 98, comment g, § 115, comments a, d (1971).

[78] MacKay v. Alexander, 268 F.2d 35, 39 (9th Cir. 1959) (fraud in obtaining a Canadian naturalization decree by false statements rejected); Bank of Montreal v. Kough, 430 F. Supp. 1243, 1250 (N.D. Cal. 1977) (fraud in the underlying transaction rejected); RESTATEMENT § 98, comment g, § 115, comments a, d (1971). *See generally* Hilton v. Guyot, 159 U.S. 113, 206-10 (1895). The Uniform Foreign Judgments Recognition Act allows for impeachment of a foreign judgment if it "was obtained by fraud." Uniform Foreign Judgments Recognition Act § 4(b)(2). While the Act does not specifically distinguish between intrinsic and extrinsic fraud, the reference to "obtained by" might be interpreted as requiring a showing of extrinsic fraud.

[79] Harrison v. Triplex Gold Mines, 33 F.2d 667, 671 (1st Cir. 1929).

[80] *Id.* at 671-72.

[81] Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624, 631 (2d Cir. 1976).

[82] Harrison v. Triplex Gold Mines, 33 F.2d 667, 671 (1st Cir. 1929).

that a stranger to a foreign judgment can impeach it for fraud, even extrinsic, only by showing that if it is enforced, his rights will be prejudiced.[83]

2. *Reciprocity*

The U.S. Supreme Court first adopted reciprocity as a requirement for recognizing and enforcing foreign-country judgments in *Hilton v. Guyot*.[84] The Court held that a judgment of France (a country that allows a full review of American judgments) would be considered only prima facie evidence of the justice of a plaintiff's claim and would not be given conclusive effect.[85] The Court limited its holding to in personam judgments in favor of a foreign national rendered by the courts of his country against a foreigner.[86] The Court's opinion indicates that lack of reciprocity will not prevent American courts from giving conclusive effect to a foreign-country judgment when the judgment is based upon in rem or quasi in rem jurisdiction, when the judgment affects the status of persons, when the judgment is between citizens of foreign countries, or when the judgment is in favor of a U.S. citizen.[87] Indeed, one court has held that the reciprocity rule was based upon a desire to protect American nationals and was limited to cases in which it was invoked by an American citizen.[88]

Commentators have overwhelmingly criticized the reciprocity requirement for several reasons. First, the judgment creditor has no control over the acts of the foreign country rendering the judgment.[89] Second, it is doubtful that it achieves either of its two goals of protecting Americans abroad or encouraging foreign countries to give conclusive effect to American judgments.[90] Third, the reciprocity rule ignores the basic policy underlying the recognition and enforcement of foreign-nation judgments, namely that of putting an end to litigation.[91]

Only a few American jurisdictions have actually rejected the reciprocity doctrine,[92] but others have found ways to distinguish it[93] or to apply law which does not include it.[94] The trend away from a reciprocity requirement can even be seen in recent Supreme Court opinions in which the Court declined to require that a foreign nation extend to the United States stand-

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[83]The W. Talbot Dodge, 15 F.2d 459, 462 (S.D.N.Y. 1926).

[84]159 U.S. 113, 210, 227-28 (1895).

[85]*Id.* at 227.

[86]*Id.* at 170–171.

[87]von Mehren & Patterson, *supra* note 20, at 48; Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 791–92 (1950).

[88]Bata v. Bata, 163 A.2d 493, 505 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961).

[89]Reese, *supra* note 87, at 793.

[90]*Id.*

[91]*Id.* at 785.

[92]Nicol v. Tanner, 256 N.W.2d 796, 801 (Minn. 1976); Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121, 123 (1926). *Contra* Hager v. Hager, 1 Ill. App. 3d 1047, 274 N.E.2d 157 (1971) (requires reciprocity).

[93]Bata v. Bata, 163 A.2d 493, 505 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961) (reciprocity could not be invoked by foreign plaintiffs).

[94]Toronto-Dominion Bank v. Hall, 367 F. Supp. 1009, 1012–14 (E.D. Ark. 1973) (predicts Arkansas law would not require reciprocity).

ing to sue in its courts before it could sue in U.S. courts[95] and struck down an Oregon statute limiting the right of foreigners to inherit U.S. property to those who are nationals of countries which allow Americans to inherit.[96] The latter holding may even imply that the states are not free to adopt a reciprocity requirement with respect to foreign-country judgments.[97]

The Uniform Foreign Judgments Recognition Act does not make reciprocity a precondition for enforcement of foreign judgments,[98] and the *Restatement of Conflicts* questions whether considerations of reciprocity are material.[99]

3. *Public Policy*

Foreign-country judgments that violate the public policy of the recognition forum will not be enforced by a U.S. court.[100] It is generally held that it is not a violation of a jurisdiction's public policy because the law of the forum would not have given a cause of action to the plaintiff[101] or because its law is different from that of the jurisdiction rendering the judgment.[102] The cases are not entirely uniform on this point.[103] The Uniform Act also recognizes this defense, without explaining which public policies will require a court to refuse to enforce a judgment.[104]

The public policy exception has often been used as a catch-all reason for denying recognition to a foreign judgment.[105] It has been said that the essence of this defense is that giving conclusive effect to a foreign judgment would in some way be unfair to one of the parties.[106] One court, however,

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[95] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 412 (1964). The Court did note:

> Furthermore, the question whether a country gives res judicata effect to United States judgments presents a relatively simple inquiry. The precise status of the United States Government and its nationals before foreign courts is much more difficult to determine.

Id.

[96] Zschernig v. Miller, 389 U.S. 429 (1968).

[97] *See* notes 34–36 *supra* and accompanying text.

[98] *See* Uniform Foreign Judgments Recognition Act § 4 (Grounds for Non-Recognition).

[99] RESTATEMENT § 98, comment e (1971).

[100] *See, e.g.*, Sangiovanni Hernandez v. Dominicana de Aviacion, C. por A., 556 F.2d 611, 614 (1st Cir. 1977); Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624, 631–32 (2d Cir. 1976); Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 443 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Zanzonico v. Neeld, 17 N.J. 400, 111 A.2d 772 (1955); MacDonald v. Grand Trunk Ry. Co., 71 N.H. 448, 52 A. 982, 987 (1902); RESTATEMENT § 98, comment g, § 117, comment c (1971).

[101] *E.g.*, Neporany v. Kir, 5 App. Div. 2d 438, 173 N.Y.S.2d 146, 147-48 (1st Dep't 1958).

[102] Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 443 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); Toronto-Dominion Bank v. Hall, 367 F. Supp. 1009, 1014–15 (E.D. Ark. 1973); Compania Mexicana Radiodifusora Fronteriza v. Spann, 41 F. Supp. 907, 909 (N.D. Tex. 1941), *aff'd sub nom.* Spann v. Compania Mexicana Radiodifusora Fronteriza, S.A., 131 F.2d 609 (5th Cir. 1942); Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 209 N.E.2d 709, 712–13 (1965), *cert. denied*, 405 U.S. 1017 (1972). *See also* Sangiovanni Hernandez v. Dominicana de Aviacion, C. por A., 556 F.2d 611, 614–15 (1st Cir. 1977).

[103] *See, e.g.*, Ryder v. Ryder, 37 P.2d 1069, 1072 (Cal. Dist. Ct. App. 1934).

[104] Uniform Foreign Judgments Recognition Act § 4(b)(3).

[105] von Mehren & Patterson, *supra* note 20, at 61.

[106] *Id.* at 63.

has said that a foreign judgment must be 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 before it will violate the forum's public policy to such an extent that nonrecognition will be mandated.[107]

4. *Mistake of Law or Fact*

The Supreme Court stated in *Hilton* that an action previously decided by a foreign court could not be tried afresh in the United States upon the mere assertion that the judgment was erroneous in law or in fact, provided the judgment met the other requirements of the Court.[108] The Court reinforced this decision thirty-two years later when it held that a Philippine court could not refuse to give effect to a Hong Kong judgment on the ground that the Hong Kong court had made a mistake by not giving effect within its territory to a sale by the American Alien Property Custodian.[109] The rule that a foreign-nation judgment cannot be attacked because the rendering Court made a mistake of law or fact still prevails today.[110]

5. *Lack of Notice to Defendant*

The due process clause of the U.S. Constitution requires that before personal jurisdiction can be obtained, the defendant must have been served with process and given reasonable notice of the proceedings.[111] Several cases have determined that service of process upon a nonresident defendant by publication was insufficient to give the court jurisdiction.[112] Courts have even held that personal service was insufficient if it failed to give adequate notice of the proceedings.[113]

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[107]Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 443 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972). *See also* Gutierrez v. Collins, 583 S.W.2d 312, 322 (Tex. 1979) (the laws of a foreign nation do not violate the public policy of Texas unless they are "inimical to good morals, natural justice, or the general interests of the citizens of this state").

[108]Hilton v. Guyot, 159 U.S. 113, 203 (1895).

[109]Ingenohl v. Walter E. Olsen & Co., 273 U.S. 541, 544 (1927).

[110]*See e.g.*, Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624 (2d Cir. 1976); MacDonald v. Grand Trunk Ry. Co., 71 N.H. 448, 52 A. 982, 987 (1902); RESTATEMENT § 106 (1971). The rule differs somewhat in child custody cases, because new facts or circumstances can always be proved to overturn the judgment. *See e.g.*, Adra v. Clift, 195 F. Supp. 857 (D. Md. 1961); Willson v. Willson, 55 So.2d 905 (Fla. 1951); Rzeszotarski v. Rzeszotarski, 296 A.2d 431, 439 (D.C. Ct. App. 1972).

[111]Griffin v. Griffin, 327 U.S. 220, 229 (1946); Boivin v. Talcott, 102 F. Supp. 979, 981 (N.D. Ohio 1951); Compagnie du Port de Rio de Janeiro v. Mead Morrison Mfg. Co., 19 F.2d 163, 165 (D. Me. 1927); Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711, 714 (1915).

[112]*See, e.g.*, Parker v. Parker, 21 So.2d 141, 142 (Fla. 1945); Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711, 714 (1915). In Boivin v. Talcott, 102 F. Supp. 979 (N.D. Ohio 1951), the court even held that personal service was insufficient when the Canadian statute provided only for service by publication and gave the court discretion to use other methods of service.

[113]Julen v. Larson, 25 Cal. App. 3d 325, 101 Cal. Rptr. 796, 798 (Cal. Ct. App. 1972) (service by mail was insufficient when suit papers were prepared in German, but defendant did not read German); Hager v. Hager, 274 N.E.2d 157, 160–161 (Ill. App. Ct. 1971) (personal service insufficient when complaint only was served without summons showing appearance date).

Procedures for Enforcing the Foreign Country Judgment

1. *Pleading*

Generally, a plaintiff should affirmatively plead each of the substantive elements necessary for a valid judgment.[114] It has been held, however, that a plaintiff need not allege that the foreign court had jurisdiction of the subject matter and of the parties, that the defendant was given notice of the pendency of the suit and the time to appear, and that a hearing or trial was held on the merits, because these facts are indispensible conditions of a due adjudication by a court.[115] Plaintiff's averment that the foreign court duly adjudicated the matter implies that the defendant was allowed a full opportunity for a hearing, and whatever is necessarily implied is sufficiently pleaded.[116] Another court has concluded that a plaintiff need not plead that the foreign jurisdiction will reciprocally give conclusive effect to American judgments,[117] because lack of reciprocity is a defensive matter, and it must be pleaded and proved by the defendant.[118]

2. *Burden of Proof*

The proper placement of the burden of proof on the parties to a foreign-country judgment is an area that has suffered from a general lack of attention by the courts. In fact, only a handful of courts have expressly considered the issue. Every reasonable presumption is normally indulged in favor of judgments, and this has been held true of judgments from foreign nations.[119] Thus, when a properly authenticated judgment that is valid on its face is presented, courts have generally presumed that the necessary requisites to recognition and enforcement of the judgment are met unless challenged by the defendant.[120] A few courts, however, when faced with a judgment that they deemed unfair in some manner, have noted in support of their decision denying recognition that the plaintiff failed to prove one or more of *Hilton*'s requirements.[121]

One court has held that a Bolivian decree was valid on its face and entitled to a presumption that the tribunal had jurisdiction, that due notice was given to the defendant, that the proceedings were regular, and that the order was free from fraud or prejudice.[122] Apparently without proof, the court also recognized Bolivia as a sovereign government with a civilized

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[114] *See* notes 37–50 *supra* and accompanying text.
[115] Fisher v. Fielding, 34 A. 714 (Conn. 1895).
[116] *Id.*
[117] Gull v. Constam, 105 F. Supp. 107, 109 (D. Colo. 1952).
[118] *Id. See generally In re* Colorado Corp., 531 F.2d 463, 469 (10th Cir. 1976).
[119] *See* James v. James, 81 Tex. 373, 16 S.W. 1087, 1088 (1891).
[120] *See generally* von Mehren & Patterson, *supra* note 20, at 55–56.
[121] Traders' Trust Co. v. Davidson, 178 N.W. 735, 736–37 (Minn. 1920); Hager v. Hager, 274 N.E.2d 157, 160 (Ill. Ct. App. 1971).
[122] Mathor v. Lloyd's Underwriters, 174 So. 2d 71, 72 (Fla. Dist. Ct. App. 1965).

jurisprudence.[123] Other courts have presumed that the foreign court rendering the judgment had jurisdiction of the subject matter and of the parties,[124] that a foreign judgment was final,[125] that the acts of a foreign court were rightly and duly performed,[126] and that the rights and liabilities of the parties were determined according to the law and procedure of the country where rendered.[127] It has been held to be the burden of the party relying on a judgment to prove the conclusive effect given it by the rendering jurisdiction,[128] but the failure to do so will merely result in the application of the forum's law.[129]

The proper burden for a plaintiff can be summarized by saying that he must produce a properly authenticated judgment that appears on its face to be valid and final. When these requirements are met, the plaintiff has made out a prima facie case for recognition of the judgment. The other requirements of the plaintiff's case are filled in by presumptions. These presumptions are, however, rebuttable. When the plaintiff has presented a prima facie case, then at least the burden of producing evidence and perhaps the burden of persuasion will be fixed on the defendant.[130] If the defendant fails to rebut the presumptions, then no fact issue will be presented and the presumptions will become conclusive.[131]

This system of ordering the parties' cases and allocating the burden of proof will promote the policy of putting an end to litigation while preserving the rights of individual litigants. Moreover, it also gives due deference to the interests of the foreign government, thereby reducing the possibility of an intrusion into the arena of foreign policy.

Currency Exchange Rates

In *Deutsche Bank Filiale Nurnberg v. Humphrey*,[132] the Supreme Court, in an action on a contract, held that the correct exchange rate for a foreign judgment is the rate prevailing on the date that the suit to recognize the foreign judgment is filed, rather than the date that the contract is breached.[133] The Court stated that the date of breach fixes the defendant's liability in the foreign currency, but that obligation bears the risk of

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[123] *Id.*

[124] Traders' Trust Co. v. Davidson, 178 N.W. 735, 736 (Minn. 1920).

[125] 164 East Seventy-Second Street Corp. v. Ismay, 151 P.2d 29, 30 (Cal. App. 1944).

[126] Martinez v. Gutierrez, 66 S.W.2d 678, 685 (Tex. Comm'n App. 1933 holding approved).

[127] Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121, 122 (1926); Dunstan v. Higgins, 138 N.Y. 70, 33 N.E. 729, 730 (1893); Cowans v. Ticonderoga Pulp & Paper Co., 219 App. Div. 120, 219 N.Y.S. 284, 285 (3d Dep't 1927), *aff'd*, 246 N.Y. 603, 159 N.E. 669 (1927).

[128] Watts v. Swiss Bank Corp., 27 N.Y.2d 270, 265 N.E.2d 739, 742–43 (1970).

[129] *Id.* 265 N.E.2d at 742. *See generally* Schacht v. Schacht, 435 S.W.2d 197, 202 (Tex. Civ. App.—Dallas 1968, no writ).

[130] C. McCORMICK, EVIDENCE § 342 at 803, § 345 at 826–27 (1972 E. Cleary, ed.)

[131] *Id.* § 345 at 820.

[132] 272 U.S. 517 (1926).

[133] *Id.* at 519.

exchange fluctuations.[134] Despite the plain language of Justice Holme's opinion, subsequent cases have construed *Humphrey* as holding that the proper exchange rate for translating foreign-nation judgments into U.S. dollars is that in existence when the American court renders its judgment.[135] Even though there is some authority to the contrary,[136] the judgment-day rule has become the general rule in the United States.[137] This rule makes sense, because it is less subject to manipulation than the filing-day rule of *Humphrey*, and it is more likely to yield the plaintiff the extrinsic value of the judgment at the time it is actually collected.

Effect of Foreign Country Judgment

The doctrines of res judicata and collateral estoppel are based on the policy of discouraging repetitious litigation and putting an end to it. They can be distinguished because res judicata is generally applied only when there is an identity of parties from one litigation to the other, and because res judicata serves to preclude not only relitigation of issues actually litigated and determined, but also issues that could have been raised. Collateral estoppel can often be applied against a party to the first litigation even though the party asserting the doctrine was not a party to the prior case. But it is applied only to issues actually tried and decided in the first case.

1. *Res Judicata*

Res judicata effect is usually allowed by American courts to foreign-nation judgments meeting the requirements both of a valid judgment and of the *res judicata* doctrine.[138] Settlements of foreign suits may be given *res*

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[134] *Id.*

[135] Paris v. Central Chiclera, S. de R.L., 193 F.2d 960, 965 (5th Cir. 1952); Shaw, Savill, Albion & Co. v. The Fredericksburg, 189 F.2d 952, 955 (2d Cir. 1951); Indian Refining Co. v. Valvoline Oil Co., 75 F.2d 797, 800 (7th Cir. 1935); Tillman v. Russo-Asiatic Bank, 51 F.2d 1023, 1025 (2d Cir. 1931); Island Territory of Curacao v. Solitron Devices, Inc., 356 F. Supp. 1, 14 (S.D.N.Y. 1973).

[136] Indian Refining Co. v. Valvoline Oil Co., 75 F.2d 797, 800 (7th Cir. 1935) (approving a foreign judgment's conversion at exchange rates prevailing at date of trial); Hoppe v. Russo-Asiatic Bank, 235 N.Y. 37, 138 N.E. 497 (1923). *See* A. NUSSBAUM, MONEY AND THE LAW: NATIONAL AND INTERNATIONAL 348 (1950); Becker, *The Currency of Judgment*, 25 AM. J. COMP. L. 157 (1977). *Contra* Jones, *The Spurious Judgment Day Rule for Converting Foreign Currency into Dollars When Suit Is Brought upon an Obligation Governed by Foreign Law*, 3 INT'L LAW. 277 (1969) (advocating conversion as of date suit is filed).

[137] Paris v. Central Chiclera, S. de R.L., 193 F.2d 960, 965 (5th Cir. 1952); Shaw, Savill, Albion & Co. v. The Fredericksburg, 189 F.2d 952, 955 (2d Cir. 1950); Island Territory of Curacao v. Solitron Devices, Inc., 356 F. Supp. 1, 14 (S.D.N.Y. 1973); RESTATEMENT § 101, comment g (1971); Scoles & Aarnas, *The Recognition and Enforcement of Foreign Nation Judgments: California, Oregon and Washington*, 57 ORE. L. REV. 377, 392 (1978). *But see* United States National Bank v. United States, 23 F.2d 927, 928 (S.D. Tex. 1928) (no further action can be maintained after French judgment paid in francs).

[138] *See, e.g.*, Sangiovanni Hernandez v. Dominicana de Aviacion, C. por A., 556 F.2d 611, 615 (1st Cir. 1977); Succession of Fitzgerald, 192 La. 726, 189 So. 116, 118 (1939); Cardy v. Cardy, 23 App. Div. 2d 117, 248 N.Y.S. 2d 944, 960 (1st Dep't 1965).

judicata effect if they have been accepted or approved by a court.[139] Courts sometimes refuse to apply the doctrine because of a lack of identity of the parties,[140] or because of a difference in the causes of action sued upon.[141]

Generally, American courts will give a foreign judgment the same effect to which it is entitled in the jurisdiction where rendered.[142] By way of limitation, however, most courts have refused to give foreign-country judgments any greater force or effect than that afforded to sister-state judgments.[143] The Uniform Foreign Judgments Recognition Act provides that a foreign judgment is enforceable in the same manner as a sister-state judgment,[144] while the Restatement says that a foreign-nation judgment will be given the same degree of recognition as a sister-state judgment.[145]

2. *Collateral Estoppel*

U.S. courts will normally afford collateral estoppel effect to foreign judgments in the proper circumstances.[146] Courts in this country have this power even though the jurisdiction rendering the judgment could not give it collateral estoppel effect.[147] One court has suggested caution, however, when applying collateral estoppel to a civil law judgment.[148]

Collateral estoppel effect has been allowed to crucial facts necessarily determined in foreign litigation and dispositive of the U.S. suit.[149] The doctrine has been denied application when the foreign suit involved property different from that at issue in the United States litigation[150] or when the defendant was not a party or a privy to the foreign suit.[151] But one who had control over, or was the successor in interest to or was in privity with a

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[139]Sangiovanni Hernandez v. Dominicana de Aviacion, C. por A., 556 F.2d 611, 615–16 (1st Cir. 1977); Cardy v. Cardy, 23 App. Div. 2d 117, 258 N.Y.S.2d 955, 960 (1st Dep't 1965).

[140]*In re* Zeitz' Estates, 135 N.Y.S.2d 573 (Surrogate's Ct. 1954).

[141]Leo Fiest, Inc. v. Debmar Publishing Co., 232 F. Supp. 623, 623–24 (E.D. Pa. 1964).

[142]Bank of Montreal v. Kough, 430 F. Supp. 1243, 1251 (N.D. Cal. 1977); Schoenbrod v. Siegler, 20 N.Y.2d 403, 230 N.E.2d 638, 641 (1967); Adamsen v. Adamsen, 195 A.2d 418, 421 (Conn. 1963); Bata v. Bata, 163 A.2d 493, 504 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961); Northern Aluminum Co. v. Law, 147 A. 715, 717 (Md. 1929); Martinez v. Gutierrez, 66 S.W.2d 678, 683–85 (Tex. Comm'n App. 1933, holding approved).

[143]Boivin v. Talcott, 102 F. Supp. 979, 981 (N.D. Ohio 1951); Pope v. Heckscher, 266 N.Y. 114, 194 N.E. 53, 54 (1934); Title Ins. & Trust Co. v. California Dev. Co., 171 Cal. 173, 152 P. 542, 557 (1915); Gruvel v. Nassauer, 210 N.Y. 149, 102 N.E. 1113, 1114 (1913).

[144]Uniform Foreign Judgments Recognition Act § 3.

[145]RESTATEMENT § 98, comment f (1971).

[146]*See generally* Bata v. Bata, 163 A.2d 493, 504–511 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961).

[147]Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F. Supp. 892, 908 (S.D.N.Y. 1968), *modified*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

[148]Bata v. Bata, 163 A.2d 493, 507 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961).

[149]Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co., Ltd., 470 F. Supp. 610, 617 (S.D.N.Y. 1979); Leo Feist, Inc. v. Dembar Publishing Co., 232 F. Supp. 623, 623–24 (E.D. Pa. 1964); *In re* Zeitz' Estates, 135 N.Y.S.2d 573, 578 (Surrogate's Ct. 1954).

[150]Flora Maritima Browning de Cuba, S.A. v. Motor Vessel Ciudad de la Habana, 218 F. Supp. 938, 942–43 (D. Md. 1963); Bata v. Bata, 163 A.2d 493, 511 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961).

[151]Kane v. Central American Mining & Oil, Inc., 235 F. Supp. 559, 568 (S.D.N.Y. 1964).

party to, the foreign suit will be bound by the judgment rendered.[152] The doctrine of mutuality of estoppel will not usually prevent the application of the collateral estoppel rule.[153]

Inconsistent Prior Judgments

When two conflicting judgments on the same cause of action exist, the general rule in the United States is to give effect to the second judgment.[154] The rule is based on the theory that the effect of the first judgment has been determined by the second suit.[155] The rule is applied to foreign as well as domestic judgments.[156] But if the subsequent decision did not rule upon the effect of the first judgment, then the prior decree may be recognized and enforced.[157]

The Uniform Foreign Judgments Recognition Act, however, allows a court to refuse recognition to a foreign-country money judgment if it conflicts with another final and conclusive judgment.[158] No guidelines are laid down concerning which of two conflicting judgments are to be recognized, and a court could refuse to give effect to either.

Conclusion

The bread and butter issue for a trial lawyer is to determine the elements of his case and the facts upon which he bears the burden of proof. But the American practice concerning such matters with respect to the recognition of foreign-nation judgments has been riddled with confusion. It is hoped that the procedures outlined in this article for ordering the parties' respective cases and for fixing the burden of proof will clarify and simplify these matters.

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[152]Watts v. Swiss Bank Corp., 27 N.Y.2d 270, 265 N.E.2d 739, 742 (1970).

[153]Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co., Ltd., 470 F. Supp. 610, 617 (S.D.N.Y. 1979).

[154]Bata v. Bata, 163 A.2d 493, 506 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961); Ambatielos v. Foundation Co., 202 Misc. 470, 116 N.Y.S.2d 641, 648 (1952).

[155]Bata v. Bata, 163 A.2d 493, 506 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961); Ambatielos v. Foundation Co., 202 Misc. 470, 116 N.Y.S.2d 641, 648 (1952); von Mehren & Patterson, *supra* note 20, at 71.

[156]Ambatielos v. Foundation Co., 202 Misc. 470, 116 N.Y.S.2d 641, 648 (1952).

[157]Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F. Supp. 892, 909 (S.D.N.Y. 1968), *modified*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

[158]Uniform Foreign Judgments Recognition Act § 4(b)(4).