1991

Is the Uniform Foreign Money-Judgments Recognition Act Potentially Unconstitutional? If So, Should the Texas Cure Be Adopted Elsewhere?

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Recommended Citation
25 Geo. Wash. J. Int'l. L & Econ. 737 (1991)

IS THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT POTENTIALLY UNCONSTITUTIONAL? IF SO, SHOULD THE TEXAS CURE BE ADOPTED ELSEWHERE?

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I. INTRODUCTION

Recent political events of historic and global proportion afford a wealth of challenge and opportunity for international legal practice. The breakup of the former Soviet Union, the reunification of Germany, and, in general, the collapse of command-style central planning as a viable approach to economic organization seem certain to expedite globalization of markets and increase the volume of international business transactions. An increase in transactions means an increase in disputes. While arbitration is generally considered the preferred device for resolving transnational business disputes,[1] litigation is frequently unavoidable, either as a substitute for arbitration or as a consequence of it.[2] As international disputes are litigated and reduced to judgments in the national courts of various countries, the recognition and enforcement[3] of foreign judgments will present an expanded challenge to international legal practice. This Article addresses one aspect of that challenge: the recognition and enforcement of foreign country money judgments in the United States.

The United States is the nation most receptive to recognition

1. That arbitration is the vehicle of choice is claimed with almost liturgical uniformity in everything recently published in the field of international commercial arbitration. *See, e.g.*, ALAN REDFERN & MARTIN HUNTER, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 22 (2d ed. 1991) (stating that "[m]ost international trade disputes are resolved by arbitration"). For a recent summary of the subject emphasizing the important role of arbitral institutions, see Richard J. Graving, *The International Commercial Arbitration Institutions: How Good a Job Are They Doing?*, 4 AM. U. J. INT'L L. & POL'Y 319 (1989).

2. *See* George T. Yates III, *Arbitration or Court Litigation for Private International Dispute Resolution: The Lesser of Two Evils*, *in* RESOLVING TRANSNATIONAL DISPUTES THROUGH INTERNATIONAL ARBITRATION 224, 226-32 (Thomas E. Carbonneau ed., 1984) (reviewing the factors involved in the choice between litigation and arbitration); Michael Kerr, *International Arbitration v. Litigation*, 1980 J. BUS. L. 164, 172-77 (describing two unsuccessful arbitrations and stating that increased costs and delays are largely inevitable whenever an arbitration clause provides for an international tribunal of three arbitrators in a neutral forum).

3. *See infra* note 22.

of foreign country judgments.[4] This is the conclusion reached in 1987 by the American Law Institute's Restatement (Third) of Foreign Relations Law.[5] It attributes this receptivity to the influence of the principles and practices engendered by the Full Faith and Credit Clause of the Federal Constitution[6] in respect of sister state judgments.[7]

One manifestation of this receptivity is the Uniform Foreign Money-Judgments Recognition Act (Uniform International Act), promulgated by the National Conference of Commissioners on Uniform State Laws in 1962[8] and now said to be in effect in twenty-two states, including California, Illinois, Massachusetts, Michigan, New York, Ohio, Pennsylvania, and Texas.[9] The Uni-

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4. It is important to understand that "foreign country judgment" is one species of the genus "foreign judgment," which also includes "sister state judgment" within the U.S. federal system. *See infra* note 22. This Article focuses on the foreign country judgment; however, the recognition and enforcement of foreign country judgments often necessitates an understanding of the treatment of sister state judgments.

5. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 481-488 introductory note (1986) [hereinafter RESTATEMENT OF FOREIGN RELATIONS LAW]. This work is the best general account of current United States and foreign practice on recognition and enforcement of foreign judgments that is readily available in English. *See also* Arthur T. von Mehren & Donald T. Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601 (1968) (addressing the subject of foreign adjudications from a jurisprudential point of view); Arthur T. von Mehren, *Recognition and Enforcement of Foreign Judgments—General Theory and the Role of Jurisdictional Requirements*, 167 RECUEIL DES COURS 9, 20-54 (1980) (updating aspects of *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*); Friedrich K. Juenger, *The Recognition of Money Judgments in Civil and Commercial Matters*, 36 AM. J. COMP. L. 1 (1988) (conveying a pessimistic outlook on prospects for liberalization of recognition practices); Wanda Ellen Wakefield, Annotation, *Judgment of Court of Foreign Country as Entitled to Enforcement or Extraterritorial Effect in State Court*, 13 A.L.R.4TH 1109 (1982) (collecting state and federal court cases applying state law); Sheldon R. Shapiro, Annotation, *Valid Judgment of Court of Foreign Country as Entitled to Extraterritorial Effect in Federal District Court*, 13 A.L.R. FED. 208 (1972) (collecting federal court cases applying federal law).

6. U.S. CONST. art. IV, § 1.

7. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, introductory note; *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. b (1969) [hereinafter RESTATEMENT OF CONFLICTS] (comparing foreign and sister state judgments). The Restatement of Conflicts is more than 20 years old and suffers from what many regard as a lack of "courage." *See, e.g.*, Courtland H. Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, 72 COLUM. L. REV. 220, 264 (1972) (complaining that a "disappointingly laconic approach seems to have dominated its [the Restatement (Second) of Conflict of Laws] treatment of foreign country judgments").

8. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT, 13 U.L.A. 261 (West 1986 & Supp. 1992) [hereinafter UNIFORM INTERNATIONAL ACT]. A copy of this Act is reproduced as Appendix C.

9. *Id.* The phrase "said to be in effect" is employed because the versions adopted in some states depart significantly in certain respects from the uniform model law. For a discussion of, *inter alia*, these variations, see *infra* notes 311-351 and accompanying text. The abbreviation "Uniform International Act" is employed for several reasons: (1) to

form International Act was designed to "codify" rules that had long been applied by a majority of state courts in the United States.[10] It provides for the enforcement of recognized foreign country money judgments "in the same manner as the judgment of a sister state which is entitled to full faith and credit."[11]

The formula sounds simple, logical, and workable. For the most part it has been. But in the 1980s, two Texas intermediate appellate courts ruled it unconstitutional[12] and a third avoided that condemnation by reading into the Uniform International Act (Texas version) what was tantamount to a section on due process hearing procedures.[13] In mid-1989 the Texas state legislature obliged the Texas Bar by converting that judicially inferred section into a statutory amendment,[14] thereby attempting to cure the purported unconstitutionality of the Uniform International Act.[15] That purported unconstitutionality lay in the Uniform International Act's failure to specify the United States procedures by which a foreign country money judgment is to be examined for compliance with due process standards: that is, the Act's failure to provide for due process *here* on the question of due process *there* unless a new common law action is brought on the foreign judgment.

A 1990 decision of the Texas Supreme Court upheld the constitutionality of the unamended Act but only on the basis that, under the facts of the particular case before it, the required due process hearing would be provided in the course of the separate

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distinguish that Act from the 1948 and 1964 Uniform Enforcement of Foreign Judgments Acts, which are applicable only to interstate judgments, i.e., sister state judgments, *see infra* text accompanying notes 45-72; (2) to place emphasis, for reasons of analytical clarity and convenience, on the international-interstate distinction, rather than the recognition-enforcement dichotomy, *see infra* note 22 and text accompanying note 125; and (3) to avoid the inevitable confusion of acronyms such as UFMJRA, UFCMJRA, or UEFJA.

10. UNIFORM INTERNATIONAL ACT, *supra* note 8, prefatory note, 13 U.L.A. at 261-62.

11. *Id.* § 3, 13 U.L.A. at 265.

12. Plastics Eng'g Inc. v. Diamond Plastics Corp., 764 S.W.2d 924 (Tex. Ct. App. 1989); Detamore v. Sullivan, 731 S.W.2d 122 (Tex. Ct. App. 1987). For further discussion of these cases, see *infra* notes 176-205 and accompanying text.

13. Hennessy v. Marshall, 682 S.W.2d 340 (Tex. Ct. App. 1984). For further discussion of this case, see *infra* notes 176-205 and accompanying text.

14. TEX. CIV. PRAC. & REM. CODE ANN. § 36.004 (West 1986 & Supp. 1992). A copy of the Texas International Act is reproduced as Appendix D.

15. Maria Luisa Flores & Fernando A. Dubove, *State Bar Legislative Program: Final Disposition by 71st Legislature*, 52 TEX. B.J. 890 (1989) ("The bill [now codified into law] corrects defects which recently caused the Court of Appeals to hold the [Uniform International] Act unconstitutional."). For a comprehensive discussion of these cases, see *infra* notes 176-205 and accompanying text.

common law action that had been brought to enforce the foreign judgment.[16] Since a separate common law action on a sister state or foreign country judgment has always been available,[17] the Texas Supreme Court's reasoning did not reach the perceived defects of the Uniform International Act,[18] which was designed to permit "short-cut" procedures as an alternative to enforcement lawsuits.[19]

Although the legislature in Texas took remedial action,[20] the problem has not been identified or addressed by the courts of any other state in which the Uniform International Act has been adopted. In fact eight states have adopted the Act in substantially its original form since the issue was first identified in Texas.[21] Thus the question arises whether Texas has illuminated the path that others should follow or simply conjured up and "solved" a problem when none in fact existed.

Parts II and III of this Article describe the background of the Uniform International Act. Part IV surveys the cases decided under the Act as adopted in Texas. Part V analyzes the recent cases that declared the Texas International Act unconstitutional. Part VI considers the due process issue that was the basis of

16. Don Docksteader Motors, Ltd. v. Patal Enters., Ltd., 794 S.W.2d 760, 761 (Tex. 1990), *rev'g* 776 S.W.2d 726 (Tex. Ct. App. 1989). For a comprehensive discussion of this case, see Sharon N. Freytag & Michelle E. McCoy, *Annual Survey of Texas Law—Conflict of Laws*, 45 Sw. L.J. 149, 194 (1991).

17. *See Docksteader*, 794 S.W.2d at 761; *infra* text accompanying note 41.

18. The constitutionality of a statute is usually challenged "as applied," not "on its face." This was the case in *Docksteader*. Constitutionality in one application is not necessarily constitutionality in another. *See* Ada v. Guam Soc'y of Obstetricians & Gynecologists, 113 S. Ct. 633, 633-34 (1992) (Scalia, J., dissenting from denial of certiorari). This elementary distinction seems to have escaped one commentator. *See* John E. Macey, Don Docksteader Motors, Ltd. v. Patal Enterprises, Ltd.: *The Arrival of Full Faith and Credit in Texas*, 17 T. MARSHALL L. REV. 359, 378-79 (1992) (opining that the Texas state legislature "was wasting its time" in 1989 by addressing a problem of purported unconstitutionality that in fact did not exist, as decided in 1990 by the Texas Supreme Court in *Docksteader*).

19. UNIFORM INTERNATIONAL ACT, *supra* note 8, § 3 cmt., 13 U.L.A. at 265. For a more thorough discussion of the Uniform International Act, see *infra* notes 119-140 and accompanying text.

20. *See infra* notes 295-310 and accompanying text.

21. Connecticut, Idaho, Iowa, Minnesota, New Mexico, Ohio, Pennsylvania, and Virginia have adopted the Act. *See* CONN. GEN. STAT. ANN. § 50a-30 to -38 (West Supp. 1991) (adopted in 1988); IDAHO CODE § 10-1401 to -1409 (Michie 1990) (adopted in 1990); IOWA CODE ANN. § 626B.1-B.8 (West Supp. 1991) (adopted in 1989); MINN. STAT. ANN. § 548.35 (West 1988) (adopted in 1985); N.M. STAT. ANN. § 39-4B-1 to -9 (Michie 1991) (adopted in 1991); OHIO REV. CODE ANN. § 2329.90-.94 (Anderson 1991) (adopted in 1985); 42 PA. CONS. STAT. ANN. §§ 22001-22009 (West 1991) (adopted in 1991); VA. CODE ANN. § 8.01-465.6 to -465.13 (Michie 1991) (adopted in 1990).

those declarations. Part VII explores the Texas 1989 "remedial" legislation. Finally, Parts VIII and IX assess certain alternative solutions to the problem that have been or could be adopted in other states, including a specific legislative proposal.

We begin, for purposes of comparison and historical development, with the distinct but analogous matter of recognition and enforcement of sister state judgments.[22]

II. Sister State Judgments and the Uniform Interstate Acts

A. *The Full Faith and Credit Clause*

The states, territories, and possessions of the United States are obligated by the Full Faith and Credit Clause of the United States Constitution to recognize and enforce one another's judgments.[23] The policy reasons that underlie the full faith and credit doctrine are federalism, comity, and *res judicata*.[24] These broad principles have the following specific objectives: (1) the public interest in concluding litigation;[25] (2) avoidance of duplication of

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22. A word about our terminology is in order:

(a) "Recognition" and "enforcement" are often used conjunctively and often used synonymously; they are technically different. Recognition must precede or accompany all enforcement, but not all recognition leads to enforcement. Some foreign judgments cannot be enforced and can only be recognized, e.g., judgments for the defendant, declaratory judgments, judgments on status of parties or things, and collateral estoppel effects.

See Restatement of Foreign Relations Law, *supra* note 5, § 481 cmt. b; Restatement of Conflicts, *supra* note 7, § 93 introductory note; *see also infra* text accompanying notes 125-129.

(b) The term "state" can mean either a sister state in the American Union, a territorial unit with a distinct body of law (such as a sister state in the American Union or a political subdivision, like England or Scotland in the United Kingdom), or a politically sovereign unit recognized as such under international law (such as the United States or the United Kingdom). Our style is to indicate which meaning is meant if it is not clear from the context.

(c) The term "foreign" means foreign with respect to the forum. It includes sister states, foreign nation political subdivisions with their own bodies of law, and foreign nations. Again, we indicate which when the meaning is not otherwise clear.

Cf. 1 Albert V. Dicey & J.H.C. Morris, Dicey and Morris on the Conflict of Laws 27-28 (Lawrence Collins et al. eds., 11th ed. 1987) (defining "state" as the whole of a territory that is subject to one sovereign power, thereby rejecting the notion that England or Scotland could be considered as a state, and defining "foreign" as simply not English); P.M. North & J.J. Fawcett, Cheshire and North's Private International Law 9 (12th ed. 1992) (defining "foreign system of law" as a "distinctive legal system prevailing in a territory other than that in which the court functions").

23. U.S. Const. art. IV, § 1. Congress enacted legislation in 1948 to clarify implementation of this provision. *See* 28 U.S.C. § 1738 (1988).

24. *See, e.g.*, Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 523 (1985).

25. *See* Restatement of Conflicts, *supra* note 7, § 98 cmt. b; *see also* Baldwin v.

effort; (3) protection of the successful litigant against harassment or evasive tactics on the part of his opponent; (4) rendering the choice of forum less dependent on the availability of local enforcement; (5) fostering national stability and unity; and, in certain cases, (6) establishing a principle of *forum conveniens*, or deference to the rendering forum as the more appropriate adjudicator.[26]

A presumption of validity is accorded a sister state judgment.[27] The U.S. Supreme Court has interpreted the Full Faith and Credit Clause as mandating recognition of such a judgment "even if it disregards the dominant interest or policy" of the state in which recognition is sought.[28] This interpretation has been supported by the rationale that judicial economy and integrity within the federal system require a strict application of the *res judicata* doctrine.[29] Furthermore, it has been argued that the Full Faith and Credit Clause "reflects the need to weld the states together as a single nation with utmost freedom of interstate commerce and migration and with all states respecting each other's procedures."[30] As an additional justification, it has been noted that interstate variations in cultural attitudes and commercial practices are not great and that each state's governmental procedures are subject to the same constitutional limitations.[31]

Implicit in this reasoning is a strong presumption that due pro-

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Iowa State Traveling Men's Ass'n, 283 U.S. 522, 525 (1931) (stating that "[p]ublic policy dictates that there be an end of litigation").

26. *See* von Mehren & Trautman, *supra* note 5, at 1603-04; *see also* Thomas v. Washington Gas Light Co., 448 U.S. 261, 289 (1980) (White, J., concurring) (discussing various policies underlying the Full Faith and Credit Clause). The six specific objectives were formulated by von Mehren and Trautman in the context of *international* recognition practice but are likewise applicable, albeit with different weighting, within a federal or non-unitary national framework. This is not to say that municipal practice should merely be an echo of international practice, or vice versa. von Mehren & Trautman, *supra* note 5, at 1604, 1607. There are of course counter-arguments to international recognition. *See* ANDREAS F. LOWENFELD, INTERNATIONAL LITIGATION AND ARBITRATION 371-72 (1992) (listing distrust of other states and their systems, public policy, propriety of requiring reciprocity, and differences about jurisdiction).

27. *See, e.g.*, Smith v. Crouse, 298 F. Supp. 1029, 1036-37 (D. Kan. 1968), *aff'd on other grounds*, 413 F.2d 979 (10th Cir. 1969).

28. Ruth B. Ginsburg, *Recognition and Enforcement of Foreign Civil Judgments: A Summary Review of the Situation in the United States*, 4 INT'L LAW. 720, 722 (1970); *see* RESTATEMENT OF CONFLICTS, *supra* note 7, § 117. *But see* RESTATEMENT OF CONFLICTS, *supra* note 7, § 103 cmt. b (noting that there are "extremely rare occasions" when this requirement will give way to a weightier individual interest).

29. *See* Ginsburg, *supra* note 28, at 723.

30. Eugene F. Scoles, *Interstate and International Distinctions in Conflict of Laws in the United States*, 54 CAL. L. REV. 1599, 1605 (1966).

31. *Id.* at 1605.

cess requirements were satisfied in the underlying proceedings in the sister state that rendered the original judgment.[32] This presumption justifies the practice of routinely enforcing sister state judgments.[33] The presumption can be overcome in a limited number of cases, such as lack of jurisdiction in the rendering court or fraud in the procurement of the judgment.[34] Judgments may not be collaterally attacked, however, for errors that, in the rendering court, were grounds for appeal only.[35]

The Full Faith and Credit Clause, as implemented by federal legislation,[36] does not specify the mechanics by which sister state judgments are to be recognized and enforced.[37] Although Congress has the authority to make the judgment of one state directly binding and immediately enforceable against the judgment debtor in another state[38]—much as federal court judgments are registered in other federal districts[39]—it has chosen not to do so.[40]

Until 1948 the sole device for interstate enforcement was a new action on the sister state judgment.[41] This is not tantamount

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32. ROBERT A. LEFLAR ET AL., AMERICAN CONFLICTS LAW 236 (4th ed. 1986).

33. Scoles, *supra* note 30, at 1605.

34. *Id.* at 238-41; *see also* Browning v. Navarro, 887 F.2d 553, 563 (5th Cir. 1989) ("Other than lack of jurisdiction or fraud, there are no other federal grounds which nullify a state court judgment."); Monrad G. Paulsen, *Enforcing the Money Judgment of a Sister State*, 42 IOWA L. REV. 202, 204 (1957) (stating that "[t]he defenses to a sister state judgment are limited to lack of jurisdiction, lack of finality, the running of the statute of limitations, and payment or discharge in bankruptcy").

35. LEFLAR ET AL., *supra* note 32, at 239; *see also* Aldrich v. Aldrich, 378 U.S. 540, 543 (1963) (per curiam) (holding that the proper recourse to challenge an allegedly erroneous judgment is by direct appeal, and not collateral attack); Milliken v. Meyer, 311 U.S. 457, 462 (1940) (stating that once jurisdiction is found to exist, the Full Faith and Credit Clause prohibits collateral attacks on the merits of the decision).

36. 28 U.S.C. § 1738 (1988).

37. EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS 971 & n.3 (2d ed. 1992) (citing M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312, 325 (1839)); *see also* LEFLAR ET AL., *supra* note 32, at 233-34; *cf.* Lynde v. Lynde, 181 U.S. 183 (1901) (distinguishing between a "judgment" and the procedures used to enforce that judgment, and holding that only the former are entitled to full faith and credit under the Constitution).

38. The second sentence of Article IV, § 1 of the Constitution authorizes Congress to prescribe by law "the Effect" to be given to sister state judgments. U.S. CONST. art. IV, § 1; *see* LEFLAR ET AL., *supra* note 32, at 233-34.

39. 28 U.S.C. § 1963 (1988). A judgment registered pursuant to this statute has the same effect as a judgment of the district court in the district of registration. *Id.*; *see* Ohio Hoist Mfg. Co. v. LiRocchi, 490 F.2d 105 (6th Cir.), *cert. dismissed*, 417 U.S. 938 (1974).

40. Nor has such legislation apparently ever been seriously considered. *See, e.g.*, Robert A. Leflar, *The New Uniform Foreign Judgments Act*, 24 N.Y.U.L.Q. REV. 336, 337-38 (1949).

41. LEFLAR ET AL., *supra* note 32, at 233; *see* Paulsen, *supra* note 34, at 202. The common law background of enforcing foreign money judgments by commencing a new

to a trial *de novo* since *res judicata* and collateral estoppel apply as required by the Full Faith and Credit Clause.[42] But the requirement of a new lawsuit is clearly an "inefficient and wasteful procedure"[43] that involves unnecessary "delay, expense and uncertainty."[44] The results of these perceived inadequacies led to the creation of the 1948 Interstate Act. We now turn our discussion to the substantive terms of that Act.

B. *The 1948 Interstate Act*

In 1948 the National Conference of Commissioners on Uniform State Laws (Commissioners) promulgated the first Uniform Enforcement of Foreign Judgments Act (1948 Interstate Act), applicable only to sister state judgments.[45]

Originally the Commissioners had proposed a simple judgment registration system[46] as the procedural mechanism by which to enforce sister state judgments under the proposed act.[47] The Commissioners' reasoning was that the judgment debtor had had his day in court and the proposed system, even without further procedural safeguards, satisfied the requirements of the Due Process Clause of the Federal Constitution.[48] Because due process requires nothing more than adequate notice and an opportunity to be heard[49] once and not a succession of times,[50] the judgment debtor, it was believed, would suffer no constitutional wrong under the judgment registration system.[51] In the final draft of the Act, however, the judgment registration system was abandoned because it was felt the only way to ensure the

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suit on the original judgment is described in Hessel E. Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129, 1136 (1935).

42. *See* LEFLAR ET AL., *supra* note 32, at 232-33.

43. *Id.* at 233.

44. *Id.* A new lawsuit is not only expensive but "subjects the plaintiff to overcrowded court calendars and dilatory activity by judgment debtors." John C. Chappell & Floyd Feeney, Note, *Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, 36 N.Y.U. L. REV. 488, 488 (1961); *see also* WILLIS L.M. REESE ET AL., CONFLICT OF LAWS 238 (9th ed. 1990) (noting that the common law requirement of a new suit on the judgment is very "time-consuming").

45. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, 13 U.L.A. 181 (1986) [hereinafter 1948 INTERSTATE ACT]. A copy of this Act is reproduced as Appendix A.

46. For a discussion of the judgment registration procedures, see *infra* text accompanying notes 64-70.

47. LEFLAR ET AL., *supra* note 32, at 234.

48. Leflar, *supra* note 40, at 346-47.

49. *Id.*

50. *Id.*

51. *Id.* at 347.

political success of the proposal was by compromise with those who thought the registration system too radical a change.[52] The resulting compromise was a summary judgment procedure, less cumbersome than the old common law process but less efficient than registration.[53] It involves the following: application for registration,[54] service of process on judgment debtor[55] or notice to last known address,[56] levy on property at any time after registration,[57] pleading of defenses by judgment debtor within sixty days,[58] hearing,[59] new personal[60] or quasi *in rem* judgment,[61] and execution after judgment.[62] For reasons discussed below, the Act was soon replaced by a more streamlined procedure designed to expedite the recognition of sister state judgements.

C. *The 1964 Interstate Act*

The Commissioners followed the 1948 Interstate Act with a revision in 1964, the Revised Uniform Enforcement of Foreign Judgments Act (1964 Interstate Act).[63] The prefatory note to this version succinctly describes the reasoning behind the abandonment of the summary judgment enforcement procedure of the 1948 Act in favor of a judgment registration system.[64] The

52. *Id.* at 347-49.

53. LEFLAR ET AL., *supra* note 32, at 234-35. The terms "summary judgment procedure" and "judgment registration system" need to be understood with some caution. They are not terms of art and their usage is not fixed. The authors have adopted Professor Leflar's terminology, but others have used the terms differently. *See, e.g.*, SCOLES & HAY, *supra* note 37, at 971 (noting that the 1964 Interstate Act provides for a "summary proceeding," not "registration"); Werner F. Ebke & Mary E. Parker, *Foreign Country Money-Judgments and Arbitral Awards and the Restatement (Third) of the Foreign Relations Law of the United States: A Conventional Approach*, 24 INT'L LAW. 21, 44 (1990) (noting that the 1964 Interstate Act provides for a "summary judgment-type procedure"); Adolf Homburger, *Recognition and Enforcement of Foreign Judgments*, 18 AM. J. COMP. L. 367, 397 (1970) (noting that the 1948 Interstate Act was a "hybrid registration statute" because it involved judicial supervision of the procedures employed); David L. Woodward, *Reciprocal Recognition and Enforcement of Civil Judgments in the United States, the United Kingdom and the European Economic Community*, 8 N.C. J. INT'L L. & COM. REG. 299, 301 (1983) (noting that the 1948 Interstate Act "merely restated the common law method").

54. 1948 INTERSTATE ACT, *supra* note 45, §§ 2, 3, 13 U.L.A. at 185, 193.

55. *Id.* § 4, 13 U.L.A. at 194.

56. *Id.* § 5, 13 U.L.A. at 195.

57. *Id.* § 6, 13 U.L.A. at 195.

58. *Id.* § 7, 13 U.L.A. at 197.

59. *Id.* § 8, 13 U.L.A. at 197-98.

60. *Id.* § 7, 13 U.L.A. at 197.

61. *Id.* § 12, 13 U.L.A. at 202.

62. *Id.* § 13, 13 U.L.A. at 203.

63. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, 13 U.L.A. 149 (1986) [hereinafter 1964 INTERSTATE ACT]. A copy of this Act is reproduced as Appendix B.

64. *Id.* at 150.

Commissioners noted that although the summary judgment system was preferable to its common law predecessor, court intervention was neither constitutionally necessary nor judicially efficient.[65] In the interest of providing "the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States,"[66] the Commissioners offered the states the option of a streamlined registration system. The system, now in effect in forty-one of the fifty states,[67] has for the most part been quite successful. It involves the following: filing of foreign judgment,[68] notice to judgment debtor at last known address,[69] and execution within specified period unless stay granted following appropriate showing by judgment debtor.[70] In substance this is the same practice as provided by Congress in 1948 for the inter-district enforcement of the judgments of federal district courts.[71] One difference is that the federal statute does not even refer to notice to the judgment debtor.[72]

In the meantime the Commissioners had focused their attention on the analogous problem of the recognition and enforcement of foreign *country* judgments. It is to this problem that we now turn.

III. Foreign Country Judgments and the Uniform International Act

Foreign country judgments, as distinguished from sister state judgments, do not enjoy the protection of the Full Faith and Credit Clause.[73] There is no obligation on the part of the state

65. *Id.*

66. *Id.*

67. The nine states that have not adopted the Act are: California, Indiana, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, South Carolina, and Vermont. 1964 Interstate Act, *supra* note 63, at 7 (West Supp. 1992); *cf. infra* note 314. Only Nebraska still retains the 1948 Interstate Act. 1948 Interstate Act, *supra* note 45, at 21 (West Supp. 1992). But see special treatment of Missouri, *infra* note 314.

68. 1964 Interstate Act, *supra* note 63, § 2, 13 U.L.A. at 154.

69. *Id.* § 3, 13 U.L.A. at 172.

70. *Id.* § 4, 13 U.L.A. at 175.

71. *See* 28 U.S.C. § 1963 (1988); *see also supra* note 39 and accompanying text.

72. While federal practice is beyond the scope of this Article, an in-depth discussion of § 1963 can be found in 11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §§ 2787, 2865 (1973); *see also* Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965) (indicating that for certain purposes registration equates with a new judgment on the original judgment).

73. Article IV, § 1 of the Constitution unambiguously states that it applies only to the "public Acts, Records, and judicial Proceedings of every other *State*." U.S. Const.

and federal courts of the United States to recognize automatically the judgments of courts sitting in foreign countries.[74] Although it has been suggested that federalization of this area[75] by treaty,[76] statute,[77] or federal common law[78] would be constitutional, as

art. IV, § 1 (emphasis added); *see also* RESTATEMENT OF CONFLICTS, *supra* note 7, § 31 cmt. c.

74. Ginsburg, *supra* note 28, at 722.

75. The term "federalization" is used here to refer to any action by the federal government that would result in the preemption of state law by virtue of the Supremacy Clause in Article VI of the Constitution. U.S. CONST. art. VI; *see* Robert C. Casad, *Issue Preclusion and Foreign Country Judgments: Whose Law?*, 70 IOWA L. REV. 53, 79 (1984) (indicating that the arguments for federalization are "strong" and the arguments against it amount to little more than advocacy of "inertia"); Richard D. Freer, Erie*'s Mid-Life Crisis*, 63 TUL. L. REV. 1087, 1090 (1989) (stating that "[t]he federal courts are simply ignoring *Erie* . . . by stacking the deck against the application of state law"). For the leading Supreme Court case discussing when federal law can be said to have preempted inconsistent state law, see Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, 461 U.S. 190 (1983).

76. *See, e.g.*, LEFLAR ET AL., *supra* note 32, at 252-53; Ginsburg, *supra* note 28, at 732-33; George A. Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 NOTRE DAME LAW. 734, 734-37 (1978); *cf.* Kurt H. Nadelmann, *Jurisdictionally Improper Fora in Treaties on Recognition of Judgments: The Common Market Draft*, 67 COLUM. L. REV. 995 (1967) (discussing various treaties in force in the European Economic Community). Then-professor Ginsburg has commented that the treaty approach appears to be more prevalent in civil law countries. Ginsburg, *supra* note 28, at 732-33. A brilliant analysis of the treaty approach, including the possibility of U.S. adherence to the Brussels-Lugano convention scheme, *see infra* note 134, is set forth in Arthur T. von Mehren, Recognition of United States Judgments Abroad and Foreign Judgments in the United States. Would International Conventions Be Useful? 1-19 (Apr. 1991) (unpublished manuscript, on file with *The George Washington Journal of International Law and Economics*) (summarizing remarks made by Professor von Mehren at the Max-Planck-Institut in Hamburg, Germany in 1991; full version to be published by the journal of the Max-Planck-Institut in late 1992 or 1993). Currently under study by the Hague Conference on Private International Law is a proposal by the United States, prepared by Professor von Mehren, for consideration and possible negotiation of a general multilateral treaty on jurisdiction and on recognition and enforcement of judgments. Hague Conference on Private International Law: Conclusions of the Working Group Meeting on Enforcements of Judgments, DEP'T. ST. Doc. L/PIL Doc.AC 45/HC/6 (Prelim. Doc. No. 19 of Nov. 1992) (on file with *The George Washington Journal of International Law and Ecnomics*).

77. Professor Casad implicitly acknowledges the potential for congressional action in this area, but then dismisses such action by stating that it is unlikely to occur. Casad, *supra* note 75, at 79.

78. *See* LEFLAR ET AL., *supra* note 32, at 253. The viability of a federal common law approach is very problematic. Justice Brandeis' opinion in *Erie* stated that "[t]here is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State . . . . [a]nd no clause in the Constitution purports to confer such a power upon the federal courts." Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938); *see also* John D. Brummett, Jr., Note, *The Preclusive Effect of Foreign-Country Judgments in the United States and Federal Choice of Law: The Role of the* Erie *Doctrine Reassessed*, 33 N.Y.L. SCH. L. REV. 83, 109 (1988) (stating that "it is appropriate to suggest that the *Erie* doctrine is inapplicable as a choice-of-law directive for federal-diversity courts in the foreign-country judgment setting"). *But see* Boyle v. United Technologies Corp., 487 U.S. 500, 504 (1988) ("But we have held that a few areas, involving 'uniquely federal

well as desirable because of its close relationship to foreign affairs,[79] Congress has not chosen to do so. Nor has the U.S. Supreme Court conclusively spoken for the nation on this issue.[80] Consequently, under the Supreme Court's decisions in *Erie*[81] and *Klaxon*,[82] state law largely governs the recognition of foreign country judgments.[83]

The following subsection focuses on the Texas common law because it is similar to that of other states and because it is the background of the Uniform International Act as adopted, declared unconstitutional at the intermediate appellate level, and

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interests,' . . . are so committed by the Constitution and laws of the United States to federal control that state law is pre-empted and replaced . . . by federal law of a content prescribed . . . by the courts, so-called 'federal common law.' "); Clearfield Trust Co. v. United States, 318 U.S. 363, 366 (1943) ("The rights and duties of the United States on commercial paper which it issues are governed by federal rather than local law.").

79. *See* Zschernig v. Miller, 389 U.S. 429, 440-41 (1968) (holding an Oregon statute unconstitutional because denial of inheritance rights to nonresident aliens whose countries did not grant reciprocity to U.S. citizens involved the state in foreign affairs and international relations, areas within the exclusive domain of Congress and the executive branch); *see also* Ginsburg, *supra* note 28, at 733 (noting that this area of the law is susceptible to federalization because of its "close association with foreign relations").

80. RESTATEMENT OF CONFLICTS, *supra* note 7, § 98 cmt. f (West Supp. 1989); Ginsburg, *supra* note 28, at 722. *But cf.* Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964) (holding that the act-of-state doctrine is exclusively "an aspect of federal law"). One commentary stated that it "appears extremely unlikely" that the Supreme Court would reinstate the doctrine of reciprocity enunciated in Hilton v. Guyot, 159 U.S. 113 (1895). Robert B. von Mehren & Michael E. Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 LAW & POL'Y INT'L BUS. 37, 48 (1974); *see infra* text accompanying notes 96-111. The Supreme Court might avoid the issue by applying the *Erie* doctrine and leaving the matter to the states, or it might "federalize" the area per *Sabbatino* and defer to the political branches of government. *See* Homburger, *supra* note 53, at 389-90, 405 (stating that it is "unlikely" that the Court would confirm *Hilton* reciprocity as a federally required rule).

81. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

82. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941).

83. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. a; RESTATEMENT OF CONFLICTS, *supra* note 7, § 98 cmt. f; *see also* Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912) (holding that no reviewable federal question was presented by a state court's failure to accord conclusive effect to a foreign country judgment); Willis L.M. Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 787 nn.21 & 25 (1950) (citing various state court cases that have held that the measure of respect that is owing to judgments of foreign nations is solely an issue of state law); Freer, *supra* note 75, at 1090. For a detailed discussion of the alternatives available for changing the current U.S. law on recognition and enforcement of foreign country money-judgments, see generally Ronald A. Brand, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253 (1991) (comparing the Uniform Foreign Money-Judgments Recognition Act with approaches based on treaties, federal statutes, federal common law, and federal procedural rules). For the treaty alternative see *supra* note 76.

amended in Texas.[84]

A. *Common Law Recognition Practice*

Despite some variations in local practice, most states of the Union tend to recognize valid foreign country judgments that are not subject to additional proceedings, other than execution, in the country of the rendering court.[85] That such a judgment is subject to appeal or modification does not deprive it of its character as a final judgment.[86] As with interstate judgments, the normal common law mode for enforcing a foreign country judgment is a new suit on the original judgment.[87]

A pair of early Texas cases suggest the path the development of the common law has followed, in Texas and elsewhere in the United States. The first court in Texas to decide this issue reported its decision in *Phillips v. Lyons*[88] in 1846, based on an action commenced in the independent Republic of Texas before its annexation in 1845 by the United States. In *Phillips*, the Texas Supreme Court faced the question whether conclusive effect could be given to a Louisiana judgment.[89] Judge Lipscomb, writing for the majority, overturned the lower court's decision that the judgment should be recognized. He ruled that "foreign judgments, in the absence of legislative enactments, are held in most of the states, to be only *prima facie* evidence."[90]

In the same year as *Phillips*, however, another Texas case addressing the same issue reached a different conclusion. In *Wellborn v. Carr*,[91] the same court was asked to determine whether a judgment rendered in Alabama should be given conclusive effect in light of the court's decision in *Phillips*.[92] The court held

84. *See infra* notes 177-205.

85. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. e; *see also* Reese, *supra* note 83, at 783-85.

86. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. e.

87. *See* Homburger, *supra* note 53, at 378; Yntema, *supra* note 41, at 1136.

88. Phillips v. Lyons, 1 Tex. 392 (1846). This case was brought before the State of Texas was annexed by the United States and therefore during the time when Texas was still an independent republic. Accordingly, the court viewed the Louisiana judgment at issue as a foreign country judgment. *See* R. Doak Bishop, *Obtaining Recognition and Enforcement Of Foreign-Country Judgments In Texas*, 45 TEX. BAR J. 287, 288 (1982); *infra* text accompanying note 91.

89. *Phillips*, 1 Tex. at 396.

90. *Id.* at 396-97.

91. Wellborn v. Carr, 1 Tex. 463 (1846). As was the case in *Phillips*, the Alabama judgment was considered a foreign country judgment since Texas had not yet been annexed by the United States. *See* Bishop, *supra* note 88, at 288.

92. *Phillips*, 1 Tex. at 398-99.

that the judgment should be given conclusive effect, and distinguished *Phillips* on the basis that the judgment in *Phillips* was *in personam* as opposed to the judgment in *Wellborn*, which was *in rem*.[93] Judge Lipscomb, speaking again for the court, stated that "the judgment of the *forum rei sitae is held absolutely conclusive*."[94] He reasoned that judgments based on *in rem* proceedings were absolutely conclusive "by the general consent of nations" as well as by "universal obligation."[95]

The common law theory of "*prima facie* evidence" of foreign country judgments articulated by Judge Lipscomb in the *Phillips* case has not survived. Judicial interpretation of the effect to be given foreign country judgments has shifted from the *prima facie* rule to the modern approach of conclusive effect, but without the *Wellborn* limitation to *in rem* proceedings.

In 1895 the U.S. Supreme Court declared the modern approach in *Hilton v. Guyot*.[96] According to the *Hilton* Court,

> [W]here there has been an opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.[97]

The key concept here is "comity," a rather elusive term that signifies a posture "somewhere between duty and courtesy."[98]

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93. *Wellborn*, 1 Tex. at 468-69.

94. *Id.* at 469 (citing JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS 494-95 (8th ed. 1883)).

95. *Wellborn*, 1 Tex. at 466 (citing STORY, *supra* note 94, at 494-95). *See generally* Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 519 (1839). The *Earle* opinion contained what is considered to be the first pronouncement of the comity doctrine by the U.S. Supreme Court. The Court's opinion characterized comity as "a part of the voluntary law of nations" and posited that there would be numerous instances "in which, by the general practice of civilized countries, the laws of the one, will, by the comity of nations, be recognised and executed in another." *Id.* at 589.

96. Hilton v. Guyot, 159 U.S. 113 (1895).

97. *Id.* at 202-03.

98. Courtland H. Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L.J. 291, 293 (1963); *see* Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d

The *Hilton* Court also advanced the doctrine of "reciprocity."[99] This doctrine requires denial of recognition to the judgment of a foreign country if the law of the country where judgment was rendered would not give *res judicata* effect to the judgment of a court sitting in the United States.[100] This requirement was intended to induce foreign governments to "modernize" their recognition procedures.[101]

The reciprocity requirement, however, leaves private litigants at the mercy of public policies.[102] The treatment of foreign judgments depends on the position taken by the government of the other country involved.[103] One commentator has suggested that "[t]he rule ignores the basic policy underlying the recognition

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435, 440 (3d Cir. 1971) (stating that comity "is not a rule of law, but one of practice, convenience, and expediency"), *cert. denied*, 405 U.S. 1017 (1972).

A broader definition of the term might be "expediency" while a narrower one might be "reciprocity." Elliott E. Cheatham, *American Theories of Conflict of Laws: Their Role and Utility*, 58 HARV. L. REV. 361, 373-74 (1945). *See generally* Herbert Barry, *Comity*, 12 VA. L. REV. 353 (1926); R. Doak Bishop & Susan Burnette, *United States Practice Concerning the Recognition of Foreign Judgments*, 16 INT'L LAW. 425, 426 (1982) (collecting various definitions of the term "comity"); Hessel E. Yntema, *The Comity Doctrine*, 65 MICH. L. REV. 9 (1966) (surveying the history of the doctrine); Note, 9 HARV. L. REV. 430 (1896) (commenting on the *Hilton* case).

99. *Hilton*, 159 U.S. at 210.

100. LEFLAR ET AL., *supra* note 32, at 250.

101. *See* Beverly M. Carl, *Recognition of Texas Judgments in Courts of Foreign Nations—and Vice Versa*, 13 HOUS. L. REV. 680, 685 (1976).

102. Arthur Lenhoff, *Reciprocity: The Legal Aspect of a Perennial Idea*, 49 NW. U. L. REV. 752, 764 (1955) (stating that by a court's insisting on reciprocity "a national judgment is confused with a judgment for a national").

103. *See* Carl, *supra* note 101, at 684-85; Hilarión Arnaldo Martínez Llanes, Note, *Foreign Nation Judgments: Recognition and Enforcement of Foreign Judgments in Florida and the Status of Florida Judgments Abroad*, 31 U. FLA. L. REV. 588, 628 (1979). Foreign countries may simply refuse to enforce judgments rendered in the United States. *See* Ernest G. Lorenzen, *The Enforcement of American Judgments Abroad*, 29 YALE L.J. 188, 205 (1919). Foreign countries may, on the other hand, insist on reciprocity, but this can lead to a *circulus inextricabilis*, especially if there is an irrebuttable presumption against the equivalence of the U.S. suit-on-a-judgment mechanism, or if there is a rebuttable presumption against U.S. reciprocity in the absence of U.S. statute or precedent. *See* Lorenzen, *supra*, at 206 (illustrating the *circulus inextricabilis*); ENFORCING FOREIGN JUDGMENTS IN THE UNITED STATES AND UNITED STATES JUDGMENTS ABROAD 25 (Ronald A. Brand ed., A.B.A. Sec. Int'l L. & Prac. 1992) [hereinafter ENFORCING FOREIGN JUDGMENTS] (stating "there is no easy exit from this analytical circle."); RUDOLF B. SCHLESINGER ET AL., COMPARATIVE LAW 292-93 & n.14 (5th ed. 1988) (noting that courts in civil law jurisdictions have inferred absence of reciprocity in the absence of specific statutory provisions); H.C. Gutteridge, *Reciprocity in Regard to Foreign Judgments*, 13 BRIT. Y.B. INT'L L. 49, 53 (1932) (discussing the procedure used in civil law countries, known as *exequatur*, to determine whether a judgment will be enforced); Homburger, *supra* note 53, at 376-78 (discussing the *exequatur* procedure); Kurt H Nadelmann, *Non-Recognition of American Money Judgments Abroad and What to Do About It*, 42 IOWA L. REV. 236, 251 (1956). It has been suggested that foreign country courts *ought* to regard the Restatement (Third) of Foreign Relations

and enforcement of foreign-nation judgments—putting an end to litigation."[104] This aspect of the *Hilton* opinion was increasingly criticized and attracted scant approval. Most state courts have either narrowly applied the reciprocity requirement or rejected it outright.[105] Scholars have uniformly condemned it.[106]

Law as evidence of reciprocal American recognition practice. LOWENFELD, *supra* note 26, at 391.

The harshness of the reciprocity requirement may be diluted somewhat, however, through "divisible" application; that is, by application only to judgments of the same kind and content as the one at bar. *See, e.g.*, GEORGES R. DELAUME, LAW AND PRACTICE OF TRANSNATIONAL CONTRACTS 205 (1988) (noting that German law has shifted from a global to a selective approach); Dieter Martiny, *Recognition and Enforcement of Foreign Money Judgments in the Federal Republic of Germany*, 35 AM. J. COMP. L. 721, 751 (1987) ("Reciprocity is divisible. Partial reciprocity for one or more specified classes of judgments . . . is sufficient."); George J. Roman, Recognition and Enforcement of Foreign Judgments in Various Foreign Countries 20 (1984) (manuscript available at Library of Congress, Law Library) (stating that "divisibility" is the current rule for the Federal Republic of Germany).

Lack of reciprocity, of course, is not the only basis on which a forum may refuse recognition or enforcement of a foreign judgment. It may simply invoke the defense of "public policy" as a bar, an approach commonly employed in European civil law jurisdictions. *See* SCHLESINGER ET AL., *supra*, at 866 (noting that civil law countries generally refuse recognition and enforcement of a foreign judgment if it violates local public policy); Hans-Michael Kraus, *Enforcement of Foreign Money Judgments in the Federal Republic of Germany—Some Aspects of Public Policy*, 17 TEX. INT'L L.J. 195, 197 (1982) (noting that foreign judgments that violate German public policy, by either contravening "good morals" or the purpose of German law, will not be recognized).

104. Bishop, *supra* note 88, at 293.

105. The leading state case rejecting the reciprocity requirement is Johnston v. Compagnie Générale Transatlantiques, 152 N.E. 121, 123-24 (N.Y. 1926) (limiting its interpretation of *Hilton* to the questions actually decided); *see also* von Mehren & Patterson, *supra* note 80, at 48 (asserting that *Hilton* only requires reciprocity in the very limited situation of its particular facts). Subsequent cases in both state and federal courts have followed this restrictive reading. *See* SCOLES & HAY, *supra* note 37, at 1000 & nn.6-8 (collecting state and federal cases); Wakefield, *supra* note 5, at 1110-17 (collecting cases applying state law). The cases vary in their interpretations of whether the court in *Johnston* narrowly construed the reciprocity requirement, e.g., Cornfeld v. Investors Overseas Services, Ltd., 471 F. Supp. 1255, 1259 (S.D.N.Y.), *aff'd without opinion*, 614 F.2d 1286 (2d Cir. 1979), or rejected it, e.g., Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co., 470 F. Supp. 610, 615 n.4 (S.D.N.Y. 1979); *see also* LEFLAR ET AL., *supra* note 32, at 250 (noting that while some state courts have "reject[ed] the doctrine," others have "sought to limit it narrowly").

106. *See, e.g.*, Juenger, *supra* note 5, at 32 (stating that the reciprocity requirement is "unfair" to private litigants); Lenhoff, *supra* note 102, at 776-79 (asserting that the "progressive trend" is to leave matters of reciprocity to the political branches of government); Arthur Lenhoff, *Reciprocity and the Law of Foreign Judgments: A Historical—Critical Analysis*, 16 LA. L. REV. 465, 473 (1956) (stating that the Supreme Court's analysis of the reciprocity issue in *Hilton* was "absolutely wrong"); Scoles, *supra* note 30, at 1605 (describing the *Hilton* case as "infamous"); Robert A. Sedler, *Recognition of Foreign Judgments and Decrees*, 28 MO. L. REV. 432, 468 (1963) (characterizing the *Hilton* concept of retorsion, or reciprocity, as "primitive"); Hans Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44, 50 (1962) (positing that the doc-

Hilton's precedential value today, moreover, is questionable for several reasons. First, the reciprocity requirement was enunciated in a case where the federal court's subject matter jurisdiction was based on diversity rather than federal question jurisdiction.[107] Today such cases would clearly be governed by state law.[108] Second, the Supreme Court's careful wording of the reciprocity doctrine in *Hilton* has been construed so as to restrict its application only to cases in which a foreign plaintiff attempts to enforce a judgment against a U.S. citizen.[109] According to one authority, the effect of these two considerations on *Hilton* is "to drain it of real significance."[110] Its authority for reciprocity is therefore "dubious" at best.[111]

Over the ensuing years, the influence of *Hilton* in Texas, as to both comity and reciprocity, was ambiguous. On the eve of adopting the Uniform International Act in 1981, the status of foreign country judgments in Texas was problematic.[112] Two cases held that foreign country judgments could be refused recognition due to lack of notice and lack of jurisdiction.[113] But these defects would not have survived the *Hilton* criteria in any case.[114] The only Texas case that exhibited a positive attitude towards

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trine of reciprocity does not have "any commendable quality"); *see also* Barbara Kulzer, *Some Aspects of Enforceability of Foreign Judgments: A Comparative Summary*, 16 BUFF. L. REV. 84, 90 & nn.36-37 (stating that various commentators have labeled reciprocity as "patently undesirable"). *But cf.* von Mehren & Trautman, *supra* note 5, at 1661-62 (speculating that French recognition of German judgments may have been the result of German insistence on reciprocity).

107. *See* 28 U.S.C. §§ 1331, 1332 (1988).

108. *See* Erie R.R. Co. v. Tompkins, 304 U.S. 64, 80 (1938); Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941). The purposes behind the *Erie* decision, preventing vertical forum shopping, *Erie*, 304 U.S. at 76, and establishing uniformity of decisions between state and federal courts by eliminating the creation of federal common law, *id.* at 78, would certainly support the proposition that *Hilton*'s precedential value is limited. *See* SCOLES & HAY, *supra* note 37, at 1000.

109. Hilton v. Guyot, 159 U.S. 113, 170 (1895); *see also* RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. d (stating that *Hilton* created a limited reciprocity requirement), § 481 reporters' notes 1; von Mehren & Patterson, *supra* note 80, at 48. *But cf.* LOWENFELD, *supra* note 26, at 388-89 (noting that some persons understand *Hilton* to mean that *no* French judgment would be enforced in the United States without the right of the judgment debtor to raise defenses).

110. Reese, *supra* note 83, at 793.

111. *Id.* at 800; *see also* von Mehren & Patterson, *supra* note 80, at 48.

112. See Carl, *supra* note 101, at 685-86; *see also infra* text accompanying notes 115-117. For a recent discussion of cases by a federal court applying Texas law, see Hunt v. BP Exploration Co. [Hunt I], 492 F. Supp. 885, 892-94 (N.D. Tex. 1980).

113. Schacht v. Schacht, 435 S.W.2d 197 (Tex. Civ. App. 1968); Gas Butano, S.A. v. Rodriguez, 375 S.W.2d 542 (Tex. Civ. App. 1964).

114. *See supra* text accompanying note 97.

giving conclusive effect to foreign country judgments was *Banco Minero v. Ross*.[115] In that case, from 1915, the majority quoted the central passage on comity from the *Hilton* opinion almost verbatim.[116] This, however, was "double" dictum since the court refused to enforce the judgment on grounds not involving the absence of reciprocity.[117]

B. *The Uniform International Act*

In an attempt to standardize recognition and enforcement procedures among the states as to foreign country judgments, and to address the perceived deficiencies of *Hilton*,[118] the National Conference of Commissioners on Uniform State Laws presented to the states in 1962 a Uniform Foreign Money-Judgments Recognition Act (Uniform International Act).[119] The purpose of the Uniform International Act was to facilitate recognition of foreign country judgments in the United States *so as* to "make it more likely that judgments rendered in the state will be recognized abroad."[120] The second half of this formulation is often overlooked.[121]

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115. Banco Minero v. Ross, 172 S.W. 711 (Tex. 1915).

116. *Id.* at 714 (citing Hilton v. Guyot, 159 U.S. 113, 202-03 (1895)).

117. *Id.* at 714-15 (holding that the defendant had been denied his constitutional right to be heard in a Mexican proceeding that was "arbitrary in its nature and summary in its execution").

118. *See supra* notes 99-111 and accompanying text.

119. UNIFORM INTERNATIONAL ACT, *supra* note 8. This Act was presented 14 years after the 1948 Interstate Act and two years *before* the 1964 Interstate Act. Bearing this sequence in mind is critical to an understanding of what the Commissioners thought they were accomplishing with the Uniform International Act. *E.g.*, *infra* text accompanying notes 218-243.

120. UNIFORM INTERNATIONAL ACT, *supra* note 8, prefatory note, 13 U.L.A. at 261; *see also* SCHLESINGER ET AL., *supra* note 103, at 293 ("The purpose of the Act is simply to ease the burden of a litigant who, in seeking enforcement abroad of an American judgment, may have to inform the foreign court of the rules which would be applied here in a converse case."); Uniform Foreign Money Judgment Recognition Act, Proceedings in Committee of the Whole 3 (Aug. 5, 1961) (remarks of Professor Kurt H. Nadelmann, co-drafter of the Uniform International Act) (unpublished transcript, on file with *The George Washington Journal of International Law and Economics*) [hereinafter 1961 Proceedings] ("The aim is, as I understand it, to facilitate enforcement of our own judgments abroad."). For thorough discussions on the enforcement of U.S. judgments abroad, see generally DELAUME, *supra* note 103, at 199-222; ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE (Charles Platto ed., 1989); ENFORCEMENT OF MONEY JUDGMENTS ABROAD (Philip R. Weems ed., 1991); VED P. NANDA & DAVID K. PANSIUS, LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS ch. 12 (1991); ENFORCING FOREIGN JUDGMENTS, *supra* note 103, at 51-192.

121. *See, e.g.*, Kevin C. Nash, *Enforcement of Foreign Judgments in Texas*, 3 INT'L BUS. L. 10, 11 (1989) (positing that "[t]he original purpose of the Foreign Country Money Judg-

The Uniform International Act applies only to foreign country *money* judgments. It provides for recognition in accordance with the Act's terms and for enforcement "in the same manner as the judgment of a sister state which is entitled to full faith and credit."[122] Thus it deals with recognition in one way, and with enforcement in another. More specifically, the Uniform International Act (1) establishes standards, but no procedure, for recognition, and (2) assigns enforcement to whatever procedures are in force in the state of the forum.[123] In the year of its promulgation, 1962, that meant enforcement either by a new suit on the judgment or by utilization of the summary procedures of the 1948 Interstate Act. The Commissioners' comment to section 3 of the Uniform International Act specifically contemplates that the "method of enforcement will be that of the [Interstate Act] of 1948 in a state having enacted that Act."[124]

Although the terms "recognition" and "enforcement" are often used interchangeably, their meanings are distinct, and this distinction is critical to understanding problems in the drafting and application of the Uniform International Act.[125] All "enforcement" involves or presupposes "recognition," but not all "recognition" involves "enforcement." Recognition "refers to the *res judicata* status of a foreign judgment" and takes place when the foreign adjudication is held to bind the parties.[126] Enforcement, on the other hand, connotes the ordering of relief based on the foreign judgment.[127] In the United States, as

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ments Act was to facilitate the recognition and enforcement of foreign country money judgments in Texas").

122. UNIFORM INTERNATIONAL ACT, *supra* note 8, § 3, 13 U.L.A. at 265.

123. By specifying grounds for nonrecognition, the Act implicitly provides standards for recognition. *Id.* § 4, 13 U.L.A. at 268.

124. *Id.* § 3 cmt., 13 U.L.A. at 265. There is no indication that the Commissioners ever contemplated the possibility of enforcement procedures more expeditious than those set forth in the 1948 Interstate Act. Homburger, *supra* note 53, at 399 n.175.

125. *See* Yntema, *supra* note 41, at 1132 (stating that the question of enforcement is analytically distinct from the question of whether a judgment is entitled to extraterritorial recognition); *see also* GARY B. BORN & DAVID WESTIN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS: COMMENTARY AND MATERIALS 740 (2d ed. 1992) (analogizing recognition to the doctrines of *res judicata* and collateral estoppel, and defining enforcement as occurring when a court uses coercion to compel a defendant to satisfy a foreign judgment).

126. Ginsburg, *supra* note 28, at 721; *see* Juenger, *supra* note 5, at 5.

127. Ginsburg, *supra* note 28, at 721; Juenger, *supra* note 5, at 5; *see also* BORN & WESTIN, *supra* note 125, at 740; HENRY J. STEINER & DETLEV F. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 4 (3d ed. 1986) ("For enforcement, a plaintiff invokes the court processes of the forum to vindicate his foreign judgment. Recognition, where money judgments are involved, simply requires a dismissal of plaintiff's action. Where other

already noted, enforcement of foreign country judgments has been traditionally effectuated by means of a suit for a domestic judgment predicated on the foreign judgment.[128] Under this traditional approach, the theoretically independent step of recognition was subsumed into the new lawsuit seeking enforcement.[129] The Uniform International Act, however, clearly separates these steps, assigning enforcement to procedures in effect for the enforcement of sister state judgments. What of recognition standing alone?

In a lacuna of rather startling dimension, the Uniform International Act makes no provision for the *procedure* to be used in determining eligibility for recognition. Conceivably this could be rolled into the enforcement phase where appropriate, but recognition apart from enforcement arises in a variety of contexts, such as actions for declaratory judgments, actions regarding status, and actions in which a foreign judgment is offered by way of bar or estoppel.[130] Yet the Uniform International Act establishes no procedure by which its standards can be applied when recognition alone is sought.[131] Moreover, because of the Uniform International Act's separation of the recognition and enforcement steps,[132] enforcement, which presupposes recognition, is necessarily predicated upon a determination for which no procedure has been provided.[133]

In contrast, the regime obtaining in the European Communities provides explicitly that recognition questions will be decided either by the court that would otherwise hear questions of enforcement if recognition is a principal issue in the dispute, or by the court seized with the principal proceedings if recognition

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judicial actions, such as a divorce decree, are involved, the consequences of recognition may be more complex."); Yntema, *supra* note 41, at 1132 (asserting that how a foreign judgment is to be enforced is a question analytically distinct from the extent to which it is entitled to extraterritorial recognition).

128. George A. Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 NOTRE DAME LAW. 734, 748-49 (1978) (stating that a new action resembling the old English action on a debt is the common law procedure for enforcing foreign judgments); *see also* RESTATEMENT OF CONFLICTS, *supra* note 7, § 100 cmt. b.

129. "Recognition is inherent in enforcement of a judgment." ALAN DASHWOOD ET AL., A GUIDE TO THE CIVIL JURISDICTION AND JUDGMENTS CONVENTION 38 (1987).

130. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. b; *see also* RESTATEMENT OF CONFLICTS, *supra* note 7, § 93.

131. For a discussion of possible explanations for this silence, see *infra* notes 239-243 and accompanying text.

132. UNIFORM INTERNATIONAL ACT, *supra* note 8, § 3, 13 U.L.A. at 265.

133. *See infra* notes 176-205, 212-243 and accompanying text.

is merely an incidental issue in the dispute.[134]

The Uniform International Act provides both mandatory and discretionary grounds for denying recognition to foreign country money judgments.[135] The mandatory grounds are based on lack of due process and lack of jurisdiction.[136] Specifically, recogni-

134. *See* European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, *done* Sept. 27, 1968, 1972 J.O. (L 299) 32, 8 I.L.M. 229 (1969) [hereinafter Brussels Convention] (giving "full faith and credit" to judicial decisions among European Economic Community members; sometimes referred to as the European Full Faith and Credit Convention); *see also* DASHWOOD ET AL., *supra* note 129, at 35-46, 146-75 (discussing the recognition and enforcement of judgments under the Brussels Convention). A consolidated and updated version of the Brussels Convention, following several amendments, is set forth in European Communities: Convention on Jurisdiction and Enforcement of Judgment in Civil and Commercial Matters, 1990 O.J. (C 189) 1-34, 29 I.L.M. 1413 (1990) (consolidated and updated version of the Brussels Convention of 1968 and the Protocol of 1971, following the 1989 accession of Spain and Portugal). For a discussion of the provisions of the convention, see, e.g., Lee S. Bartlett, *Full Faith and Credit Comes to the Common Market: An Analysis of the Provisions of the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters*, 24 INT'L & COMP. L.Q. 44, 56-58 (1975) (describing recognition and enforcement); Peter Hay, *The Common Market Preliminary Draft Convention on the Recognition and Enforcement of Judgments—Some Considerations of Policy and Interpretation*, 16 AM. J. COMP. L. 149, 167-71 (1968).

The principles of the Brussels Convention were made available to members of the European Free Trade Association by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. *See* European Communities-European Free Trade Association: Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, *done* Sept. 16, 1988, 1988 O.J. (L 319) 9, 28 I.L.M. 620 (1989) [hereinafter Lugano Convention] (giving "full faith and credit" to judicial decisions among EEC and EFTA members). Reports on the two conventions, with valuable chronology and commentary, appear at European Communities: Reports on Conventions on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1990 O.J. (C 198) 35-122, 29 I.L.M. 1470 (1990). For a thorough and comprehensive discussion of these treaties and protocols, see generally PETER BYRNE, THE EEC CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS 104-49 (1990); PETER KAYE, CIVIL JURISDICTION AND ENFORCEMENT OF FOREIGN JUDGMENTS 1345-1556 (1987) (discussing, *inter alia*, the requirements under the Brussels Convention for recognition and enforcement of foreign judgments); Michael Bogdan, *The "Common Market" for Judgments: The Extension of the EEC Jurisdiction and Enforcement Treaty to Nonmember Countries*, 9 ST. LOUIS U. PUB. L. REV. 113 (1990) (explaining the relationship between the Brussels and Lugano Conventions and describing the effect of the treaties on domiciliaries of non-signatories). For a recent and well-organized exposition on recognition and enforcement of judgments under the Brussels and Lugano Conventions, see NORTH & FAWCETT, *supra* note 22, at 411-44.

135. The grounds for nonrecognition are generally the same as those set forth in the Restatement of Foreign Relations Law. *Compare* UNIFORM INTERNATIONAL ACT, *supra* note 8, § 4, 13 U.L.A. at 268 (setting out three mandatory and six discretionary grounds for nonrecognition) *with* RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 482 (setting forth two mandatory and six discretionary grounds for nonrecognition). The differences between the two are discussed in Ebke & Parker, *supra* note 53, at 30-43; *see also infra* notes 136-140 and accompanying text.

136. The use of the words "due process" is not meant to imply U.S. constitutional

tion *must* be denied when: "(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have jurisdiction over the subject matter."[137] It should be noted that the foreign procedures need be only *compatible* with U.S.-style due process; they need not be *identical*.[138]

Discretionary grounds for nonrecognition include those cases where: the defendant did not receive notice in sufficient time to defend; the judgment was obtained by fraud; the claim is repugnant to the forum's public policy; the judgment conflicts with another final judgment; the judgment was contrary to an agreement to settle disputes otherwise than by litigation, e.g., by arbitration; and *forum non conveniens* if foreign jurisdiction was based only on personal service.[139] Notably absent from the list of mandatory and discretionary grounds for nonrecognition is the absence of reciprocity.[140] But several states, including Texas, introduced a modification to include absence of reciprocity as a mandatory or discretionary ground for nonrecognition.

We turn now to the Texas version of the Uniform International Act, both as necessary background to what followed and as concrete exemplar for other enacting states.

IV. The Texas International Act

Texas adopted the Uniform International Act in 1981 with two noteworthy modifications (Texas International Act).[141] In the title of the legislation, "Country" was inserted after "Foreign" to

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due process, but only due process in the sense of "fundamental fairness." Therefore, a U.S. court may only scrutinize the procedures employed in the foreign forum for *compatibility* with U.S. domestic notions of due process; they need not be identical. *See* Uniform International Act, *supra* note 8, § 4(a)(1) & cmt., 13 U.L.A. at 268 (stating that "a mere difference in the procedural system is not a sufficient basis for non-recognition").

137. *See* Uniform International Act, *supra* note 8, §§ 4, 5, 13 U.L.A. at 268, 272.

138. *See* Ingersoll Milling Mach. Co. v. Granger, 833 F.2d 680, 687 (7th Cir. 1987) (citing Illinois' version of the Uniform International Act as mandating only "compatible" and not "identical" procedures); *infra* note 217.

139. *See* Uniform International Act, *supra* note 8, § 4, 13 U.L.A. at 268; Restatement of Foreign Relations Law, *supra* note 5, § 482; *see also* Ginsburg, *supra* note 28, at 727-29, 735-36 (listing permissive grounds for nonrecognition).

140. *See* Uniform International Act, *supra* note 8, § 4, 13 U.L.A. at 268; Restatement of Foreign Relations Law, *supra* note 5, § 482.

141. Tex. Civ. Prac. & Rem. Code Ann. § 36.001-.008 (West 1986) (formerly Tex. Civ. Stat. art. 2328b-6, recodified in 1985 without significant change except that the uniform interpretation provision was deleted because it was covered by Tex. Gov't

make sure that no one was misled into thinking it referred to the kind of "foreign" judgment whose provenance is merely a sister state.[142] The more critical modification, however, was the insertion of an additional discretionary ground for nonrecognition: lack of reciprocity.[143] As the Fifth Circuit Court of Appeals observed shortly after adoption of the Texas International Act, "Texas' amendment of the Uniform [International] Act to include a reciprocity provision is especially ironic given that the Act was designed to be a modern, forward-looking statute which discarded what were considered to be outmoded and discredited doctrines."[144]

The Texas International Act, like the Uniform International Act, deals only with monetary judgments awarded or denied in foreign countries.[145] It provides that recognized foreign country judgments are "conclusive between the parties" and are "enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit."[146] Enforcement is contingent on recognition, but is then available under the Texas version of the 1964 Interstate Act, adopted at the same time as the Texas International Act, as an alternative to the common law

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CODE ANN. § 311.028 (West 1986)). Section 36.002(b) states that the provisions of the Act do not apply to judgments rendered prior to June 17, 1981. *Id.* § 36.002(b).

142. *Id.* § 36.003; *see also* Carl, *supra* note 101, at 690 (recommending that Texas follow New York's approach by adding the word "country" to avoid potential confusion with sister state judgments). The change was reflected in the Act's definitions. TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(1), (2) (West 1986).

143. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(7) (West 1986).

144. Royal Bank of Canada v. Trentham Corp., 665 F.2d 515, 516 n.2 (5th Cir. Unit A Dec. 1981) (vacating and remanding the district court's pre-enactment judgment recognizing a Canadian judgment for a hearing on the question of reciprocity as a result of the post-judgment enactment of the Texas International Act). In *Trentham*, the Fifth Circuit indicated that the Texas legislature had sent a "clear message . . . that foreign judgments which would not be reciprocally recognized if made in Texas are not favored." *Id.* at 518-19. The irony of reverting to reciprocity, albeit discretionary, is accentuated by the views of a federal district court in the Fifth Circuit, expressed shortly before the adoption of the Texas Act, that "Texas courts will not hereafter adopt this oft-criticized concept [of reciprocity]." Hunt v. BP Exploration Co. [Hunt I], 492 F. Supp. 885, 899 (N.D. Tex. 1980). The federal view of current Texas law on reciprocity is exemplified in Banque Libanaise Pour Le Commerce v. Khreich, 915 F.2d 1000 (5th Cir. 1990) (holding that the district court's refusal to recognize an Abu Dhabi judgment on the grounds of nonreciprocity did not constitute an abuse of discretion). *But see* DELAUME, *supra* note 103, at 207 (stating that "it seems that no American case since *Hilton* has refused recognition to a foreign country judgment on the sole ground of lack of reciprocity"). The authors found no state court cases that directly addressed this issue at the time this Article was written.

145. TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(2) (West 1986).

146. *Id.* § 36.004.

enforcement approach.[147] Certain of the grounds for nonrecognition clearly implicate due process concerns:

> (a) A foreign country judgment is *not* conclusive if: (1) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the *requirements of due process of law*; [and]
> (b) A foreign country judgment *need not be recognized* if: (1) the defendant in the proceedings in the foreign country did not receive notice of the proceedings in sufficient time to defend.[148]

At the time of the adoption of the Texas International Act, the Texas legislature intended to address the following problems:

> 1. Lack of adequate procedures in the state for enforcing foreign country money judgments;[149]
> 2. Growing concern over the indefinite and sometimes arbitrary criteria for recognizing foreign country money judgments;[150] and
> 3. Need to facilitate and, it was hoped, to assure, the recognition and enforcement of Texas judgments abroad.[151]

Prior to the adoption of the Texas International Act, citizens of Texas had difficulty persuading foreign courts to recognize and enforce Texas judgments.[152] The problem was more pronounced in civil law countries, where reliance is primarily on codified or statutory law rather than on judicial decisions, and where *proof* of reciprocity is quite often required.[153] Mexico, for example, requires reciprocity and will enforce a judgment from another country only to the extent that a valid Mexican judgment is enforceable in such other country.[154]

Proponents of the Uniform International Act for Texas were

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147. *Id.* § 35.001-.008 (West 1986 & Supp. 1992).

148. *Id.* § 36.005(a)(1), (b)(1) (emphasis added).

149. For a discussion of these deficiencies in the context of the Uniform International Act, which was adopted in almost its entirety, see *supra* notes 122-133 and accompanying text.

150. *See supra* notes 102-131 and accompanying text.

151. Carl, *supra* note 101, at 697 (stating that "the Act should serve to secure recognition of Texas judgments by that large group of nations that insist upon reciprocity").

152. W. Frank Newton, *Annual Survey of Texas Law—Conflict of Laws*, 36 Sw. L.J. 397, 431 (1982); *see also* Carl, *supra* note 101, at 686-87.

153. *See* Carl, *supra* note 101, at 686-87 (discussing the possibility of this problem arising under Mexican civil law).

154. *Id.* The reciprocity requirement does not apply, however, to questions of Mexican recognition not accompanied by enforcement. *See* José L. Siqueiros, *Enforcement of Foreign Civil and Commercial Judgments in the Mexican Republic*, 1986 ARIZ. J. INT'L & COMP. L. 149, 154-55 (noting that foreign judgments may be recognized solely for preclusion purposes under Mexican law without a showing of reciprocity). The relevant section of the Mexican Code is Capítulo VI, C.P.C.D.F. art. 605 (Mex. 1989).

quite sanguine about its potential. "All these problems," said one commentator, "could be eliminated through the enactment . . . of . . . the Uniform Foreign Money Judgments Recognition Act."[155] Of course this was the view *before* local introduction of the discretionary reciprocity requirement.[156] Concerns about due process were focused solely on due process in the *foreign* proceeding.[157]

The earlier cases under the Texas International Act offer no surprises. In *Hunt v. BP Exploration Co.*[158] and *Norkan Lodge Co. v. Gillum*,[159] two federal district courts applying Texas law gave conclusive effect to the respective judgments of English and Canadian courts.

In *Hunt*, the plaintiff brought suit seeking a declaratory judgment that a prior, adverse English judgment was unenforceable because under Texas law absence of reciprocity was a discretionary ground for nonrecognition, and England allegedly did not recognize judgments of U.S. courts.[160] The court cited the Texas International Act as setting forth the elements necessary for a party to establish a *prima facie* case for recognition of foreign country judgments in Texas.[161] Applying Texas law, it also noted that the burden of proof to establish lack of reciprocity was on the party opposing such recognition.[162] The court concluded that the plaintiff had failed to rebut the *prima facie* case presented by the defendant and had failed to show nonreciprocity,[163] and therefore the English judgment was enforceable.[164]

In the same year, the court in *Norkan Lodge* was asked to determine whether the bases for nonrecognition under the Texas

155. Carl, *supra* note 101, at 687; *see* Beverly M. Carl, *Uniform Foreign Country Money Judgments Recognition Act*, 44 TEX. B.J. 60, 60 (1981) (stating that the "situations can be easily remedied through the enactment by Texas of the Uniform Foreign Country Money Judgments Recognition Act").

156. *See, e.g.*, Carl, *supra* note 101, at 697 (stating that "the Act contains no reciprocity requirement").

157. *Id.* at 691-92, 696-98.

158. Hunt v. BP Exploration Co. [Hunt II], 580 F. Supp. 304 (N.D. Tex. 1984). *Hunt II* involved the same parties and issues as its predecessor, *Hunt I*, 492 F. Supp. 885 (N.D. Tex. 1980).

159. Norkan Lodge Co. v. Gillum, 587 F. Supp. 1457 (N.D. Tex. 1984). This case and *Hunt II* are discussed in D. Paul Dalton et al., *Annual Survey of Texas Law—Conflict of Laws*, 39 Sw. L.J. 373, 387 (1985).

160. *Hunt II*, 580 F. Supp. at 305-06.

161. *Id.* at 307 & nn.6-7 (citing § 5(a) and (b) of the Texas International Act).

162. *Id.* at 307-08.

163. *Id.* at 309.

164. *Id.*

International Act precluded enforcement of a Canadian judgment.[165] Although the factual situation differed from *Hunt*, the *Norkan Lodge* court found ample bases for enforcing the Canadian judgment. In *Hunt*, the action involved a dispute over a debt,[166] whereas the *Norkan Lodge* case arose out of an alleged trespass and conversion.[167] The court held that the defendant had failed to establish any of his affirmative defenses of nonreciprocity, fraud, and repugnance to public policy.[168]

In *Allen v. Tennant*,[169] however, the foreign judgment at issue was denied enforcement by a Texas state court. The plaintiffs instituted a writ of mandamus proceeding against a state trial court judge to set aside an order enforcing a foreign country default judgment entered against them.[170] The appellate court held that the trial court judge was without authority to enforce the judgment because the judgment creditor had failed to meet the requirements of the Texas International Act, as implemented by the Texas version of the 1964 Interstate Act.[171] In order to obtain enforcement of a foreign judgment, the judgment creditor first had to file an authenticated copy of the foreign judgment with the clerk of any Texas court of competent jurisdiction.[172] Second, the filing had to be accompanied by an affidavit indicating the names and last known addresses of both parties.[173] Lastly, the clerk had to give notice of the filing to the debtor.[174] The court concluded that because the judgment creditor had failed to give notice of the filing of the judgment or, in the alternative, notice of filing of a new cause of action, all orders pertaining to the enforcement were to be set aside.[175] The decision is hardly startling. But those that followed were indeed so.

V. *HENNESSY, DETAMORE,* AND *DIAMOND PLASTICS*

Contrary to a general understanding that had inspired the Uni-

165. *Norkan Lodge*, 587 F. Supp. at 1459.
166. *See Hunt I*, 492 F. Supp. at 888-90.
167. *See Norkan Lodge*, 587 F. Supp. at 1458.
168. *Id.* at 1460-62 (noting that while the Texas International Act disfavors "recognition of judgments from countries not reciprocally recognizing Texas judgments, . . . [it] leaves the Court some discretion in this area").
169. Allen v. Tennant, 678 S.W.2d 743 (Tex. Ct. App. 1984).
170. *Id.* at 743.
171. *Id.* at 744.
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.* at 744-45.

form International Act and had been reinforced by more than twenty years of experience with it, three different intermediate appellate courts in Texas determined that the "model" legislation was not so model after all. Indeed, it was found to be so seriously deficient that in one case the Act was effectively rewritten by the court, while in the other two cases the statute was declared unconstitutional. The possibility of these results had been briefly acknowledged in scholarly writings but summarily dismissed.[176]

The first case in this trilogy was *Hennessy v. Marshall*.[177] The primary question was whether, absent a plenary hearing, an English judgment could be recognized under the Texas International Act and then enforced under the Texas version of the 1964 Interstate Act.[178] The trial court held that "these two Acts had been satisfied and that the English judgment was valid and enforceable in the same manner as a judgment of the State of Texas, just as though the English judgment was that of a sister state."[179] On the basis of this holding, the trial court entered an order directing appellants to provide post-judgment discovery.[180] Appellants then sought a writ of mandamus requiring the judge to vacate the post-judgment discovery order.[181]

In vacating the trial court's order, the appellate court reasoned that "the question of enforcement is not material until the foreign country judgment has first been recognized."[182] It added that the criteria for nonrecognition could be established *only* in a

176. *See, e.g.*, Charles W. Joiner, *The Recognition of Foreign Country Money Judgments by American Courts*, 34 AM. J. COMP. L. 193, 222 & n.165 (Supp. 1986) (criticizing some courts' rejection of a registration procedure for enforcement as running counter to both the wording and the intent of the Uniform International Act). *But cf.* Bishop, *supra* note 88, at 288 (noting that both the language and intent of the Texas International Act permit enforcement through Texas' version of the 1964 Interstate Act); Bishop & Burnette, *supra* note 98, at 428 (stating that the drafters' intent was to permit registration of foreign nation judgments under the interstate acts). The acknowledgement is only implicit since no mention is made of unconstitutionality. Rejection of registration for enforcement under the 1964 Interstate Act, however, means that no notice and hearing procedures are available for foreign country judgments unless a new suit is brought on the original judgment.

177. Hennessy v. Marshall, 682 S.W.2d 340 (Tex. Ct. App. 1984). The case is discussed in James P. George & Fred C. Pedersen, *Annual Survey of Texas Law—Conflict of Laws*, 40 Sw. L.J. 401, 448-49 (1986).

178. *Hennessy*, 682 S.W.2d at 342.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 343.

plenary hearing.[183]

With respect to the standards for determining the propriety of the foreign court's personal jurisdiction,[184] the court also concluded that "these matters cannot be determined absent a plenary hearing on the question of recognition."[185] Because of these concerns, and the absence of any statutory guidance on the question of what proceedings to use for testing the foreign court's jurisdiction,[186] the court inferred that "the drafters of the Uniform Act and the Texas legislature intended that a plenary hearing be had *before* the foreign country judgment is recognized and before enforcement of the foreign country judgment commences."[187] Relying in part on other "sister-state decisions which have considered the question before us,"[188] the appellate court held that "a plenary suit must be filed and a plenary hearing held in a Texas Court before a foreign country judgment is entitled to recognition and enforcement."[189]

Three years after *Hennessy*, a second appellate court was faced with a similar issue of interpretation of the Texas International Act. In *Detamore v. Sullivan*,[190] a Canadian court had granted a default judgment in favor of the plaintiff, Continental Bank of Canada, against the Texas defendant, Detamore.[191] Subsequently, Continental Bank filed the default judgment in an applicable Texas county clerk's office seeking a writ of execution.[192] The trial judge ordered the sale of defendant's stock under the

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183. *Id.* at 343-44. The court emphasized that:

> these criteria for nonrecognition can be established only in a plenary hearing by the judgment holder against the judgment debtor. Absent such a plenary hearing, the defendant has not had an opportunity to present the matters set forth in section 5 [of the Texas International Act], some of which are in the nature of affirmative defenses and some of which the party seeking recognition of the foreign country judgment must affirmatively establish.

Id. at 344.

184. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 36.006 (West 1986).

185. *Hennessy*, 682 S.W.2d at 344.

186. *See supra* text accompanying note 123.

187. *Hennessy*, 682 S.W.2d at 345.

188. *Id.* The cases relied on by the court were Dayan v. McDonald's Corp., 397 N.E.2d 101 (Ill. App. Ct. 1979); Zalduendo v. Zalduendo, 360 N.E.2d 386 (Ill. App. Ct. 1977); Hager v. Hager, 274 N.E.2d 157 (Ill. App. Ct. 1971); Biel v. Boehm, 406 N.Y.S.2d 231 (N.Y. Sup. Ct. 1978).

189. *Hennessy*, 682 S.W.2d at 345.

190. Detamore v. Sullivan, 731 S.W.2d 122 (Tex. Ct. App. 1987). The case is discussed in Sharon N. Freytag et al., *Annual Survey of Texas Law—Conflict of Laws*, 42 Sw. L.J. 455, 495-96 (1988).

191. *Detamore*, 731 S.W.2d at 123.

192. *Id.*

writ to satisfy the judgment.[193] As in *Hennessy*, the defendant filed an application for a writ of mandamus requiring the trial judge to vacate his order.[194]

Defendant Detamore advanced two contentions in support of his application. First, he claimed that the foreign judgment had not been properly recognized as a Texas judgment because he was not afforded the plenary hearing that he was entitled to under *Hennessy*.[195] In the alternative, Detamore argued that the Texas International Act was facially unconstitutional because it failed to provide the judgment debtor with notice and an opportunity to be heard on the issue of recognition.[196]

With respect to the first contention, although the *Detamore* court agreed with the rationale of *Hennessy*,[197] it concluded that the *Hennessy* court had gone too far in ordering a plenary hearing because the Act did not provide for one. The court therefore expressly declined to follow that court's holding.[198] On the constitutional issue, however, the court reasoned that since the grounds for nonrecognition are affirmative defenses,[199] "a judgment debtor could find himself in the procedural quandary of having a valid defense to recognition and enforcement of a foreign country judgment but being unable to assert that defense."[200] The court regarded this as a denial of the judgment debtor's due process rights and concluded that the Texas International Act was unconstitutional.[201]

In 1989, confronted with an attempt to enforce a Barbados judgment, a third appellate court in *Plastics Engineering Inc. v. Dia-*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* For a discussion of facial unconstitutionality, see *supra* note 18.

197. *Id.*

198. *Id.* Justice Cannon stated that incorporating procedures where none are provided for by statute constituted judicial legislating and, as a result, declined to follow *Hennessy*'s mandate of a plenary hearing. *Id.*

199. *Id.* at 124. The grounds for nonrecognition are set forth in the Texas International Act. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005 (West 1986). Recall that the court in *Hunt II*, in interpreting the nonrecognition provision, stated that the burden of proof was on the party opposing the recognition of the judgment. *Hunt II*, 580 F. Supp. 304, 307-08 (N.D. Tex. 1984); *see also supra* text accompanying note 162.

200. *Detamore*, 731 S.W.2d at 124.

201. *Id.* One of the authors of this Article inspected the entire record on appeal in *Detamore* as well as the briefs on appeal filed by relator and respondent. The judgment creditor made no attempt to argue that a foreign country judgment could be registered under the 1964 Interstate Act.

mond Plastics Corp.[202] chose *Detamore* over *Hennessy*[203]: the Uniform International Act was unconstitutional for not providing a plenary hearing to determine the eligibility of the foreign country judgment for recognition.[204] The judgment creditor had advanced the argument that the Barbados judgment in question could be scrutinized at the time of enforcement proceedings, but the court insisted that recognition *preceded* enforcement and that "recognition being conclusive . . . could not be relitigated in the enforcement proceeding."[205]

The situation seemed to call for legislative remedy. But first we examine the constitutional issues in greater detail.

VI. The Due Process Requirement

A. *Application to Foreign Judgments*

The Fifth and Fourteenth Amendments to the U.S. Constitution prohibit governmental action that deprives "any person of life, liberty, or property, without due process of law."[206] The essential ingredient of due process is fairness.[207] This requires a neutral and detached decisionmaker.[208] It also requires notice and usually a hearing prior to any grievous governmental deprivation.[209] In some situations, a *post*-deprivation hearing or other process will suffice.[210]

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202. Plastics Eng'g Inc. v. Diamond Plastics Corp., 764 S.W.2d 924 (Tex. Ct. App. 1989).

203. *Compare supra* text accompanying notes 177-189 (mandating a plenary hearing for deciding questions of recognition) *with supra* text accompanying notes 190-201 (declining to require a plenary hearing but finding the Texas International Act facially unconstitutional).

204. *Diamond Plastics*, 764 S.W.2d at 927 (holding that "to engraft procedures for a plenary hearing on the Recognition Act, where none is provided, constitutes impermissible judicial legislating").

205. *Id.* at 926.

206. U.S. Const. amends. V, XIV, § 1. Procedural due process analysis is not implicated unless the government attempts to deprive an individual of a *constitutionally protected* "life, liberty, or property" interest. *See, e.g.*, Board of Regents v. Roth, 408 U.S. 564, 569 (1972).

207. Ronald D. Rotunda & John E. Nowak, Treatise on Constitutional Law § 17.8 (2d ed. 1992); *In re* Murchison, 349 U.S. 133, 136 (1955).

208. Rotunda & Nowak, *supra* note 207, § 17.8; *see, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 271 (1970).

209. *See, e.g.*, Laurence H. Tribe, American Constitutional Law §§ 10-8, -14, -15 (2d ed. 1988); *see, e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950); Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 678 (1930); Grannis v. Ordean, 234 U.S. 385, 394 (1914).

210. Tribe, *supra* note 209, § 10-14; Rotunda & Nowak, *supra* note 207, § 17.8. Due process generally requires that an individual be afforded a hearing *prior to* any depriva-

Due process requires notice and an opportunity for a fair hearing only one time, however, and not a succession of times.[211] Applied to the enforcement of sister state judgments, this means that

> [d]ue process need not be satisfied separately in each state that has anything to do with enforcement of a judgment. It is enough that one process be satisfied in one state. After that the action of a second state in enforcing the already valid judgment is essentially administrative in character, with no new service and hearing necessary.[212]

The proposition is now beyond cavil. The U.S. Supreme Court, "for want of substantial federal question," has dismissed an appeal from a judgment of the Supreme Court of Colorado that upheld, against due process objections, enforcement of a New Mexico money judgment in Colorado under the Uniform Interstate Act.[213] This accords with almost universal academic analysis.[214]

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tion of an interest that is protected under the Due Process Clause. *See* Bell v. Burson, 402 U.S. 535, 542 (1971). In some cases, however, it may be constitutionally permissible to postpone the hearing until after the deprivation has occurred. *See, e.g.*, Mathews v. Eldridge, 424 U.S. 319 (1976) (permitting a post-deprivation hearing). The Court has made it clear that post-deprivation hearings may only take place in "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." Boddie v. Connecticut, 401 U.S. 371, 379 (1971). The classic type of case where a post-deprivation hearing will be allowed is one involving exigent circumstances. *See, e.g.*, Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 599-600 (1950) (rejecting a due process timing challenge to § 304(a) of the Federal Food, Drug, and Cosmetic Act, which allowed seizures of misbranded articles, even if there was no threat to the public health); Yakus v. United States, 321 U.S. 414, 437 (1944) (upholding emergency wartime price controls without a prior hearing due to exigent circumstances); North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 315 (1908) (upholding the constitutionality of a state law which allowed for the destruction, after an inspection but prior to a hearing, of food believed to have spoiled on the grounds of public safety).

211. LEFLAR ET AL., *supra* note 32, at 235; *see, e.g.*, Griffin v. Griffin, 327 U.S. 220, 240 (1946).

212. LEFLAR ET AL., *supra* note 32, at 235-36.

213. Gedeon v. Gedeon, 630 P.2d 579, 583 (Colo.) (stating that "[t]he basic requirements of notice and hearing have been met by the New Mexico court which rendered the original judgment"), *appeal dismissed*, 454 U.S. 1050 (1981). The constitutionality of the Uniform Interstate Act has been upheld against due process challenges in Holley v. Holley, 568 S.W.2d 487, 489 (Ark. 1978) (en banc); Bittner v. Butts, 514 S.W.2d 556, 559 (Mo. 1974); Hehr v. Tucker, 472 P.2d 797, 799 (Or. 1970) (en banc); Sullivan v. Sullivan, 97 N.W.2d 348, 351 (Neb. 1959); Glotzer v. Glotzer, 447 N.Y.S.2d 603, 605 (N.Y. Sup. Ct. 1982). *See generally* Sara L. Johnson, Annotation, *Validity, Construction, and Application of Uniform Enforcement of Foreign Judgements Act*, 31 A.L.R.4TH 706, 715-17 (1984).

214. *See, e.g.*, RESTATEMENT OF CONFLICTS, *supra* note 7, §§ 93, 100; LEFLAR ET AL., *supra* note 32, at 235-36; Chappell & Feeney, *supra* note 44, at 490; Leflar, *supra* note 40, at 347. *Contra* David W. Hartmann, *Enforcing Foreign Judgments: Due Process Considerations*. 46 J. Mo. B. 529, 536 (1990) (stating that the failure to provide for notice and an oppor-

The constitutional context changes, and from a structural standpoint it changes rather dramatically, when the recognition or enforcement sought in the forum is for a foreign *country* judgment. True, comity in practice may come close to full faith and credit.[215] But the due process ingredients are different. It can no longer be *assumed* that the original judgment passes muster for having been rendered in a jurisdiction subject to the U.S. Constitution. There is no appeal to the U.S. Supreme Court from a foreign country court.[216] Satisfaction of due process standards for U.S. constitutional purposes is therefore in suspense. Satisfaction remains to be established, either in fact or by presumption. Automatic, unquestioning acceptance of a foreign country judgment falls short of U.S. due process standards for actual implementation at the forum. A new suit on the judgment may cure that shortfall. Mere registration may not.[217]

B. *Silence of the Uniform International Act*

Remarkable and even incredible as it may seem, the authors of the Uniform International Act focused exclusively on fairness in the *foreign* forum.[218] They gave no thought to how this might be established in the enforcing forum. They apparently assumed nothing further was needed than fairness in the rendering court and established no procedure by which this key issue might be determined. The record of the Commissioners' deliberations bears not a trace of concern for the problem that so preoccupied the drafters of the two Uniform Interstate Acts: what notice and

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tunity to be heard in the post-judgment context amounts to a "due process violation that is being systematically ignored as a matter of public policy"); *see* James P. George & Fred C. Pedersen, *Annual Survey of Texas Law—Conflict of Law*, 41 Sw. L.J. 383, 427-29 (1987) (stating that Texas' version of the 1964 Interstate Act needs to be amended to include specific due process remedies).

215. *See* RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, §§ 481, 482; *see also supra* text accompanying notes 97-98.

216. *See* RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, § 481 cmt. a.

217. In *Hilton*, the U.S. Supreme Court declared that "we are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is, of itself, a sufficient ground for impeaching the foreign judgment." Hilton v. Guyot, 159 U.S. 113, 205 (1895). The "differing procedures" involved were the French practices of permitting the plaintiff to testify without being under oath, not subjecting the plaintiff to cross-examination by the defendant, and the introduction of evidence that would not be admissible in a U.S. court. *Id.* at 204-05.

218. The drafters were Professors Kurt H. Nadelmann and Willis L.M. Reese. *See* 1961 Proceedings, *supra* note 120, at 1. Indicative of Professor Nadelmann's focus is his statement that "[t]he British Act does not include a due process requirement. Our draft does. I think it would seem obvious that no legislation should be enacted without a due process requirement." *Id.* at 8-9.

hearing procedures are required by due process for recognition in the "second" forum?[219]

The explanation for so egregious an oversight is not immediately apparent. Certainly the drafters and the Commissioners did not expect a court to interpolate appropriate notice and hearing procedures, as was done in *Hennessy*.[220] *Detamore* and *Diamond Plastics* quite properly rejected so extreme an example of judicial creativity.[221] The essence of procedural due process resides in the mechanics, a matter singularly unsuitable for gap-filling without guidance. What mechanics there are in the Uniform International Act were considered in quite specific detail.[222] This is hardly consistent with an intent to leave due process mechanics to the uncertainties of judicial improvisation.

What, then, *is* the explanation for the oversight? It will be recalled that the Uniform International Act of 1962 followed the Interstate Act of 1948 but *preceded* its revision in the Interstate Act of 1964.[223] In 1962, therefore, *enforcement* of a foreign country judgment would have been accomplished either by a new suit on the original judgment or by a judicially supervised summary process under the 1948 Act.[224] In either case, the judgment debtor would have enjoyed the right to notice and the right to be heard on the issue of *foreign country* fairness, all in the same fashion as he could have raised certain limited objections, such as lack of jurisdiction, to enforcement of a sister state judgment.[225] Due process in this country for establishing the existence of due process in the foreign country, under the Uniform International Act, would simply take place under the 1948 Interstate Act.

The difficulty with this explanation, however, is that both the

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219. Concerns about the two Uniform Interstate Acts are set forth *supra* text accompanying notes 45-72. Hearings on the Uniform International Act included a section by section analysis, taking up 79 double-spaced, typed pages. No cognizance is taken of the problems considered in this Article. *See* 1961 Proceedings, *supra* note 120, at 1-39; Uniform Foreign Money-Judgments Recognition Act, Proceedings in Committee of the Whole 1-40 (July 31, 1962) (unpublished transcript, on file with *The George Washington Journal of International Law and Economics*) [hereinafter 1962 Proceedings]. In section 3, providing for enforcement of a foreign country money judgment in the same manner as a sister state judgment, the transcript records that when the chairman asked for discussion, "[There was none.]." *Id.* at 14.

220. *See supra* notes 177-189 and accompanying text.

221. *See supra* notes 190-205 and accompanying text.

222. The drafters were careful to perform a section by section analysis. *See* 1962 Proceedings, *supra* note 219, at 7-39.

223. *See supra* text accompanying note 119.

224. *See supra* notes 41-72 and accompanying text.

225. *See* LEFLAR ET AL., *supra* note 32, at 236; Paulsen, *supra* note 34, at 204.

1948 Act and the 1964 Act define "foreign judgment" as one *already* "entitled to full faith and credit."[226] That of course excludes foreign country judgments.[227] Can they nevertheless be included through cross-reference from the Uniform International Act? It prescribes enforcement of foreign country judgments "in the same manner as the judgment of a sister state which is entitled to full faith and credit."[228] But what enjoys this in-the-same-manner treatment is a foreign country judgment that is already "conclusive" for having met the criteria for recognition.[229] The exact wording of the cross-reference bears repetition in context:

> Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.[230]

Section 4 specifies grounds for nonrecognition.[231] Section 2 requires that a foreign country judgment be final and conclusive and enforceable where rendered.[232] Only a foreign country judgment meeting those requirements is enforceable "in the same manner" as a sister state judgment.[233] There is nothing to remit until the foreign country judgment qualifies for recognition.

The cross-reference thus fails to span the definitional gap. It is like that ravaged medieval bridge on the Rhône at Avignon, anchored to an abutment at one end but truncated in space at the other.[234] Still barred *in limine* is any consideration of those issues

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226. 1948 INTERSTATE ACT, *supra* note 45, § 1(a), 13 U.L.A. at 183; 1964 INTERSTATE ACT, *supra* note 63, § 1, 13 U.L.A. at 152.

227. As indicated earlier, foreign country judgments are not covered by the Full Faith and Credit Clause of the Constitution. U.S. CONST. art. IV, § 1; *see also supra* note 73 and accompanying text. The cases routinely cited for this proposition are Dayan v. McDonald's Corp., 397 N.E.2d 101 (Ill. App. Ct. 1979); Zalduendo v. Zalduendo, 360 N.E.2d 386 (Ill. App. Ct. 1977); Hager v. Hager, 274 N.E.2d 157 (Ill. App. Ct. 1971); Biel v. Boehm, 406 N.Y.S.2d 231 (N.Y. Sup. Ct. 1978). These cases are cited in Hennessy v. Marshall, 682 S.W.2d 340 (Tex. Ct. App. 1984).

228. UNIFORM INTERNATIONAL ACT, *supra* note 8, § 3, 13 U.L.A. at 265.

229. *Id.* §§ 2, 3, 13 U.L.A. at 264-65.

230. *Id.* § 3, 13 U.L.A. at 265.

231. *Id.* § 4, 13 U.L.A. at 268.

232. *Id.* § 2, 13 U.L.A. at 264.

233. *Id.* § 3, 13 U.L.A. at 265.

234. ENCYCLOPEDIA BRITANNICA, *Bridges, Construction and History of*, (15th ed. 1982) (asserting that partial destruction of Pont d'Avignon was due to war and to ice in the river); MICHELIN TOURIST GUIDE, Provence, S.V. Avignon (3d ed. 1985) (map, history of "St. Bénézet's Bridge," and etching of the same).

required by the Uniform International Act to be resolved in favor of recognition and enforcement.[235] This in fact was so declared by the cases cited in *Hennessy*.[236]

Even if the definitional threshold could be crossed, however, the terms of the 1964 Act, with its simple registration procedure,[237] would leave the judgment debtor with considerably less remedy than that available when the Uniform International Act was issued in 1962. In addition, there is no evidence that the Commissioners in 1962 ever contemplated the possibility of applying simple registration procedures in the enforcement of foreign country judgments.[238]

As to *recognition*, as distinguished from enforcement, it is perhaps possible that the drafters of the Uniform International Act expected the matter to arise, and be dealt with in accordance with applicable due process standards, in a main proceeding to which the issue of recognition was incidental.[239] At least such a concept would not confront the threshold barrier of exclusion by definition. But rationalizing the omission of recognition procedures still leaves open the problem of enforcement.

There is a final possibility. To invoke the vernacular, nobody's perfect. If the Uniform Commercial Code, with its impressive genealogy and long period of closely monitored gestation, can contain manifest errors of draftsmanship, so too can other uniform acts.[240] An explanation for the oversight, then, may be that the sponsors simply never thought of the problem. In their zeal

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235. A recent commentator rejects this conclusion, albeit without analysis. Brand, *supra* note 83, at 278-79 (stating that the Uniform International Act "effectively incorporates" the Uniform Interstate Act into its terms in those states that have adopted both); *see* ENFORCING FOREIGN JUDGMENTS, *supra* note 103, at 21 (declaring that the Uniform International Act "incorporates" the Uniform Interstate Act into its terms where the latter is in effect). The short answer to an "incorporates" position is two-fold: (1) the text of neither one even *purports* to incorporate the other; and (2) the cross-reference fails to accomplish an effect equivalent to incorporation because of the ellipsis between foreign country judgment and "conclusive" foreign country judgment. The truncated end of the bridge is on the international side.

236. *See* cases cited *supra* note 227.

237. *See supra* text accompanying notes 63-72.

238. Homburger, *supra* note 53, at 399 n.175; *see also supra* notes 123, 219 and accompanying text.

239. The possibility is suggested in dictum by the *Zalduendo* court. *See* Zalduendo v. Zalduendo, 360 N.E.2d 386, 390 (Ill. App. Ct. 1977).

240. *See, e.g.*, JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE §§ 6-7 (3d ed. 1988) (the interplay among §§ 2-610, 2-711, 2-712, 2-713, and 2-723 is an "impossible legal thicket"). The fullest judicial discussion of this problem with the UCC is found in Cosden Oil v. Karl O. Helm Aktiengesellschaft, 736 F.2d 1064, 1069-73 (5th Cir. 1984).

to ensure due process abroad, they ignored due process at home.[241]

In this they were not alone. In none of the literature on the subject is the problem addressed, although unwittingly some writers come close.[242] Advocates of equal treatment for foreign country judgments and sister state judgments have always assumed that foreign country judgments would be subject to scrutiny in this country for "jurisdictional" requirements such as adequate notice and the opportunity to be heard.[243] But they have never considered *what* this scrutiny might entail and *how* a judgment debtor might trigger it. Those issues are the subject of the next section. What "process" is "due" in the recognizing or enforcing forum?

C. *The Balancing Test*

For present purposes, it will be taken as given that most foreign countries provide litigants with fair and reasonable judicial procedures, and that the fundamental policy of terminating litigation after a final judgment has been rendered entitles foreign country judgments to recognition in the United States.[244] There

241. This may be the case, for instance, with Professor Nadelmann, a co-author of the Uniform International Act. Apparently, he regarded as exemplary the regime that obtained in California from 1907 to 1974, under which a foreign country judgment enjoyed even higher status than a judgment of a sister state. *See infra* text accompanying notes 311-331.

It is possible that the statement in the text is too harsh. One commentator attributes the hiatus to an "implicit assumption." William C. Sturm, *Enforcement of Foreign Judgments*, 95 COM. L.J. 200, 215 (1990) (noting that there was an implicit assumption by the sponsors that enforcement would be available through the 1948 Interstate Act). An example of this latter-day oversight, in an otherwise excellent summary of U.S. practice, is Leigh B. Middleditch, Jr. et al., *Enforcement of Foreign Commercial Judgments in the U.S., England and South Africa*, 19 INT'L BUS. LAW. 436, 437 (1991) (noting that when both the Uniform International Act and the 1964 Interstate Act are in force, "foreign country judgments may be enforced simply by filing an authenticated copy of the foreign judgment with a state court in the receiving jurisdiction").

242. Homburger, *supra* note 53, at 397 (stating that absent a treaty, "judicial supervision of validation proceedings and a hearing before final enforcement is *preferable* for judgments coming from independent nations of different political, social and legal background") (emphasis added).

243. *See, e.g.*, SCOLES & HAY, *supra* note 37, at 1003; Scoles, *supra* note 30, at 1606 & n.32; *see generally* David Westin, *Enforcing Foreign Commercial Judgments and Arbitral Awards in the United States, West Germany, and England*, 19 LAW & POL'Y INT'L BUS. 325, 333-36 (1987) (stating that U.S. courts should enforce foreign country judgments unless the judgment debtor can show that the judgment was obtained by unfair means).

244. SCOLES & HAY, *supra* note 37, at 1003.

will be exceptional cases where this is not so, however.[245] Thus a determination of which cases qualify for recognition and which cases do not so qualify is itself a part of the process for deprivation of property that must be "due." It is here that the Uniform International Act breaks down.

Other than the three Texas cases discussed earlier,[246] there are no cases on what process is due in the determination of whether or not due process has been obtained in the foreign country rendering court.[247] Nor is there more than one authority, *Gedeon v. Gedeon*, addressing that problem with respect to a sister state judgment.[248] One must therefore rely on analogy and extrapolation.

The U.S. Supreme Court has not provided systematic guidance on the values and objectives of the due process determination.[249] The answers have depended heavily on the particular context involved.[250] In all cases today, however, the Court employs a three-pronged balancing test. As elaborated in *Mathews v. Eldridge*,[251] the factors to be weighed are:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[252]

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245. *See* Ebke & Parker, *supra* note 53, at 35 (noting that foreign country judgments have rarely been denied recognition due to a lack of fair procedures).

246. *See supra* notes 177-205 and accompanying text.

247. The Uniform International Act's specific jurisdictional requirements appear to be higher than those applicable under modern long-arm statutes, but § 5(b) permits acceptance of other bases of jurisdiction in the rendering court. UNIFORM INTERNATIONAL ACT, *supra* note 8, § 5(b), 13 U.L.A. at 272; *see also* Bank of Montreal v. Kough, 612 F.2d 467, 469-71 (9th Cir. 1980) (interpreting California's International Act to permit enforcement of a British Columbia judgment with jurisdiction based on the state long-arm statute).

248. Gedeon v. Gedeon, 630 P.2d 579, 583 (Colo.), *appeal dismissed*, 454 U.S. 1050 (1981); *see supra* text accompanying note 213.

249. Two esteemed constitutional law scholars have labeled the Court's approach to procedural due process analysis as utilitarian. *See* ROTUNDA & NOWAK, *supra* note 207, § 17.8.

250. *Id.*

251. Mathews v. Eldridge, 424 U.S. 319 (1976).

252. *Id.* at 335. The test was actually adopted by the Court two years earlier in Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974). *See infra* text accompanying note 277.

The most recent Supreme Court case on the subject is significantly different, factually and legally, from the scenario typically involved in the foreign judgment situation with

All federal and state courts in the United States must now follow the *Mathews* balancing test.[253] It is employed not only to determine if an individual is entitled to a hearing, whether before or after deprivation, but also to determine the precise procedures to be employed, with or without a hearing.[254] The threshold requirement is of course that the individual's interest be constitutionally protected against deprivation without "due process of law."[255]

In creditor-debtor type cases, it is doctrine that when the creditor invokes government-enforced procedures to take property of the debtor or alleged debtor, the latter *is* deprived of a constitutionally significant interest in property.[256] Once the creditor has established his claim, however, the debtor has been accorded due process and the government may help the creditor to enforce it.[257] Even here, however, a minimum of procedure may be required to satisfy due process. An examination of how the U.S.

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which we are here concerned. Connecticut v. Doehr, 111 S. Ct. 2105 (1991), involved a challenge to the constitutionality of a state statute allowing prejudgment attachment of defendant's property without notice or hearing. *Id.* at 2109. The statute in question required only an oath by the plaintiff that there was probable cause to sustain the validity of his or her claim. *Id.* The Supreme Court affirmed the Second Circuit's decision that the statute violated due process because it permitted *ex parte* attachment absent a showing of extraordinary circumstances. *Id.* at 2116. In the course of its opinion, the Supreme Court shifted the focus of the third prong of the *Mathews* test—the governmental interest. *Mathews* involved the question of "what process is due when the government itself seeks to effect a deprivation on its own initiative." *Id.* at 2112. In *Doehr*, the Court paid "principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections." *Id.*

With respect to this alteration of the third prong, foreign judgments are probably more similar to *Doehr* than *Mathews*. But *Doehr* involved a civil suit for assault and battery, and the Court emphasized the importance of "the highly factual nature of the issues," as contrasted with "uncomplicated matters *that len[t] themselves to documentary proof.*" *Id.* at 2111 (emphasis added) (citing Mitchell v. W.T. Grant Co., 416 U.S. 600, 609 (1974)). In this more important regard, cases involving foreign money judgments are more like *Mathews*.

253. ROTUNDA & NOWAK, *supra* note 207, § 17.8. For a criticism of the *Mathews* balancing test, see TRIBE, *supra* note 209, § 10-13 (stating that "protection of such 'core' concerns cannot be afforded by 'balancing' the general interests of the majority against those of the individual"); *see also* Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in* Mathews v. Eldridge: *Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 46 (1976) (commenting that the *Mathews* test is "incomplete" and that the Court has overlooked alternative theories such as individual dignity, equality, and tradition).

254. ROTUNDA & NOWAK, *supra* note 207, § 17.8.

255. U.S. CONST. amends. V, XIV, § 1.

256. ROTUNDA & NOWAK, *supra* note 207, § 17.9(b).

257. *Id.*

Supreme Court has dealt with post-judgment garnishment procedures will give some indication of how it might deal with the analogous problem of enforcing or recognizing foreign country judgments. Prejudgment garnishment procedures will be considered as well, since presumably the Court would turn to them for guidance.[258]

As early as 1924, the U.S. Supreme Court held in *Endicott Johnson Corp. v. Encyclopedia Press, Inc.* that due process does not require post-judgment garnishment procedures to provide a debtor with notice or hearing before garnishment.[259] The Court reasoned that the underlying proceeding served as constructive notice to the debtor that the creditor might attempt to garnish the debtor's wages to satisfy the judgment.[260] The Court added that "in the absence of a statutory requirement, it is not essential that he [the debtor] be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take 'notice of what will follow,' no further notice being 'necessary to advance justice.' "[261]

For more than five decades, the *Endicott Johnson* rule was largely followed by the lower courts.[262] Then in 1980 in *Finberg v. Sulli-*

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258. Darrell W. Dunham, *Post-Judgment Seizures: Does Due Process Require Notice and Hearing?*, 21 S.D. L. REV. 78, 79 (1976).

259. Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285, 288 (1924).

260. *Id.* at 288-89.

261. *Id.* at 288.

262. *See, e.g.*, McCahey v. L.P. Investors, 593 F. Supp. 319, 326-27 (E.D.N.Y. 1984), *aff'd*, 774 F.2d 543 (2d Cir. 1985); Halpern v. Austin, 385 F. Supp. 1009, 1013 (N.D. Ga. 1974); Moya v. DeBaca, 286 F. Supp. 606 (D.N.M. 1968), *appeal dismissed*, 395 U.S. 825 (1969); South Florida Trust Co. v. Miami Coliseum Corp., 133 So. 334 (Fla. 1931).

One exception to the *Endicott Johnson* rule emerged in Griffin v. Griffin, 327 U.S. 220 (1946), involving garnishment for alimony arrearages to satisfy a judgment. The majority opinion made no mention of *Endicott Johnson*, and the Court required that the debtor be afforded notice and a hearing. *Id.* at 235. Other domestic relations cases have consistently followed *Griffin*, and *Endicott Johnson* is still followed in most other cases. *See* Dunham, *supra* note 258, at 81 & n.16.

A second exception to the *Endicott Johnson* rule, not involving a domestic relations matter, is Betts v. Tom, 431 F. Supp. 1369 (D. Haw. 1977). In *Betts*, the lessor, holding a default judgment, seized the lessee's bank account that contained only unexpended funds from a welfare grant. *Id.* at 1370-71. Under Hawaiian law, such funds are exempt from execution. *Id.* at 1371 & n.3. The court ruled that the judgment creditor should have been required *at least* to submit prior to seizure an affidavit that the funds were not exempt, followed by an immediate hearing on the issue of exemption within two days. *Id.* at 1377-78.

For an interesting proposal suggesting a post-judgment summary-seizure procedure designed to protect the interests of both debtors and creditors, see Thomas W. Logue, Comment, *Due Process, Postjudgment Garnishment, and "Brutal Need" Exemptions*, 1982 DUKE L.J. 192.

van,[263] the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania statute was unconstitutional for failing to provide immediate post-seizure adjudication of claims of exemption[264] and for failing to require that the debtor be informed of the existence of the exemptions.[265] Nevertheless, on closer examination, *Finberg* is consistent with *Endicott Johnson*. First, the particular facts of *Finberg* were critical to the court's decision: Mrs. Finberg was a sixty-eight year old widow on welfare.[266] Second, federal law proscribes the seizure of Social Security benefits.[267] Third, Pennsylvania law provides a $300 cash exemption to debtors in Mrs. Finberg's economic position.[268] The real issue, therefore, was whether Pennsylvania law adequately protected Mrs. Finberg's statutory right to exempt certain property from seizure.[269] Because the protection of an *unadjudicated* statutory right was involved, the requirement of additional safeguards can be reconciled with *Endicott Johnson*.[270]

The *Finberg* decision was preceded, and perhaps facilitated, by the U.S. Supreme Court's earlier holding in *Sniadach v. Family Finance Corp.*.[271] The *Sniadach* Court held that, because garnishment of wages is such a severe deprivation and the possibility for grave injustice is so manifest, due process requires that it be preceded by notice to the debtor and an opportunity for a hearing.[272] This holding, in a prejudgment attachment case, rested entirely on the Court's characterization of wages as a type of property unique in our economic system.[273] Following *Sniadach*, the Court held in *Fuentes v. Shevin*[274] that a replevin statute violated due process because it failed to provide the debtor with notice and an opportunity to dispute the creditor's claim of

263. Finberg v. Sullivan, 634 F.2d 50 (3d Cir. 1980) (en banc).

264. *Id.* at 61.

265. *Id.* at 62.

266. *Id.* at 51.

267. *Id.* at 52 (discussing 42 U.S.C. § 407 (1988)).

268. *Id.* (discussing 42 PA. CONS. STAT. ANN. § 8123 (1979)). In 1991, the state legislature reduced the exemption to $100. 42 PA. CONS. STAT. ANN. § 8123 (1991).

269. *Finberg*, 634 F.2d at 56.

270. This distinction is further developed in Michael M. Greenfield, *A Constitutional Limitation on the Enforcement of Judgments—Due Process and Exemptions*, 1975 WASH. U. L.Q. 877, 896-98 (advocating that the *Endicott Johnson* rule should not apply when new questions of law or fact relevant to subsequent proceedings could not have been litigated in the earlier proceeding).

271. Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

272. *Id.* at 340-42.

273. *Id.* at 340.

274. Fuentes v. Shevin, 407 U.S. 67 (1972).

default.[275] *Fuentes* is significant, not for its holding but for its dissent. The "balancing of interests" approach advocated in the dissent[276] was adopted as the majority's opinion in *Mitchell v. W.T. Grant Co.*[277] This approach, as noted earlier, represents the Court's current position on due process.[278] The *Mitchell* Court deemed it critically important that a judge was involved in the process to assure that the debtor was not left to the "unsupervised mercy of the creditor and court functionaries."[279] *Mitchell* also reflects a shared understanding among the concurring and dissenting justices that the pro-debtor opinion in *Fuentes* had been overruled.[280]

Mitchell's "shared understanding" was somewhat muddled, however, in *North Georgia Finishing, Inc. v. Di-Chem, Inc.*[281] In *North Georgia*, the Court invalidated as unconstitutional a Georgia statute that allowed the creditor to garnish the property of an alleged debtor under certain procedural safeguards but without a hearing prior to the garnishment or attachment of the debtor's assets.[282]

Of the foregoing cases, only *Finberg* involved post-judgment garnishment. It concerned the issue of exempt property and ruled for the debtor.[283] *Sniadach*, *Fuentes*, *Mitchell*, and *North Georgia* all involved prejudgment garnishment. *Mitchell*, contemplating some judicial intervention, ruled for the creditor. But *Sniadach*, concerning wages; *Fuentes*, concerning consumer goods; and *North Georgia*, contemplating no judicial intervention, all ruled for the debtor. Can these various holdings be reconciled? To what extent are they applicable by analogy or otherwise to the recognition and enforcement of foreign country judgments?

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275. *Id.* at 67-68.

276. *Id.* at 99-102 (White, J., dissenting). Justice White reasoned that the seller's interest in the property, to prevent deterioration of his or her security, was greater than the property owner's interest in retaining the use of the property pending final judgment. *Id.* at 100.

277. Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974).

278. *Mitchell* was articulated further and eventually formalized in Mathews v. Eldridge, 424 U.S. 319 (1976). *See supra* notes 249-252 and accompanying text.

279. *Mitchell*, 416 U.S. at 616.

280. *Id.* at 623 (Powell, J., concurring) ("I think it is fair to say that the *Fuentes* opinion is overruled."); *id.* at 634 (Stewart, J., dissenting) (asserting that "this case is constitutionally indistinguishable from *Fuentes v. Shevin*, and the Court today has simply rejected the reasoning of that case and adopted instead the analysis of the *Fuentes* dissent").

281. North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975).

282. *Id.* at 606-07.

283. *See supra* text accompanying notes 263-270.

It should be borne in mind that the Texas appellate courts did not strike down the procedures of the Uniform International Act as constitutionally insufficient.[284] They found them constitutionally nonexistent, except, in the case of *Hennessy*, by what the other two courts thought was impermissible judicial legislation.[285] If the Uniform International Act had operated as its creators apparently thought it would, the procedures to be scrutinized for due process constitutionality of enforcement would be those of the 1948 Interstate Act and, by extension, those ultimately adopted in the 1964 Interstate Act. For recognition alone, compliance would automatically occur whenever *res judicata* or collateral estoppel issues arose in already pending litigation.[286]

The cumulative effect of the various holdings in *Endicott Johnson*, *Finberg*, *Sniadach*, *Fuentes*, *Mitchell*, and *North Georgia* confirms the constitutionality of the 1964 Interstate Act procedures, and *a fortiori* those of the 1948 Interstate Act.[287] The *sine qua non* for satisfying the dictates of due process is that the judgment debtor have an opportunity to present defenses by motion to set aside registration at some point before his property is finally taken on execution.[288] This the 1964 Interstate Act provides.[289] So does the Texas International Act as amended in 1989, described and discussed in the following section.[290]

The law was aptly summarized as follows by the Colorado

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284. *See supra* notes 190-205 and accompanying text.

285. *See supra* text accompanying notes 182-187.

286. Juenger, *supra* note 5, at 5 ("To 'recognize' a foreign judgment means to respect the foreign court's decision as *res judicata*.").

287. Several attempts have been made to reconcile these and similar cases. The common theme seems to be this: the *Mathews* balancing test recognizes both the judgment creditor's interest in expeditious seizure and the judgment debtor's interest in preventing erroneous deprivation, thus indicating a willingness to permit seizures without prior notice only if such seizure is followed by an immediate post-deprivation hearing. *See* Dunham, *supra* note 258, at 92-93, 104; Logue, *supra* note 262, at 206-07.

288. *See, e.g.*, LEFLAR ET AL., *supra* note 32, at 235 (noting that the judgment debtor is "amply protected" if he can present defenses any time before execution); Chappell & Feeney, *supra* note 44, at 490-91 (stating that enforcement is constitutional so long as the judgment debtor has an opportunity to present defenses at the time of levy of execution); Gregory A. Harrison, Note, *S. 23: Ohio Enacts an Enforcement of Foreign Judgments Law*, 9 U. DAYTON L. REV. 391, 396-98 (1984) (noting that in Ohio notice as well as an automatic thirty-day stay and early access to a hearing meet the constitutional requirements).

289. 1964 INTERSTATE ACT, *supra* note 63, § 3, 13 U.L.A. at 172.

290. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0044 (West Supp. 1992). For a complete discussion of the Texas amendments, see *infra* notes 295-310 and accompanying text.

Supreme Court in *Gedeon v. Gedeon*, referred to above[291]:

> It is not entirely clear what precisely due process requires by way of procedures for post-judgment filings such as this. However, when the creditor's interest in collecting a valid judgment is balanced against the debtor's interest in keeping his property, which has already been protected by prior notice and hearing, in our view, the due process requirements of the United States Constitution, *amend.* XIV, are satisfied by the procedures of the Act. The Act requires that notice be mailed to the last known address of the debtor and that there be a ten-day stay of execution. The Act also has liberal provisions for an additional stay of enforcement of the judgment and for further hearings. While these procedures may not comply with the strict requirements of *Fuentes*, . . . those procedures are not required in post-judgment proceedings.[292]

It will be recalled that the appeal from *Gedeon* was dismissed by the U.S. Supreme Court for want of a substantial federal question.[293]

We now consider the remedial measures taken by Texas to cure the supposed unconstitutionality of its Uniform International Act.

VII. Texas Amendments of 1989

The response of the international bar in Texas to the *Detamore* decision[294] was prompt, organized, and forceful.[295] At the insistance of its international law section, the State Bar of Texas adopted a draft of proposed amendments to the Texas International Act and included it as part of its legislative agenda for the 1989 session of the legislature.[296] The author of the draft explained that the purpose was to overrule *Detamore* and to "aid

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291. *See supra* text accompanying notes 213, 248.

292. Gedeon v. Gedeon, 630 P.2d 579, 583 (Colo.), *appeal dismissed*, 454 U.S. 1050 (1981).

293. *See supra* text accompanying note 213.

294. Detamore v. Sullivan, 731 S.W.2d 122 (Tex. Ct. App. 1987).

295. *See, e.g.*, Memorandum from Johnson & Swanson, *Enforcing Foreign Judgments in Texas*, Johnson & Swanson Briefing 7, 8 (July 1988) (on file with *The George Washington Journal of International Law and Economics*) (explaining that "[t]he law clearly needs urgent and immediate reform and clarification"). The earlier decision in Hennessy v. Marshall, 682 S.W.2d 340 (Tex. App. Ct. 1984), which read a plenary hearing requirement into the Texas International Act to avoid condemnation of it for violating due process was largely ignored, probably for two reasons: (1) it represented only one decision, of limited precedential value, from an intermediate appellate court; and (2) it "saved" the Uniform International Act by reading in a notice and hearing requirement.

296. Frances Rauer, *Uniform Foreign Money Judgments Recognition Act Amendments*, 52 Tex. B.J. 39 (1989).

in renewing the growth of Texas as an international business and financial center."[297] This would be accomplished by making "it as simple as possible to enforce valid foreign [country] judgments in Texas, . . . thereby [assuring] the enforcement of Texas judgments in foreign countries that condition their recognition of foreign judgments on reciprocity."[298] The State Bar draft also contained a provision deleting from the Texas International Act its nonuniform discretionary lack of reciprocity ground for nonrecognition.[299]

The draft, essentially as proposed by the State Bar but without repeal of the anachronistic reciprocity provision, was passed by the legislature and became law on June 14, 1989.[300] The commentators concur that the amendments "cure" the constitutional doubts and that the new provisions simplify substantially the recognition and enforcement in Texas of foreign country judgments.[301]

In summary, the 1989 amendments provide as follows:

1. The party seeking recognition of a foreign country judgment is to file an authenticated copy of the judgment in the judgment debtor's county or in any other court of competent jurisdiction permitted by Texas venue laws.[302]

2. The county clerk is to mail notice of the filing to the party against whom recognition is sought.[303] As an alternative, the party seeking recognition may himself mail notice and file proof of same with the clerk.[304]

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297. *Id.*

298. *Id.*

299. Flores & Dubove, *supra* note 15, at 890 (noting that there was a proposed amendment that would have repealed § 36.005(b)(7) of the Texas International Act dealing with reciprocity); NEWSL. INT'L L. SEC. (State Bar of Tex.), Jan. 1989, at 15-16 (containing a copy of the draft legislation, including the proposed repeal in § 2). The international law section strongly opposed this deletion but dropped its insistence in contemplation of "a battle for another legislative session." Letter from John P. Cogan, Jr., Attorney, Baker & Botts, to Sally Velasquez, Legislative Assistant, State Representative Henry Cuellar 1-3 (Mar. 27, 1989) (on file with *The George Washington Journal of International Law and Economics*) (suggesting changes in the draft legislation to accommodate various objections). For a discussion on the original inclusion of this nonuniform provision in the Texas International Act, see *supra* notes 143-144 and accompanying text.

300. TEX. CIV. PRAC. & REM. CODE ANN. §§ 36.004-.0044 (West Supp. 1992). The reciprocity provision remained in tact. *Id.* § 36.005(b)(7) (West 1986).

301. *See, e.g.*, Nash, *supra* note 121, at 11; R. Doak Bishop, *Recent Amendments to the Texas Foreign Country Judgments Act*, NEWSL. INT'L L. SEC. (State Bar of Tex.), Jan. 1990, at 17, 19.

302. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0041 (West Supp. 1992).

303. *Id.* § 36.0042(b).

304. *Id.* § 36.0043.

3. A party against whom recognition is sought may contest recognition within 30 days after service of notice of filing. This is extended to 60 days if the party is domiciled in a foreign country.[305]

4. Within 20 days following service of the motion for nonrecognition, the party seeking recognition must file its response.[306] Either party may request an evidentiary hearing, which the court may grant or not at its discretion.[307] The court may refuse recognition only on those grounds specified in the Uniform International Act.[308]

5. The general recognition and enforcement section now reads as follows:

> Except as provided by Section 36.005 [Grounds for Nonrecognition], a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirement of Section 36.002 [Applicability], and that is not refused recognition under Section 36.0044 [Recognition and Enforcement] is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.[309]

The Texas "cure" was, in essence, to specify a registration procedure for *recognition* under the Texas International Act. This procedure is quite similar to that required by the Uniform Interstate Act when *enforcement* of a sister state judgment is sought. The Texas amendment thus provides the missing procedure for cases in which recognition, either alone or as a prerequisite to enforcement, is sought under the Texas International Act. No doubt this is a serviceable solution to the due process problem. In fact the notice and hearing procedures would appear even to exceed the minimum standards required by U.S. Supreme Court decisions.[310] To the extent those protective standards are exceeded, qualification for recognition abroad of Texas judgments is unnecessarily impaired. The more burdensome the procedure, the weaker the case for reciprocity. But the less burdensome the procedure, the stronger the case for reciprocity. The work of the drafter in this area is thus the art of the aerialist. The balance should be as near to perfect equilibrium as possible.

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305. *Id.* § 36.0044(a).
306. *Id.* § 36.0044(c).
307. *Id.* § 36.0044(e).
308. *Id.* § 36.0044(g). The grounds for nonrecognition are set forth in *id.* § 36.005.
309. *Id.* § 36.004 (West 1986 & Supp. 1992).
310. *See supra* text accompanying notes 206-210.

An additional problem with the Texas "cure" is that it would appear to require essentially redundant procedures when recognition *and* enforcement are sought. Are there alternatives to the Texas solution? Before answering that question, we turn to the experience of other states that have adopted the Uniform International Act.

VIII. EXPERIENCE OF OTHER STATES

Uniform Laws Annotated lists twenty-two states that have adopted the Uniform International Act: Alaska, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Washington.[311]

Nineteen of those twenty-two states have also adopted the 1964 Interstate Act.[312] The three who have not are California, Massachusetts, and Michigan.[313] None of the three has adopted the 1948 Interstate Act.[314] California has its own Sister State Money-Judgments Act,[315] considered below, so that in Massachusetts and Michigan the effect of the pour-over enforcement provision in the Uniform International Act is to remit the judgment creditor to a new suit on the original judgment.[316] In such cases, there is obviously no problem with the due process requirement. It is subsumed and satisfied as part of the new suit.[317]

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311. UNIFORM INTERNATIONAL ACT, *supra* note 8.

312. 1964 INTERSTATE ACT, *supra* note 63, at 7 (West Supp. 1992). Those 19 states are: Alaska, Colorado, Connecticut, Georgia, Idaho, Illinois, Iowa, Maryland, Minnesota, Missouri, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Washington. *Id.*

313. By a process of elimination, California, Massachusetts, and Michigan are the three states that have not adopted either the 1948 or the 1964 Interstate Acts. UNIFORM INTERNATIONAL ACT, *supra* note 8.

314. *Id.* The status of Missouri is somewhat ambiguous. It has amended its Rules of Civil Procedure to conform to the 1964 Interstate Act but not as yet its statutes, which still contain the 1948 Interstate Act. MO. ANN. STAT. § 511.760 (Vernon 1952 & Supp 1992). Missouri is considered here as under the 1964 Act on the footing that the Missouri Supreme Court's procedural rules prevail over prior inconsistent legislation. For a comprehensive discussion of recent Missouri reform, see Hartmann, *supra* note 214, at 529-36.

315. CAL. CIV. PROC. CODE §§ 1710.10-.65 (Deering 1981).

316. *See, e.g.*, Rentals Unlimited, Inc. v. Motor Vehicle Admin., 405 A.2d 744, 750-51 (Md. 1979) (stating that in Maryland money judgments may be enforced by either a new suit at common law or through the use of several antiquated common law writs).

317. *See* Don Docksteader Motors, Ltd. v. Patal Enters., Ltd., 794 S.W.2d 760 (Tex. 1990) (holding that when the judgment creditor seeks enforcement by a new suit, the debtor cannot claim that he has been denied due process).

Although California now has its own Sister State Money-Judgments Act, modeled on the 1964 Interstate Act but narrower in scope and departing substantially from it,[318] its Uniform International Act expressly excludes resort to the Sister State Money-Judgments Act for enforcement.[319] Thus the only way to enforce a foreign country judgment in California is through a new suit on the foreign judgment, the same as in Massachusetts and Michigan.[320]

At one time, California was at the opposite end of the recognition-enforcement spectrum. A law enacted in 1907 gave a foreign country judgment the same effect as a judgment rendered in California.[321] In literal terms, this extended greater effect to the judgments of foreign countries than to the judgments of sister states.[322] The purpose was to facilitate the enforcement abroad of California judgments, especially those against insurance companies for claims arising out of the 1906 earthquake and fire.[323] The experiment began to fail in 1909, when the German courts found lack of California reciprocity for German judgments, but the law remained on the books.[324] Its provisions were fairly regarded as both "much too sweeping" and "ineffective."[325] In practice the literal terms were ignored,[326] and a new suit on the original judgment was in fact required.[327] Then in 1967, foreign

318. *See* Stephen P. Feldman, *The Sister State and Foreign Money-Judgments Act of 1974*, 50 CAL. ST. B.J. 483 (1975).

319. CAL. CIV. PROC. CODE § 1713.3 (Deering 1981). California's Uniform International Act was enacted in 1967, but the express exclusion was not added until 1974, when the Sister State Money-Judgments Act was enacted. *See id.* § 1915 law revision commission cmt. (Supp. 1992); *see also infra* text accompanying notes 328-329.

320. *Review of Selected 1974 California Legislation*, 6 PAC. L.J. 125, 210-11 (1975) [hereinafter *California Legislation*]; *see also* Donald E. McKnight, Jr., *Enforcement of a Foreign Money Judgment in California*, 1 CAL. INT'L PRAC. 1, 1-2 (1990) (noting that enforcement in California requires the filing of an action, but leaving the erroneous impression that California's insistence on a lawsuit is "uniform" with that of other states that have enacted the Uniform International Act).

321. CAL. CIV. PROC. CODE § 1915 law revision commission cmt. (Supp. 1992) (§ 1915 was repealed in 1974).

322. *See* ALBERT A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS 163 n.25 (1962) (criticizing the scope of § 1915); Gladys L. Schwatka, Comment, *Recognition of Foreign Country Divorces: Is Domicile Really Necessary?*, 40 CAL. L. REV. 93 (1952).

323. *See* Lorenzen, *supra* note 103, at 204 n.129.

324. *Id.* at 202-05.

325. EHRENZWEIG, *supra* note 322, at 163 n.25.

326. CAL. CIV. PROC. CODE § 1915 law revision commission cmt. (Supp. 1992) ("Section 1915 . . . has been largely ignored by the courts and has served no useful purpose.").

327. *See* Schwatka, *supra* note 322, at 93 ("Section 1915 is too broad to be applied according to its literal meaning. . . . [A] foreign country judgment would always have to

country *money* judgments were excluded from the purview of the 1907 Act by adoption of the Uniform International Act.[328] This meant that foreign country *non-money* judgments were still equivalent to California judgments under the 1907 Act but that foreign country *money* judgments required a new suit for enforcement. Confusion produced by this anomalous and disparate treatment was dispelled by repeal of the 1907 Act in 1974.[329] Thus, since 1974, all foreign country judgments require a new action for enforcement.

The California experience is instructive for two reasons: (1) sweeping validation of foreign country judgments simply did not produce the desired effects; and (2) it was nevertheless the model that was cited and praised by the authors of the Uniform International Act.[330] This raises doubts about the efficacy of the Uniform International Act, and at the same time supports the conclusion that due process for the enforcement phase was simply taken for granted, without proper consideration.[331]

Colorado's Uniform International Act, adopted in 1977, is patently nugatory.[332] It comes into play only when the foreign judgment is rendered in a country with which the United States has a reciprocal recognition of judgments treaty.[333] No such treaties exist and none are likely in the near future.[334] The essen-

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be reduced to a California judgment before enforcement in this state, as is required for a sister state decree."); *see also* 164 E. Seventy-Second St. Corp. v. Ismay, 151 P.2d 29, 30 (Cal. Ct. App. 1944) (distinguishing, in an action to establish an English judgment, execution on a judgment from action to obtain a judgment).

328. CAL. CIV. PRAC. CODE §§ 1713-1713.8 (Deering 1981); *see also California Legislation*, *supra* note 320, at 211.

329. *California Legislation*, *supra* note 320, at 211. The 1967 Act was amended in 1974, at the time of the adoption of the Sister State Money-Judgments Act, to exclude resort to the latter as a means of enforcing foreign country judgments. *See* CAL. CIV. PROC. CODE § 1915 law revision commission cmt. (Supp. 1992).

330. 1961 Proceedings, *supra* note 120, at 4-5 (remarks of Professor Kurt H. Nadelmann, co-drafter of the Uniform International Act) ("[T]he obvious answer, it seems to us, is codification. That is what California did . . . in 1907.").

331. *See supra* text accompanying notes 240-241.

332. COLO. REV. STAT. ANN. § 13-62-101 to -109 (West 1989).

333. The statute defines a "foreign judgment" as a judgment of a "foreign state." *Id.* § 13-62-102(2). A "foreign state" is defined as:

> any governmental unit other than the United States, any state, district, commonwealth, territory, insular possession thereof, or . . . the Trust Territory of the Pacific Islands . . . which governmental unit has entered into a reciprocal agreement with the United States recognizing any judgment of a court of record of the United States . . . and providing for procedures similar to those contained in this article.

Id. § 13-62-102(1).

334. RESTATEMENT OF FOREIGN RELATIONS LAW, *supra* note 5, §§ 481-488 introductory note. The United States and the United Kingdom drafted and initialed a proposed

tially inoperative character of the legislation is something that apparently has escaped the notice of commentators.[335]

New York was sensitive to the procedural dimension from the outset. In studies prepared for the Judicial Conference of the State of New York in 1968, concerning the two Uniform Interstate Acts and the Uniform International Act, it was recommended that the registration procedure of the 1964 Interstate Act not be used as a pour-over from the Uniform International Act:

> Objection has been made to the suggestion that a registration procedure be made available to foreign judgments, especially if such a procedure should take the form of the Uniform Foreign Judgments Enforcement Act (Revised 1964 Act), principally on the ground that registration need not be preceded or accompanied by a judicial determination of the judgment's validity under foreign or domestic standards. However, the judgment debtor is notified of the registration and may contest and defeat registration. Unless the judgment creditor is acting against his own self interest or is engaging in harassing techniques, he will not seek registration in a place where the debtor is neither present nor has substantial assets. Thus, in a normal case, it would seem that no undue burden would be placed on a judgment debtor. But concededly, the varying procedural and substantive systems that produce foreign country judgments reaching these shores may demand separate treatment for enforcement.[336]

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convention dealing with this issue, but it was never enacted. *See* United Kingdom-United States: Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, Oct. 26, 1976, 16 I.L.M. 71-87 (reprinting an *ad referendum* copy of the draft convention); *see also* SCOLES & HAY, *supra* note 37, at 1007 (describing this unexecuted treaty with the United Kingdom, and stating that the chance for adoption was "remote"); Woodward, *supra* note 53, at 322 (containing a 1978 modified version of this proposed United Kingdom treaty). For a description of the United Kingdom's objections to the still unexecuted treaty, see P.M. North, *The Draft U.K./U.S. Judgments Convention: A British Viewpoint*, 1 NW. J. INT'L L. & BUS. 219, 239 (1979) (asserting that "there will be continued vigorous opposition in the United Kingdom to the implementation of this draft Convention"). British resistance continues because of large U.S. jury verdicts, fear of class actions and treble damage awards in antitrust actions, and opposition to long-arm jurisdiction, particularly in so-called split torts, where the manufacturing or design defect occurs in England (enforcement forum), but the injury occurs in the United States. LOWENFELD, *supra* note 26, at 438-39.

335. *See, e.g.*, Mark S. Caldwell, *Enforcing Foreign Country Judgments in Colorado*, 13 COLO. LAW. 381, 386 (1984) (concluding that "enforcing a foreign judgment will be no more difficult than enforcing a domestic judgment"); ENFORCING FOREIGN JUDGMENTS, *supra* note 103, at 2 n.8, 28 & n.1 (failing to classify Colorado as requiring reciprocity).

336. Barbara Kulzer, *Recognition of Foreign Country Judgments in New York: The Uniform Foreign Money-Judgments Recognition Act*, 18 BUFF. L. REV. 1, 24 n.162 (1969) (a re-publication in substantially identical form of a study prepared for the Judicial Conference of the State of New York).

And again, as to enforcement of foreign country judgments through registration:

> It was at first thought that foreign country judgments could be enforced . . . by a registration procedure such as the second enforcement act provides. Provision is made for notice, so the judgment debtor would have opportunity to quash the registration proceedings by taking appropriate and timely measures. Since it would be unlikely that the judgment creditor would seek registration in a state where neither the judgment debtor nor his property was present, the probability of the debtor's being unknowingly victimized seemed low. However, it has been suggested that such a procedure, at least insofar as it may be made applicable to foreign country judgments, is unduly burdensome to judgment debtors, especially those against whom default judgments have been entered. Moreover, concern was expressed that the doors would be opened to highly questionable judgments emanating from highly questionable legal systems, all the more dangerous because the 1964 Act makes no provision for judicial, or even quasi-judicial overseeing in the first instance.[337]

At no point in the lengthy and thorough consideration of the three uniform acts by New York did these qualms about notice and hearing congeal into a question of constitutional magnitude. Rejection of simple registration was "preferable."[338] Simple registration would be "unduly burdensome" to judgment debtors.[339] It would be "unwise" to allow simple registration.[340] Thus:

> It was the feeling of the members of the Committee, shared by virtually all the experts in the field, to whom the proposed act was submitted for evaluation, that the benefits of the registration statute in its 1964 version go far beyond the privileges and courtesies normally extended to foreign country judgments. The registration statute is well suited for the enforcement of judgments of courts operating within a federal system of sister states, but it would be unwise to extend its applicability beyond it.
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> As Professor Ruth E. Ginsberg [sic Ruth B. Ginsburg] put it in a letter responding to the Committee's request for comments: "It may be asked whether application of the 1964 Act to foreign country judgments is not an over-response to the

337. Barbara Kulzer, *Programs for Improving Foreign Judgment Enforcement in New York: The Uniform Enforcement of Foreign Judgments Act*, 18 BUFF. L. REV. 53, 82-83 (1969) (a republication in substantially identical form of a study prepared for the Judicial Conference of the State of New York).

338. *See supra* note 242.

339. Kulzer, *supra* note 337, at 83.

340. *Id.* at 65.

> high value foreign nations place on abbreviated enforcement procedures."[341]

Then-professor Ginsburg[342] had submitted her own proposals for procedures that are not substantially different from those adopted as amendments by Texas in 1989.[343] In all of the extensive legislative history for New York's adoption of the 1964 Interstate Act and the Uniform International Act, there are few references to the constitutional problem; furthermore, those references involve only domestic concerns and are largely dismissive. The Committee to Advise and Consult on the Civil Practice Law and Rules of New York, for instance, found that "[s]ixteen years of experience with the *federal* registration statute apparently have laid to rest any lingering fears as to the constitutionality or feasibility of a streamlined registration procedure *at the state level*."[344]

The product of New York's doubts about feasibility of simple registration was to amend the Uniform International Act to eliminate the pour-over to the 1964 Interstate Act and to require enforcement by (1) the traditional method of a new suit on the judgment, (2) a motion for summary judgment in lieu of complaint, or (3) a counterclaim, cross-claim, or affirmative defense in a pending action.[345]

The summary judgment motion technique is available generally for other matters, such as judgments and money-only instruments.[346] Questions about the validity of a judgment or the jurisdiction on which it was based are for the court to decide following notice and hearing.[347]

The inclusion of "affirmative defense," although in the sentence concerning "enforcement," obviously refers only to "recognition." This blurring of the distinction is fairly common in American usage.[348]

New York thus avoided the constitutional problem by avoiding the pour-over into the 1964 Uniform Interstate Act. It did this

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341. 1969 N.Y. Laws 2287.

342. Ruth B. Ginsburg is currently a judge on the United States Court of Appeals for the District of Columbia Circuit.

343. *Compare* Homburger, *supra* note 53, at 381 n.89 (summarizing Ginsburg's recommendations) *with supra* text accompanying notes 302-309 (discussing the 1989 Texas amendments).

344. 1969 N.Y. Laws 2287 (emphasis added).

345. N.Y. Civ. Prac. L. & R. § 5303 (McKinney 1978).

346. *Id.* § 3213 (McKinney 1991).

347. *See id.* practice commentaries § C3213:1-:3 (McKinney 1970).

348. *See supra* note 22.

while entirely conscious of the Uniform International Act's principal attraction for New York: to facilitate enforcement of New York judgments abroad through proof of codified reciprocity.[349]

Statutes and cases from the other states that have adopted the Uniform International Act and the 1964 Interstate Act shed little or no light on the problem at hand. The statutes follow the Uniform International Act except for several that either permit or require refusal to recognize because of lack of a foreign reciprocity.[350] In the cases a few anomalies of interpretation have arisen that do no more than reveal relatively innocuous carelessness or confusion as to applicability.[351]

The question is, then, should a state that has or is considering a "pristine" Uniform International Act follow the example of

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349. *See, e.g.*, 1971 N.Y. Laws 2296 (stating that a purpose behind the adoption of the Uniform International Act is "to facilitate proof of reciprocity"); 1970 N.Y. Laws 2784 (stating that "[t]he basic purpose of this proposal is to procure for New York judgments in foreign countries much better reciprocal treatment at the hands of foreign courts than they now receive"); 1969 N.Y. Laws 2282 (indicating that the adoption of the Uniform International Act would be very "beneficial" to commercial activity in the state); *see also* N.Y. CIV. PRAC. L. & R. practice commentaries § C5301:1 (McKinney 1978) (noting that the aim of New York's adoption of the Act is "to enhance the prospect of recognition of a New York judgment by foreign courts"). New York's effort has been gauged a success. *See* SCHLESINGER ET AL., *supra* note 103, at 866 (commenting that reciprocity is not a "serious hurdle . . . in view of New York's liberal provision for the enforcement of foreign judgments").

350. Of the 22 states that have adopted some form of the Uniform International Act, only Colorado, Georgia, Idaho, Massachusetts, Ohio, and Texas have included a reference to reciprocity. *See, e.g.*, COL. REV. STAT. ANN. § 13-62-102(1) (West 1989) (requiring a reciprocal recognition treaty, discussed *supra* text accompanying notes 332-335); GA. CODE ANN. § 9-12-114(10) (Michie 1982) (mandating nonrecognition if reciprocity is unavailable); IDAHO CODE § 10-1404(2)(g) (1990) (classifying the absence of reciprocity as a discretionary ground for nonrecognition); MASS. GEN. LAWS ANN. ch. 235, § 23A para. 3(7) (West 1986) (mandating nonrecognition if reciprocity is unavailable); OHIO REV. CODE ANN. § 2329.92(B) (Anderson 1991) (permitting discretionary nonrecognition if reciprocity is unavailable); TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(7) (West 1986) (permitting discretionary nonrecognition if reciprocity is unavailable). Although New Hampshire has not adopted the Uniform International Act, it has nonetheless codified the concept of reciprocity, but only with respect to Canadian judgments. *See* N.H. REV. STAT. ANN. § 524:11 (1974).

351. *See, e.g.*, Blumberg v. Berland, 678 F.2d 1068, 1070 (11th Cir. 1982) (per curiam) (relying, for purposes of registering a sister state judgment, erroneously on the Georgia Uniform International Act); Van Kooten Holding B.V. v. Dumarco Corp., 670 F. Supp. 227, 228 (N.D. Ill. 1987) (noting that the parties confused the 1948 Interstate Act and the Uniform International Act on the basis of erroneous prior case law); Fairfield Lease Corp. v. Nielson, No. 005515, 1991 Conn. Super. LEXIS 1189, at *1 (Conn. Super. Ct. May 8, 1991) (applying Connecticut's Uniform International Act to an interstate judgment); Ross v. Brewer, 805 P.2d 133, 134-35 (Okla. Ct. App. 1991) (applying Oklahoma's Uniform International Act to an interstate judgment).

Texas? Of California? Of New York? Adopt some other formula? Or just leave well enough alone?

IX. An Alternative Approach

Texas, California, and New York have dealt in their separate ways with the Uniform International Act's absence of procedure for recognizing foreign country judgments. The crux of the *Hennessy-Detamore* analysis is the failure of the Uniform International Act to provide an effective pour-over for enforcement to the 1964 Interstate Act. An alternative approach designed to fulfill the objectives of the Uniform International Act and to cure its evident textual deficiencies would be as follows. First, each act should refer to the other. Thus, section 1 of the 1964 Interstate Act would read:

> § 1. Definition
>
> In this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, *or any foreign judgment as defined in section 1 of the Uniform Foreign Money-Judgments Recognition Act.*[352]

Section 3 of the Uniform International Act would correspondingly read:

> § 3. Recognition and Enforcement
>
> Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit. *The enforcement procedures provided by the Uniform Enforcement of Foreign Judgments Act are available to a qualifying foreign judgment.*[353]

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352. *Cf.* Kulzer, *supra* note 337, at 55, 64-65 & n.72 (stating that such an amendment to the 1948 Interstate Act is not strictly necessary but would alert code-minded civil law countries that "equality of treatment in enforcement is an actuality"). Professor Kulzer did not recommend a corresponding amendment to the 1964 Interstate Act since she rejected a pour-over to simple registration. *See supra* text accompanying notes 336-337. The Texas experience would indicate that such an amendment is indeed necessary, in both Interstate Acts, to ensure correlative functioning with the Uniform International Act. What is not necessary, however, and even self-defeating, is Professor Kulzer's phrase "which is entitled to recognition" in modification of "foreign judgment." Kulzer, *supra* note 337, at 65. This would preserve the original procedural hiatus. When would the determination of entitlement be made?

353. *Cf.* Kulzer, *supra* note 336, at 20-21, 24 & n.162 (indicating that such an explicit reference ought to enhance the effects of the Uniform International Act abroad). It is, of course, the burden of this Article that such a reference is not a question of enhancement but of necessity.

This still leaves unattended the problem of *when* the foreign country judgment is scrutinized for qualification—that is, recognition, whether for purposes of subsequent enforcement or of recognition standing alone, including an action for declaratory judgment. This could be covered by adding further to section 3 of the Uniform International Act as follows:

> § 3. Recognition and Enforcement
>
> Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. *The conclusive effects of such a foreign judgment shall be determined and recognized in any pending action or in any proceedings for enforcement.* The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit. *The enforcement procedures provided by the Uniform Enforcement of Foreign Judgments Act are available to a qualifying foreign judgment.*[354]

The key word in the above amendment is obviously "determined." It is the missing arch that completes the span from international to interstate. The recognition criteria of the Uniform International Act will now simply be invoked whenever and wherever relevant to decide the issue.

The foregoing set of amendments would carry out the objectives of the Uniform International Act and cure the *Hennessy-Detamore* problem.[355] But are they the *best* way to do it?

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354. This generally matches the formulation of the Brussels and Lugano Conventions for EEC and EFTA members. *See supra* note 134.

355. Amendment of the uniform acts in the above fashion is designed to offer a possible solution to the instant problem *with a minimum of disturbance* to the current dually bifurcated statutory scheme of international-versus-interstate and recognition-versus-enforcement. For an integrated approach based on a *tabula rasa*, without federal-state or other U.S. complications, see *Model Act Respecting the Recognition and Enforcement of Foreign Money-Judgments, in* REPORT OF THE FIFTY-FIRST CONFERENCE HELD AT TOKYO xvii-xxiii (International Law Association, 1965). The recognition portion of the International Law Association Model Act was approved at the Hamburg Conference in 1960, and the enforcement portion was adopted at the Tokyo Conference in 1964. *Id.* at xvii. The suggested amendment, moreover, does not attempt to address problems other than *Hennessy* and *Detamore* that might merit attention. A major candidate in that category might be the use of the words "foreign" and, particularly, "state." In the lexicon of international law, "state" is quite properly used for "nation-state," but it can lead to confusion. *See* cases cited *supra* note 351. Texas substituted "country" for "state" and defined it as a governmental unit, not necessarily a nation. TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(1) (West 1986). This is plainer but still comports with orthodox typology. *See* 1 DICEY & MORRIS, *supra* note 22, at 27-28. Problems of this sort are deferred for another day.

X. Conclusion

It is possible, of course, that the *Hennessy-Detamore* analysis is wrong and that the Uniform International Act is not potentially unconstitutional. One could simply infer that recognition is to be granted or denied whenever it is relevant to decide the issue, including a procedure for enforcement under either of the two Interstate Acts. Nevertheless, these cases represent a respectable point of view and therefore a problem that needs to be addressed.

Any approach to solving the problem should be guided and informed by the twin policy objectives of producing (1) the most streamlined procedure that is consistent with the due process requirements of the United States Constitution, and (2) the appearance and reality of certainty sufficient to promote the recognition of U.S. judgments abroad.

The California "solution" fails with regard to both objectives. The New York approach is decidedly better but may provide more process than is due. Similarly, the recent Texas legislation would seem, in some circumstances, to require virtually redundant procedures, and, to that extent, the problem may have been "over-solved." Most states that have adopted the Uniform International Act have not confronted the *Hennessy-Detamore* problem. Nor of course have states that have not adopted the uniform legislation. If and when they do, they should seriously consider the simple solution proposed in Part IX of this Article.

XI. Appendices

A. *Uniform Enforcement of Foreign Judgments Act (1948 Interstate Act)*

§ 1. Definitions

As used in this Act

(a) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any State or Territory which is entitled to full faith and credit in this state.

(b) "Register" means to [file and] [docket and] [record] a foreign judgment in a court of this state.

(c) "Levy" means to take control of or create a lien upon property under any judicial writ or process whereby satisfaction of a judgment may be enforced against such property.

(d) "Judgment debtor" means the party against whom a foreign judgment has been rendered.

§ 2. Registration of Judgment

On application made within the time allowed for bringing an action on a foreign judgment in this state, any person entitled to bring such action may have a foreign judgment registered in any court of this state having jurisdiction of such an action.

§ 3. Application for Registration

A [verified] [petition] for registration shall set forth a copy of the judgment to be registered, the date of its entry and the record of any subsequent entries affecting it [such as levies of execution, payments in partial satisfaction and the like] all authenticated in the manner authorized by the laws of the United States or of this state, and a prayer that the judgment be registered. The Clerk of the registering court shall notify the clerk of the court which rendered the original judgment that application for registration has been made, and shall request him to file this information with the judgment.

§ 4. Personal Jurisdiction

At any time after registration the [petitioner] shall be entitled to have [summons] [issued and] served upon the judgment debtor as in an action brought upon the foreign judgment, in any manner authorized by the law of this state for obtaining jurisdiction of the person.

§ 5. Notice in Absence of Personal Jurisdiction

If jurisdiction of the person of the judgment debtor cannot be obtained, a [notice] [summons] clearly designating the foreign judgment and reciting the fact of registration, the court in which it is registered, and the time allowed for pleading, shall be sent by the Clerk of the registering court by registered mail to the last known address of the judgment debtor. Proof of such mailing shall be made by certificate of the Clerk.

§ 6. Levy

At any time after registration and regardless of whether jurisdiction of the person of the judgment debtor has been secured or final judgment has been obtained, a levy may be made under the

registered judgment upon any property of the judgment debtor which is subject to execution or other judicial process for satisfaction of judgments.

§ 7. New Personal Judgment

If the judgment debtor fails to plead within [sixty days] after jurisdiction over his person has been obtained, or if the court after hearing has refused to set the registration aside, the registered judgment shall become a final personal judgment of the court in which it is registered.

§ 8. Defenses

Any defense [set-off] [counter-claim] [or cross complaint] which under the law of this state may be asserted by the defendant in an action on the foreign judgment may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within [sixty days] after personal jurisdiction is acquired over him or within [sixty days] after the mailing of the notice prescribed in section 5.

§ 9. Pendency of Appeal

If the judgment debtor shows that an appeal from the original judgment is pending or that he is entitled and intends to appeal therefrom, the court shall, on such terms as it thinks just, postpone the trial for such time as appears sufficient for the appeal to be concluded, and may set aside the levy upon proof that the defendant has furnished adequate security for satisfaction of the judgment.

§ 10. Effect of Setting Aside Registration

An order setting aside a registration constitutes a final [judgment] in favor of the judgment debtor.

§ 11. Appeal

An appeal may be taken by either party from any [judgment] [order] [or decision] sustaining or setting aside a registration on the same terms as an appeal for a [judgment] [order] [or decision] of the same court.

§ 12. New Judgment Quasi in Rem

If personal jurisdiction of the judgment debtor is not secured within [sixty days] after the levy and he has not, within [sixty days] after the mailing of the notice prescribed by section 5, acted to set aside the registration [or to assert a set-off] [counterclaim] [or cross-complaint] the registered judgment shall be a final judgment quasi in rem of the court in which it is registered, binding upon the judgment debtor's interest in property levied upon, and the court shall enter an order to that effect.

§ 13. Sale under Levy

Sale under the levy may be held at any time after final judgment, either personal or quasi in rem, but not earlier except as otherwise provided by law for sale under levy on perishable goods. Sale and distribution of the proceeds shall be made in accordance with the law of this state.

§ 14. Interest and Costs

When a registered foreign judgment becomes a final judgment of this state, the court shall include as part of the judgment interest payable on the foreign judgment under the law of the state in which it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The court shall include as part of its judgment court costs incidental to the proceeding in accordance with the law of this state.

§ 15. Satisfaction of Judgment

Satisfaction, either partial or complete, of the original judgment or of a judgment entered thereupon in any other state shall operate to the same extent as satisfaction of the judgment in this state, except as to costs authorized by section 14.

§ 16. Optional Procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired.

§ 17. Uniformity of Interpretation

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 18. Short Title

This act may be cited as the Uniform Enforcement of Foreign Judgments Act.

§ 19. Repeal

All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

B. *Uniform Enforcement Of Foreign Judgments Act (1964 Interstate Act)*

§ 1. Definition

In this Act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

§ 2. Filing and Status of Foreign Judgments

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the Clerk of any [District Court of any city or county] of this state. The Clerk shall treat the foreign judgment in the same manner as a judgment of the [District Court of any city or county] of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a [District Court of any city or county] of this state and may be enforced or satisfied in like manner.

§ 3. Notice of Filing

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of Court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the Clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mail-

ing with the Clerk. Lack of mailing notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

[(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until [ ] days after the date the judgment is filed.]

§ 4. Stay

(a) If the judgment debtor shows the [District Court of any city or county] that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the [District Court of any city or county] any ground upon which enforcement of a judgment of any [District Court of any city or county] of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

§ 5. Fees

Any person filing a foreign judgment shall pay to the Clerk of Court _____ dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments of the [District Court of any city or county of this state].

§ 6. Optional Procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired.

§ 7. Uniformity of Interpretation

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 8. Short Title

This Act may be cited as the Uniform Enforcement of Foreign Judgments Act.

§ 9. Repeal

The following Acts and parts of Acts are repealed:
(1)
(2)
(3)

§ 10. Taking Effect

This Act takes effect on ——.

C. *Uniform Foreign Money-Judgments Recognition Act (Uniform International Act)*

§ 1. [Definitions]

As used in this Act:

(1) "foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

§ 2. [Applicability]

This Act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

§ 3. [Recognition and Enforcement]

Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

§ 4. [Grounds for Non-recognition]

(a) A foreign judgment is not conclusive if
(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
(2) the foreign court did not have personal jurisdiction over the defendant; or
(3) the foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if
(1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
(2) the judgment was obtained by fraud;
(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;
(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

§ 5. [Personal Jurisdiction]

(a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if
(1) the defendant was served personally in the foreign state;
(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
(4) the defendant was domiciled in the foreign state

when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or

(6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

§ 6. [Stay in Case of Appeal]

If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

§ 7. [Savings Clause]

This Act does not prevent the recognition of a foreign judgment in situations not covered by this Act.

§ 8. [Uniformity of Interpretation]

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 9. [Short Title]

This Act may be cited as the Uniform Foreign Money-Judgments Recognition Act.

§ 10. [Repeal]

[The following Acts are repealed:

(1)

(2)

(3)

§ 11. [Time of Taking Effect]

This Act shall take effect ——.

D. *Texas Uniform Foreign Country Money-Judgment Recognition Act (Texas International Act)*

§ 36.001. Definitions

In this chapter:

(1) "Foreign country" means a governmental unit other than:
  (A) the United States;
  (B) a state, district, commonwealth, territory, or insular possession of the United States;
  (C) the Panama Canal Zone; or
  (D) the Trust Territory of the Pacific Islands.

(2) "Foreign country judgment" means a judgment of a foreign country granting or denying a sum of money other than a judgment for:
  (A) taxes, a fine, or other penalty; or
  (B) support in a matrimonial or family matter.

§ 36.002. Applicability

(a) This chapter applies to a foreign country judgment:
  (1) that is final and conclusive and enforceable where rendered, even though an appeal is pending or the judgment is subject to appeal; or
  (2) that is in favor of the defendant on the merits of the cause of action and is final and conclusive where rendered, even though an appeal is pending or the judgment is subject to appeal.

(b) This chapter does not apply to a judgment rendered before June 17, 1981.

§ 36.003. Short Title

This chapter may be cited as the Uniform Foreign Country Money-Judgment Recognition Act.

§ 36.004. Recognition and Enforcement

Except as provided by Section 36.005, a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirements of Section 36.002, and that is not refused recognition under Section 36.0044 is conclusive between

the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.

§ 36.0041 Filing

A copy of a foreign country judgment authenticated in accordance with an act of congress, a statute of this state, or a treaty or other international convention to which the United States is a party may be filed in the office of the clerk of a court in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws.

§ 36.0042 Affidavit; Notice of Filing

(a) At the time a foreign country judgment is filed, the party seeking recognition of the judgment or the party's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.

(b) The clerk shall promptly mail notice of the filing of the foreign country judgment to the party against whom recognition is sought at the address given and shall note the mailing in the docket.

(c) The notice must include the name and post office address of the party seeking recognition and that party's attorney, if any, in this state.

§ 36.0043 Alternate Notice of Filing

(a) The party seeking recognition may mail a notice of the filing of the foreign country judgment to the other party and may file proof of mailing with the clerk.

(b) A clerk's lack of mailing the notice of filing does not affect the conclusive recognition of the foreign country judgment under this chapter if proof of mailing by the party seeking recognition has been filed.

§ 36.0044 Contesting Recognition

(a) A party against whom recognition of a foreign country judgment is sought may contest recognition of the judgment if, not later than the 30th day after the date of service of the notice of filing, the party files with the court, and serves the opposing

party with a copy of, a motion for nonrecognition of the judgment on the basis of one or more grounds under Section 36.005. If the party is domiciled in a foreign country, the party must file the motion for nonrecognition not later than the 60th day after the date of service of the notice of filing.

(b) The party filing the motion for nonrecognition shall include with the motion all supporting affidavits, briefs, and other documentation.

(c) A party opposing the motion must file any response, including supporting affidavits, briefs, and other documentation, not later than the 20th day after the date of service on that party of a copy of the motion for nonrecognition.

(d) The court may, on motion and notice, grant an extension of time, not to exceed 20 days unless good cause is shown, for the filing of a response or any document that is required to establish a ground for nonrecognition but that is not available within the time for filing the document.

(e) A party filing a motion for nonrecognition or responding to the motion may request an evidentiary hearing that the court may allow in its discretion.

(f) The court may at any time permit or require the submission of argument, authorities, or supporting material in addition to that provided for by this section.

(g) The court may refuse recognition of the foreign country judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005.

§ 36.005 Grounds for Nonrecognition

(a) A foreign country judgment is not conclusive if:
  (1) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
  (2) the foreign country court did not have personal jurisdiction over the defendant; or
  (3) the foreign country court did not have jurisdiction over the subject matter;

(b) A foreign country judgment need not be recognized if:
  (1) the defendant in the proceedings in the foreign coun-

try court did not receive notice of the proceedings in sufficient time to defend;
(2) the judgment was obtained by fraud;
(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;
(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or
(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of "foreign country judgment."

§ 36.006 Personal Jurisdiction

(a) A court may not refuse to recognize a foreign country judgment for lack of personal jurisdiction if:
(1) the defendant was served personally in the foreign country;
(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;
(4) the defendant was domiciled in the foreign country when the proceedings were instituted or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign country;
(5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business

done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.

(b) A court of this state may recognize other bases of jurisdiction.

§ 36.007 Stay in Case of Appeal

If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until a period of time sufficient to enable the defendant to prosecute the appeal has expired.

§ 36.008 Other Foreign Country Judgments

This chapter does not prevent the recognition of a foreign country judgment in a situation not covered by this chapter.