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# TRANSNATIONAL RECOGNITION AND ENFORCEMENT OF CIVIL JUDGMENTS

George A. Zaphiriou\*

## I. Introduction

It is characteristic of interdependence and a necessity for the attainment of international order that the judiciaries of the various countries should cooperate<sup>1</sup> and the civil judgments should be readily recognized and enforced with minimum formalities. Moreover, it is fair and just that the adjudicated right of the successful plaintiff, his successors, assigns, and privies should be respected transnationally and that conversely the successful defendant, his successors, assigns, and privies should not be subjected to unnecessary harassment. Respect of *res judicata*, however, should not work to the detriment of standards of justice. It is therefore necessary that the court which is asked to recognize or enforce a foreign judgment (to be referred to as the "court addressed") should be satisfied that the court of origin had transnational jurisdiction according to accepted principles, that the defendant had both adequate notice of the original proceedings and an opportunity to defend, and that recognition or enforcement is not manifestly repugnant to fundamental notions of public policy. Generally the tendency is to accept foreign judgments on their face value when it appears that jurisdiction, proper and adequate notice to the defendant, and public policy are satisfied. Other defenses are also available, but they are left to be raised and proved by the party objecting to recognition or enforcement, rather than by the party that seeks it. A correct distribution between matters to be considered by the court addressed of its own motion and the matters that are to be proved by the objecting party leads to the desired balance between the expeditious respect and enforcement of adjudicated rights and the attainment of justice.

"Recognition" means simply that a foreign final and conclusive judgment will be recognized as such. If it is a judgment *in rem* affecting interests in immovable or movable property or personal status, recognition will confirm its conclusiveness against the world at large. A wide effect will also be given to a binding declaratory judgment. If it is an *in personam* judgment, recognition will attribute to it a *res judicata* effect as to the main issue and a collateral estoppel effect as to decided issues which are binding on the original parties and those claiming under them.

Recognition is a condition precedent to enforcement. Enforcement entails the affirmative relief consisting in the recovery of money or property or the ordering of the defendant or counterdefendant to do an act or enjoining the doing of an act. We shall see that statutory provisions in the United Kingdom

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1 See Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of March 18, 1970, 8 INT'L LEG. MAT. 37 (1969); *Rio Tinto Zing Corporation v. Westinghouse Electric Corporation*, 16 INT'L LEG. MAT. 784 (1977).

and the United States on recognition or enforcement of foreign country judgments limit their scope to money judgments leaving the pursuit of other relief to judicial precedent and discretion.

The purpose of this analysis is to deal with the recognition and enforcement of foreign country judgments in the United States, the United Kingdom and the European Community, with particular reference to areas within the scope of three conventions. The three conventions are:

(1) The Hague Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of April 26, 1966<sup>2</sup> (to be referred to as the "Hague Convention") with a Supplementary Protocol of October 15, 1966.<sup>3</sup>

The United States delegation participated in the preparation of the Hague Convention and signed it at an extraordinary session of the Hague conference of private international law. So did delegations of several other countries which included all present members of the European Community.<sup>4</sup> The Hague Convention is not effective, but it reflects unanimous expert opinion and constitutes evidence of international consensus among countries representing vast commercial interests. Excluded from its scope are judgments determining as a main issue the status or capacity of persons, all family matters both personal and proprietary, maintenance, alimony, the constitution of legal persons or the powers of their officers, questions of succession, bankruptcy, questions relating to social security and questions relating to damage or injury in nuclear matters.<sup>5</sup> The Convention, by providing that it does not apply to judgments for the payment of any customs duty, tax or penalty,<sup>6</sup> reflects the view that foreign country judgments on revenue and penal matters are not enforceable.<sup>7</sup> It also does not apply to judgments that order provisional or protective measures or that are rendered by administrative tribunals.<sup>8</sup> The Hague Convention is multilateral, but it is subject to bilateralization. Article 21 provides that for the Convention to become effective between two countries which are parties to the Convention, they must enter into a supplementary agreement. Article 23 further provides that the supplementary agreement may clarify certain of the Convention's terms, include judgments that are otherwise excluded from its scope, and amend the list of appropriate jurisdictional bases that are stated in the Convention.

(2) The Brussels Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (to be referred to as the "European Convention") with annexed Protocol and Joint Declaration.<sup>9</sup>

2 5 INT'L LEG. MAT. 636 (1966); 15 AM. J. COMP. L. 362 (1967).

3 15 AM. J. COMP. L. 369 (1967).

4 Also Austria, Finland, Greece, Israel, Japan, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Arab Republic.

5 Hague Convention, Art. 1(2).

6 *Id.* at Art. 1(3).

7 *Government of India v. Taylor*, [1955] A.C. 491 (H.L.); *United States v. Harden*, [1963] Can. Sup. Ct. 366; 41 D.L.R.2d 721. The Uniform Money Judgments Recognition Act, 13 U. L. ANN. 269 (1977 Supp.), which has been adopted by nine states of the United States excludes in § 1(2) "a judgment for taxes, a fine or other penalty. . . ."

8 Hague Convention, Art. 2(2).

9 Official Journal of the European Communities L 299/32 (1972). The references in this article are to an unpublished English Language Text Agreed in Negotiations at Official Level (Nov. 1976). See also 2 COMM. MKT. REP. (CCH) ¶ 6003 (updated).

The European Convention and the annexed documents were ratified by the six original member states and became effective as of February 1, 1973. The new member states (Denmark, Ireland and the United Kingdom), pursuant to Article 220 of the EEC Treaty<sup>10</sup> and Article 3(2) of the Act of Accession,<sup>11</sup> will accede to the European Convention subject to minor adjustments which have now been prepared, but are not yet widely publicized. The European Convention excludes the same matters that were excluded by the Hague Convention with the exception of maintenance<sup>12</sup> (which includes alimony) and the determination of the existence or constitution of companies and legal persons and the powers of their officers and directors. It is understandable that these matters should be included in a Convention which is intended to apply to a community of states striving to attain a quasi-federal structure. One of the objects of the European Community is to facilitate the mutual recognition of companies and legal persons<sup>13</sup> and to harmonize certain company law provisions.<sup>14</sup> It is therefore desirable that judgments dealing with these matters should be recognized and enforced within the European Community. Judgments on revenue, customs, and administrative matters are not expressly excluded. Nevertheless, the intention was to exclude them by providing in Article 1(1) that the Convention "shall apply in civil and commercial matters." The exclusion will be even more explicit in the document of accession to the European Convention to be signed by the new member states. This will state in unequivocal terms that the European Convention does "not extend, in particular, to revenue, customs, or administrative matters." The European Convention is not limited to money judgments. It also includes provisional judgments provided they are enforceable in the country of origin.

(3) The Draft Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters between the United Kingdom and the United States which was initialled by the negotiators of the two countries on October 26, 1976<sup>15</sup> (to be referred to as the "U.K.-U.S.A. Convention").

If ratified, the U.K.-U.S.A. Convention will be the first convention on recognition and enforcement of judgments to which the United States will be a party. The scope of this Convention is very similar to the Hague Convention. The U.K.-U.S.A. Convention excludes in Article 2(2)(b) judgments "to the extent that they are for punitive or multiple damages." This would exclude, for example, treble damages in civil antitrust cases. The Hague Convention has no comparable provision. The exclusion in Article 1(3) of the Hague Convention of "decisions for the payment of any customs duty, tax or penalty" refers to criminal or administrative penalties. The U.K.-U.S.A. Convention is not limited to money judgments, other relief may be granted by the court addressed in accordance with its law.<sup>16</sup> According to Article 3 of the U.K.-U.S.A.

10 1 COMM. MKT. REP. (CCH) (updated).

11 2 COMM. MKT. REP. (CCH) ¶ 7035 (updated).

12 See Arts. 1 and 5(2) of the European Convention.

13 See Convention on the Mutual Recognition of Companies and Legal Persons of 29 Feb. 1968, Bulletin of the European Communities Supp. 2/69; 2 COMM. MKT. REP. (CCH) ¶ 6255.

14 C. SCHMITTHOFF (ed.), THE HARMONISATION OF EUROPEAN COMPANY LAWS (1973); E. STEIN, HARMONIZATION OF EUROPEAN COMPANY LAWS (1971).

15 16 INT'L LEG. MAT. 71 (1977).

16 U.K.-U.S.A. Convention, Art. 15(1).

Convention, its provisions do not prevent the recognition or enforcement of a judgment under an existing statute or at common law.

## II. Recognition and Enforcement in the United States

The weight of authority and of legal opinion supports the view that recognition and enforcement of a foreign country judgment are matters to be determined by state law.<sup>17</sup> As a consequence, state courts are not bound by the decision of the United States Supreme Court in *Hilton v. Guyot*<sup>18</sup> in which a majority of 5 to 4 held that a French judgment was not to be enforced in the United States because of lack of reciprocity by France. Furthermore, after the 1938 decision in *Erie R.R. v. Tompkins*<sup>19</sup> a federal court may be asked in a non-federal matter to apply the law of the state in which it sits. The majority of decisions of state courts,<sup>20</sup> with isolated exceptions,<sup>21</sup> have rejected the reciprocity requirement and federal courts<sup>22</sup> have questioned its application. The Uniform Money Judgments Recognition Act,<sup>23</sup> which deals with foreign country judgments, requires no reciprocity. It was adopted by nine states,<sup>24</sup> out of which only Massachusetts has provided by statute that reciprocity is required.<sup>25</sup> These developments prompted a commentator to remark that it is "regrettable that the *Restatement (Second)* did not more clearly consign the reciprocity rule to oblivion."<sup>26</sup>

Although a distinction is drawn between sister state judgments which are to be recognized under the compulsion of the full faith and credit clause of the United States Constitution and foreign country judgments, the tendency is to treat them on an equal footing. The United States Supreme Court in *Hilton v. Guyot*<sup>27</sup> formulated two significant principles that had found early support in England.<sup>28</sup> First, the principle that a foreign country judgment which is compatible with the requirement of due process should be recognized and enforced

17 *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); *Republic of Iraq v. First National Bank*, 350 F.2d 645 (7th Cir. 1965); *Domingo v. States Marine Lines*, 340 F. Supp. 811 (S.D.N.Y. 1972); *Svenska Handelsbanken v. Carlson*, 258 F. Supp. 448 (D. Mass. 1966); *Compania Mexicana Radiodifusora Franteriza v. Spann*, 41 F. Supp. 907 (N.D. Tex. 1941), *aff'd*, 131 F.2d 609 (5th Cir. 1942); *cf. Aetna Life Ins. Co. v. Tremblay*, 233 U.S. 185 (1912); *Johnston v. Compagnie Generale Transatlantique* 242 N.Y. 381 (1926); *Cowans v. Ticonderoga Pulp & Paper Co.* 219 App. Div. 120, 219 N.Y.S. 284, *aff'd*, 246 N.Y. 603, 159 N.E. 669 (1927); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98, Comment 3 (1971); VON MEHREN & PATTERSON, ENFORCEMENT OF FOREIGN COUNTRY JUDGMENTS 104 PRACTICING LAW INSTITUTE 17 (1974). *But see* Homburger, *Recognition and Enforcement of Foreign Judgments*, 18 AM. J. COMP. LAW 367 (1970).

18 159 U.S. 113 (1895).

19 304 U.S. 64 (1938).

20 *See* note 17 *supra*.

21 *Hager v. Hager*, 1 Ill. App.3d 1047, 274 N.E.2d 157 (1971).

22 *See* note 17 *supra*.

23 13 U. L. ANN. 269 (1977 Supp.).

24 Alaska, California, Illinois, Maryland, Massachusetts, Michigan, New York, Oklahoma and Washington.

25 *See* MASS. GEN. LAWS ANN. ch. 235, § 23A (Supp. 1977).

26 Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, 72 COLO. L. REV. 250, 236 (1972).

27 159 U.S. 113 (1895).

28 *See* notes 114, 158 *infra*.

even if it was based on an error as to a question of fact or law.<sup>29</sup> Secondly, that recognition and enforcement are founded on comity which in addition to "courtesy and goodwill" contains an element of public international law obligation.<sup>30</sup> Comity has generally been criticized as a vague concept leading to the requirement of reciprocity; also that the reference to a public international law obligation disregards the nature and function of conflict rules as part of internal law and provides no explanation for the defenses that can be raised against recognition.<sup>31</sup>

A point can perhaps now be made as to the increasing internationalization of conflict rules in this as well as in other topics. The Hague Convention, the European Convention, and the many bilateral conventions on recognition and enforcement of judgments that exist between countries in Europe<sup>32</sup> and between the United Kingdom and countries of the Commonwealth,<sup>33</sup> provide evidence of consensus extending over a significant geographical area and representing vast commercial interests. The U.K.-U.S.A. Convention, if ratified, and other conventions that may follow between the United States and other member states of the European Community will be important additions. Even when there is no relevant binding convention, the legislatures and courts in this country as well as abroad tend to adopt, in connection with the recognition and enforcement of foreign judgments, standardized requirements and defenses. The conflict rules, though part of internal law, are in their transnational application either directly affected by binding conventions or indirectly fashioned according to generally accepted standards. They deserve now, more than ever, the name of private international law. Comity and reciprocity have lost their negative and limiting effect and have become in a world of interdependence positive factors of unification.

A foreign country judgment, out of contested proceedings or in default of appearance, if final and conclusive in the country of origin, will be recognized and enforced in the United States if it satisfies the following prerequisites: (1) fair trial, (2) transnational jurisdiction of the court of origin, (3) proper notice to the defendant and (4) adequate opportunity to defend. It will not be recognized and enforced if: (1) it was obtained by fraud, (2) it is contrary to public policy or (3) it is irreconcilable with another judgment on the same transaction or occurrence.

#### A. *Fair Trial*

A foreign country judgment will not be recognized in the United States unless a federal or state court is convinced that:

<sup>29</sup> See note 27, *supra* at 203.

<sup>30</sup> *Id.* at 163-64.

<sup>31</sup> Peterson, *supra* note 26, at 239; Reese, *The Status in this Country of Judgments Rendered Abroad*, 50 COLO. L. REV. 783, 785 (1950); Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44, 56 (1962).

<sup>32</sup> See COUNCIL OF EUROPE, *THE PRACTICAL GUIDE TO THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDICIAL DECISIONS IN CIVIL AND COMMERCIAL LAW* (1975).

<sup>33</sup> See Part III, Section A of text *infra*.

[T]here has been 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 is sitting or fraud in procuring judgment. . . .<sup>34</sup>

The requirement of fair trial is merely an application of the requirements of due process under the Fifth and Fourteenth Amendments of the United States Constitution to the recognition and enforcement of foreign country judgments even though they would not apply directly to foreign proceedings.<sup>35</sup> It was included in § 4(1) of the Uniform Foreign Money Judgments Recognition Act and has acquired statutory sanction in the nine states<sup>36</sup> that have adopted the Act. In contrast it is not mentioned in § 93 of the *Restatement (Second) of Conflict of Laws*, which deals with the recognition of sister state judgments, as it is understood that both the original proceedings and the recognition and enforcement proceedings are subject to due process and that means of recourse are available to ensure compliance. The requirement of fair trial is also not mentioned in the U.K.-U.S.A. Convention. It was presumably felt that this requirement is adequately covered and protected by providing in the Convention jurisdictional grounds satisfying minimum contact standards, the requirement of due notice to the defendant, and the opportunity to make arrangements for his defense. In any event, the reservation of public policy contained in the Convention can be used in extreme cases to exclude the recognition or enforcement of a judgment which was obtained in proceedings that offended against due process. The express mention of the due process requirement in the U.K.-U.S.A. Convention would amount to an invitation to the judgment-debtor to raise fair trial points to delay the enforcement.

### B. Jurisdiction

The foreign country judgment will only be recognized and enforced if the court of origin exercised jurisdiction according to standards acceptable to the federal or state court addressed. These standards are set by taking into account the adjudicatory jurisdiction of an American court in a comparable situation. After all it is unfair to deny to a foreign court a jurisdictional basis exercised by American courts in transnational situations. Internationally prevailing standards, however, should also be taken into account. This can be illustrated by referring to the exercise by the court of origin of a jurisdiction analogous to the quasi *in rem* jurisdiction of American courts. If a Scottish court<sup>37</sup> or a court of the Federal Republic of Germany<sup>38</sup> exercised jurisdiction based on the presence or attachment of an asset of the defendant within the jurisdiction, an American

34 *Hilton v. Guyot*, 159 U.S. 113, 202 (1895).

35 Reese, *supra* note 31, at 796; Smit, *supra* note 31, at 46.

36 See note 24 *supra*.

37 DUNCAN & DYKES, *PRINCIPLES OF CIVIL JURISDICTION* 71-103 (1911).

38 GERMAN CODE OF CIVIL PROCEDURE, Art. 23.

court could object, particularly if the asset on which jurisdiction was founded was unrelated to the cause of action, or was insubstantial and entitled the plaintiff to damages exceeding its value. The jurisdiction quasi *in rem* was not included in either the Hague Convention, the European Convention or the U.K.-U.S.A. Convention. Generally accepted standards do not favor a jurisdiction founded on the mere presence or attachment of an asset unless it is to assert a proprietary interest in that particular asset or to deal with a security interest therein.<sup>39</sup>

The Uniform Foreign Money Judgments Recognition Act<sup>40</sup> (to be referred to as the "Uniform Recognition Act") provides that a foreign judgment is not conclusive if the court of origin did not have personal jurisdiction over the defendant or jurisdiction over the subject matter. A mandatory provision is contained in § 5(a) of the Uniform Recognition Act to the effect that a foreign country judgment *shall* not be refused recognition for lack of personal jurisdiction in either of six situations: (1) personal service of the defendant in the foreign country; (2) voluntary appearance of the defendant other than for the sole purpose of protecting property seized or threatened to be seized or to contest the jurisdiction of the court; (3) submission by the defendant to jurisdiction before commencement of proceedings; (4) the defendant was domiciled in the foreign country or if the defendant is a body corporate it had a principal place of business in the foreign country or was incorporated there; (5) the defendant had a business office in the foreign country and the subject matter of the action arose out of business done by the defendant through that office; or (6) the defendant operated a car or airplane in the foreign country and the subject matter of the action arose out of that operation. A foreign country judgment need not be recognized, however, if the parties had agreed to settle their dispute otherwise than by proceedings in the court of origin,<sup>41</sup> e.g. by an arbitration clause or a choice of forum clause. Nor need it be recognized in case of jurisdiction based only on personal service if the court of origin was a "seriously inconvenient forum for the trial of the action."<sup>42</sup> This last provision would enable an American court to refuse recognition if a foreign country judgment was rendered against a transient defendant who was served when he was present within the territorial jurisdiction of the court of origin.

Section 5(b) of the Uniform Recognition Act permits the recognition of additional bases of jurisdiction. In fact both federal and state courts have recognized judgments rendered by a court of origin exercising jurisdiction on grounds that were not mentioned above. A New York court<sup>43</sup> dealing with an English default judgment upheld the jurisdiction of the English court on the ground that the defendant had sold and shipped goods to England. The judge observed

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39 Supplementary Protocol to the Hague Convention, *supra* note 3, at Arts. 1 and 4. See *Shaffer v. Heitner*, 97 S. Ct. 2569 (1977), where it was held that an American court can only exercise quasi *in rem* jurisdiction when there are sufficient contacts between the individual or corporate defendant and the state to satisfy the due process requirement of the U.S. Constitution.

40 See note 23 *supra*.

41 Uniform Foreign Money Judgments Recognition Act, § 4(b)(5).

42 *Id.* at § 4(b)(6).

43 *Plugmay Ltd., v. National Dynamics Corp.*, 48 Misc. 2d 913, 266 N.Y.S. 2d 240 (Civ. Ct. N.Y.C. 1966), *rev'd for trial on the jurisdictional issue*, 53 Misc. 2d 451, 278 N.Y.S.2d 896 (App. term 1st Dept. 1967).



that the jurisdiction exercised by the English court was equivalent to the jurisdiction which is exercised by courts in New York or Illinois under statutes that require merely a "single act" of the defendant within the jurisdiction. Another New York court<sup>44</sup> upheld the jurisdiction of an English court in an action for breach of contract on the ground that the contract was made in England. The above decisions of the New York courts are somewhat impaired because on appeal the summary judgments were set aside and a trial on the jurisdictional issue was ordered. They are, however, indicative of an approach which is clearly demonstrated by a decision of the Court of Appeals of the Third Circuit which held that doing business by the defendant through a distributor in England, constituted a sufficient basis of jurisdiction for the enforcement of an English default judgment against the defendant in Pennsylvania.<sup>45</sup>

The Uniform Recognition Act recognizes the jurisdiction which was exercised by a court of origin in case of a tort arising out of the operation of a car or airplane in the country of origin.<sup>46</sup> This jurisdictional basis is more limited than the jurisdiction which is exercised by American courts under various long arm statutes.<sup>47</sup> These American statutes provide that jurisdiction can be exercised in the case of commission of a tort within the state and that the defendant can be served outside the jurisdiction. A similar provision is contained in Order 11 rule 1(1)(h) of the Rules of the Supreme Court which enables an English court to exercise jurisdiction when the tort was committed in England. These wider jurisdictions are up to a point reflected in the U.K.-U.S.A. Convention.<sup>48</sup> The U.K.-U.S.A. Convention recognizes the jurisdiction of the court of origin in actions for the recovery of damages for physical injuries to the person or for damage to tangible property when a substantial portion of the conduct, as well as the effect of that conduct, occurred within the territory of the country of origin (*i.e.* the United Kingdom or the United States, as the case may be) and either conduct or effect occurred within the territorial jurisdiction of the court of origin (*i.e.* of a court in England and Wales, Northern Ireland or Scotland or of a district court or circuit court in the United States).<sup>49</sup> The provision has four important limitations: First, it refers to actions for the recovery of damages; this would exclude injunctions. Secondly, it refers to physical injuries; this would exclude defamation and antitrust violations. Thirdly, damage to tangible property leaves out such important intangibles as patents, copyright and trademarks. Fourthly, to found jurisdiction both conduct and effect must coincide within the country of origin. Of course, the jurisdiction of the court of origin over any of the excluded matters may be upheld on some other ground, *e.g.* place of residence or place of business of the defendant within the territory of origin. The coincidence of tortious conduct and effect within the country of origin is also a requirement of Article 10(4) of the Hague Convention.

44 *H. L. Wilkinson & Co. v. Calvine Mills, Inc.*, 28 App. Div. 2d 675, 282 N.Y.S.2d 655 (1967) (appeal against summary judgment ordering a trial on the jurisdictional issue).

45 *Sombortex Ltd. v. Philadelphia Chewing Gum Corp.*, *supra* note 17.

46 Uniform Foreign Money Judgments Recognition Act, § 5(a)(6).

47 *See, e.g.*, Illinois Civil Practice Act, § 17(1)(b), ILL. REV. STAT. ch. 110, § 17(1)(b).

48 U.K.-U.S.A. Convention, Art. 10 (j).

49 *Id.* at Art. 2 (2)(b).

An important and difficult question is whether the finding as to jurisdiction of the court of origin amounts to *res judicata* and is therefore not open to review by the court addressed. In case of sister state judgments, the findings as to jurisdiction by the court of origin will generally be respected in another state, because of the wide application of the full faith and credit clause, unless there has been a violation of due process or some other constitutional limitation.<sup>50</sup> In the case of foreign country judgments, according to the weight of authority, the courts in the United States are not bound by the jurisdictional findings of the court of origin.<sup>51</sup> Nevertheless, in a 1971 case,<sup>52</sup> the Court of Appeals of the Third Circuit went a long way to enforce a default judgment rendered by an English court. The United States court recognized the adjudication as to jurisdiction of the English court which was based on a long arm English provision analogous to the long arm statutes of states of the United States and refused to order proof of certain facts which were relevant to the jurisdictional finding.

Authority appears to be divided as to whether a foreign country judgment is presumed to have been rendered by a court having jurisdiction until the matter is raised by a party opposed to recognition or whether the matter should be examined of the court's own motion.<sup>53</sup> It is submitted that since recognition and enforcement of a judgment rendered by a foreign court without jurisdiction may indirectly constitute a violation of due process, the American court should of its own motion examine the matter. In most cases, the issue of whether jurisdiction was properly exercised will appear on the face of the judgment, but if there is any doubt, the parties should be invited to make their submissions.<sup>54</sup>

A distinction should be made, however, between conclusions as to jurisdiction and findings of fact as to jurisdiction by the court of origin. Article 12 of the U.K.-U.S.A. Convention provides that conclusions as to jurisdiction are not binding on the court addressed. On the other hand findings of fact are binding, unless the person opposing recognition or enforcement can establish that they are incorrect; he is precluded from doing so if the defendant appeared in the court of origin and failed to challenge its jurisdiction.<sup>55</sup>

### C. Notice to Defendant

Not only must the court in the United States be satisfied that the foreign court had jurisdiction, but it must also be satisfied that the defendant in the original proceedings was duly served with process. The Uniform Recognition Act provides in § 4 (b) that a foreign judgment "need not be recognized" if the defendant in the original proceedings did not receive notice of the proceedings in sufficient time to enable him to defend. Although the ground for non-recognition

50 RESTATEMENT OF CONFLICTS OF LAW, *supra* note 17, at §§ 96, 97, 103.

51 See VON MEHREN & PATTERSON, *supra* note 17, at 33 and authorities cited therein.

52 *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, *supra* note 17.

53 VON MEHREN & PATTERSON, *supra* note 17, at 33, 34 and authorities cited therein.

54 The U.K.-U.S.A. Convention provides in Article 15 that the court addressed may require a statement as to the grounds relied upon to establish the jurisdiction of the court of origin.

55 Article 9 of the Hague Convention provides that findings of facts by the court of origin are binding on the court addressed unless the judgment was rendered by default.

tion appears to be discretionary, the court is bound not to recognize a judgment rendered in default of appearance of a defendant who had either no actual notice<sup>56</sup> or no proper notice.<sup>57</sup> Under these circumstances, lack of actual or proper notice goes to the fairness of the trial and would render the judgment inconclusive. In transnational cases reference is made to the standards set by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965.<sup>58</sup> In several European countries, substituted service was effected on persons absent and without a place of residence within the jurisdiction by simply serving the documents on a local official. As a result of the Hague Convention on Service Abroad, however, the situation has improved.<sup>59</sup> Even countries that did not sign the Convention have complied with the standards that it has set and in addition to substituted service they impose service abroad through diplomatic channels.<sup>60</sup> Article 20(3) of the European Convention has incorporated by reference Article 15 of the Hague Convention on Service Abroad which contains a number of safeguards ensuring that proper methods were used to serve the documents effectively on the defendant and that adequate time was granted to provide the defendant with an opportunity to appear.

#### D. *Fraud*

A foreign country judgment will not be recognized or enforced when it was obtained by fraud.<sup>61</sup> By analogy to what applies to domestic judgments, the fraud must be extrinsic and not intrinsic.<sup>62</sup> The determination of what amounts to extrinsic and what to intrinsic fraud presents difficulties and the distinction between the two is often blurred.<sup>63</sup> Intrinsic fraud is one which "occurred during the course of the trial upon a subject on which both parties presented evidence."<sup>64</sup> Usual examples of intrinsic fraud are perjury, adducing forged evidence, or fraudulent misrepresentation on the court. Extrinsic fraud exists when "the unsuccessful party has been prevented from exhibiting fully his case."<sup>65</sup> The rationale for the application of the distinction to both domestic and foreign

56 *Parker v. Parker*, 155 Fla. 635, 21 So.2d 141 (1945); *In re Paramythiotis' Estate*, 15 Misc.2d 133, 181 N.Y.S.2d 590 (Sup. Ct. 1958); *Banco Minero v. Ross*, 106 Tex. 522, 172 S.W. 711 (1915).

57 *Hager v. Hager*, *supra* note 21; *Julen v. Larsen*, 25 Cal. App. 3d 325, 101 Cal. Rep. 796 (Dist. Ct. App. 1972).

58 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163. The Convention was ratified by the United States and is effective. In *Julen v. Larsen*, *supra* note 57, reference was made to the standards set by the Convention.

59 Changes were introduced in France in 1965. See Norman, *La delivrance des actes a l'etranger et les delais de distance*, 55 REV. CRIT. DE DROIT INT. PRIVE 386 (1966).

60 See, e.g., Greece which introduced changes in 1967 and embodied them in a new Code of Civil Procedure of 1968/1971.

61 Uniform Foreign Money Judgments Recognition Act § 5(b)(2) U.K.-U.S.A. Convention, Art. 7(b). Both provisions do not distinguish between extrinsic and intrinsic fraud.

62 *Hilton v. Guyot*, *supra* note 34, at 207-10 (where the question was reviewed but left open); *MacKay v. McAlexander*, 268 F.2d 35 (9th Cir. 1959); *Tamimi v. Tamimi* 38 App. Div. 2d 197, 328 N.Y.S.2d 477 (1972).

63 F. JAMES, CIVIL PROCEDURE § 11.7 (1965).

64 Note, *Equitable Relief Against an Award Obtained by Perjury; The Extrinsic-Intrinsic Fraud Distinction*, 36 ILL. L. REV. 894, 895 (1941-42).

65 *United States v. Throckmorton*, 98 U.S. 61 (1878).

judgments is that the conclusiveness of the judgment would be seriously impaired if alleged fraud as to matters already litigated were to be permitted and that as a result there would be no end to litigation.

### E. *Public Policy*

The Uniform Recognition Act<sup>66</sup> provides that a foreign judgment "need not be recognized" if the original claim on which the judgment is based is repugnant to the public policy of the state. It refers only to the original claim and not to the foreign proceedings because these are covered by the requirement of a fair trial in § 4(1) of the Uniform Recognition Act. Lack of fair trial renders the foreign judgment nonconclusive whereas repugnancy of the original claim to public policy entitles the court addressed not to recognize the judgment. The former is mandatory and the latter discretionary. The same distinction is followed by the *Restatement (Second) of the Conflict of Laws*.<sup>67</sup>

The U.K.-U.S.A. Convention adopted a different approach. It has omitted the express requirement of a fair trial and has applied instead the reservation of public policy to the original claim and the foreign proceedings.<sup>68</sup> It is submitted that even under such a comprehensive application of the public policy reservation, an American court will distinguish between matters offending against due process in which case it must refuse recognition and other matters affecting the original claim or rules of procedure in which case it will only refuse recognition if they are fundamental in a transnational context. The fact that an action on the original claim could not have been maintained in an American court does not necessarily mean that a foreign judgment based on the claim should be refused recognition in the United States.<sup>69</sup> Nor does the admission by the court of origin of hearsay evidence or of unsworn evidence or the lack of an opportunity to cross-examine entitle an American court to refuse recognition.<sup>70</sup>

### E. *No Review of Merits or of Choice of Law*

An American court will not review a foreign judgment as to its merits,<sup>71</sup> nor will it refuse recognition or enforcement on the ground that if it had considered the matter in the first instance it would have come to a different decision by applying a different rule of conflict of laws.<sup>72</sup> Thus a New York court, in a 1970 case,<sup>73</sup> enforced, as to assets deposited in a New York bank, a French judgment applying the French forced heirship law to the estate of a Frenchman who had died domiciled in New York. If the New York court had determined the matter originally it would have applied the law of New York as the law of the domicile of the deceased and would have denied the forced share.

66 See note 63, *supra* at § 4(b)(3).

67 *Id.* at § 117 Comment c.

68 *Id.* at U.K.-U.S.A. Convention, Art. 7(a). See Reese, *supra* note 31, at 796, who suggests that the standards of due process are included in the requirement of natural justice.

69 *Neporany v. Kir*, 5 App. Div.2d 438, 173 N.Y.S.2d 146 (1st Dep't 1958).

70 *Hilton v. Guyot*, *supra* note 34, at 204-05.

71 *Id.* at 203.

72 VON MEHREN & PATTERSON, *supra* note 17, at 40.

73 *Watts v. Swiss Bank Corp.*, 27 N.Y.S.2d 270, 279; 265 N.E.2d 739, 744 (1970).

In contrast to the American and as we shall see the English approach, French courts review the choice of law by the court of origin to see whether it agrees with their own and if it does not and the decision reached by the court of origin is not the same as the one that they would have reached, they refuse recognition or enforcement.<sup>74</sup> German law<sup>75</sup> imposes the same test but only as to certain matters pertaining to personal status and affecting a German national.

The U.K.-U.S.A. Convention confirms in Article 9 the rule that there will be no review of merits or of choice of law, but provides for two exceptions. The first concerns the choice of law by the court of origin as to questions that were excluded as *main issues* from the scope of the Convention but which may arise as preliminary questions. They cover such matters as damage or injury resulting from a nuclear incident, the determination of the existence or constitution of legal persons or the powers of their officers or directors, the status or capacity of natural persons, matters of family law, maintenance claims, succession, bankruptcy or winding up, matters of social security, and matters concerning the judicial supervision of incompetent persons.<sup>76</sup> If the court of origin in order to render its judgment had to decide any of these questions and if the result reached does not agree with the result that the court addressed would have reached by applying a different conflict rule than the one applied by the court of origin, the court addressed is not required to recognize or enforce the judgment.<sup>77</sup> It is submitted that this exception should not have been included in the U.K.-U.S.A. Convention. In the first place it is not representative of the American and as we shall see the English approach and it is not supported by either American or English precedent. In the second place, it is difficult to visualize its usefulness in a Convention that does not apply to maintenance, alimony, proprietary claims between spouses, and matters of succession. It is mainly in connection with such matters that preliminary questions as to domestic status arise. In the everyday commercial practice there are no problems as to the existence or constitution of a corporation or its powers or the powers of its officers and directors. In transnational contracts of some importance these matters are investigated before the contract is signed and in informal transactions the erosion of the *ultra vires* doctrine and the wide application of apparent authority have dispensed of complications. Furthermore, American and English conflict rules in the topics covered by the Convention are very similar and are not likely to give rise to diametrically opposed results.

The testing by the court addressed of the foreign court's choice of law has

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74 The French courts have abandoned the "revision a fond" of a foreign judgment. This consisted in a review of facts and law in order to determine the merits of the decision reached. See *Munzer v. Jacoby-Munzer*, Cour de Cass. Ch. Civ. (1st Sect.) (1964), [1964] Bull. des Arrêts de la Cour de Cass. Ch. Civ. I, No. 15, at 11. They still, however, refuse to recognize or enforce the foreign judgment if the result does not agree with the result that would have been reached by a French court applying to the same situation the French conflict rule. See COUNCIL OF EUROPE, *supra* note 32, at 57-58. Nadelmann, *French Courts Recognize Foreign Money Judgments; One Down and More to Go*, 13 AM. J. COMP. L. 72 (1964).

75 GERMAN CODE OF CIVIL PROCEDURE § 328(3). See COUNCIL OF EUROPE, *supra* note 32, at 67, 72.

76 U.K.-U.S.A. Convention, Art. 2(2)(g)(h) and (3).

77 *Id.* at Art. 7(e).

been ably supported by two commentators<sup>78</sup> on the ground that it tends to ensure that the defendant has been treated fairly and that it denies recognition when the foreign judgment is based on an arbitrary or parochial choice of law. It is submitted that justice can be better served by denying in extreme and exceptional cases recognition or enforcement on grounds of public policy. Even though in the Anglo-American conflict of laws public policy is rarely used, it is appropriate in this context in order to emphasize that probing into choice of law merits should be resorted to sparingly, if at all. The inclusion of choice of law testing in the Hague Convention<sup>79</sup> reflects Continental European thought. Moreover, it may have some justification because of the important differences between civil law and common law countries on conflict rules applicable to domestic status, succession and the status of corporations. A similar provision in the European Convention<sup>80</sup> is again representative of the Continental European approach and may prove necessary on matters of maintenance and alimony that are within the scope of the European Convention.

The second exception to the rule that there will be no review of merits or of choice of law, concerns the application of mandatory provisions of the law of the court addressed. A judgment will not be recognized *at the request of the judgment-debtor*, if the court of origin applied the law chosen by the parties to govern a particular transaction, in disregard of mandatory provisions of the law of the court addressed that would be applicable according to the conflict rule of the court addressed.<sup>81</sup> If, for instance, a court in the United Kingdom disregarded the application of disclosure provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934 to a transaction substantially connected with a state of the United States,<sup>82</sup> on the ground that the relevant agreement provided that English law should govern, the English judgment would not, at the request of the respondent, be recognized or enforced in the United States. The author knows of no authority either American or English that supports this proposition. There is, however, some justification for its inclusion in the U.K.-U.S.A. Convention, in order to deny effectiveness to a choice of law by the parties that would lead to the evasion of a mandatory provision designed to protect the public interest or the consumer.<sup>83</sup>

### G. *Effect of Recognition and Finality*

The effect of recognition is that the foreign judgment is conclusive as to the underlying cause of action (*res judicata*) and also as to the decided issues (*collateral estoppel*) with regard to the original parties, their successors and privies, and that it is to be recognized and enforced in the same manner as the judgment of a sister state which is entitled to full faith and credit.<sup>84</sup>

78 Von Mehren & Trautman, *Recognition of Foreign Adjudications*, 81 HARV. L. REV. 1601, 1637-39 (1968).

79 See note 77, *supra* at Art. 7(2).

80 *Id.* at Art. 27(4).

81 U.K.-U.S.A. Convention, Art 8(d).

82 See RESTATEMENT OF CONFLICTS OF LAW, *supra* note 17, at § 187.

83 See Zaphiriou, *Choice of Law and Choice of Forum Clauses in International Commercial Agreements*, 3 INT'L TRADE L. JOURNAL (1977).

84 Uniform Foreign Money Judgments Recognition Act, § 3; RESTATEMENT OF CONFLICTS OF LAW, *supra* note 17, at § 98; von Mehren & Trautman, *supra* note 78, at 1671-96; Smit, *supra* note 31.

What effect will be given to a foreign judgment will be decided according to the domestic law of the court addressed and includes not only a *res judicata* effect but also, in a proper case, collateral estoppel effects.<sup>85</sup> Collateral estoppel effects can be more easily attributed to a judgment of a common law country<sup>86</sup> than to a judgment of a civil law country. Generally in civil law countries the effect of a judgment as *res judicata* is restricted to the dispositive part of the judgment as distinct from the premises.<sup>87</sup> It is submitted that the court addressed must first determine the effect of the judgment according to the law of the court of origin and then apply its own law in order to attribute to the judgment as equivalent an effect as is possible under its own law.

American<sup>88</sup> and English<sup>89</sup> courts have refused to accept that the cause of action merges into the foreign country judgment. As a result the plaintiff or a person claiming under him may bring an action in the United States on the original claim. This normally is of no practical use, unless, for instance, the original claim is in a foreign hard currency and the foreign judgment has been converted into another foreign currency that has in the meantime depreciated.

American courts do not recognize or enforce interlocutory judgments.<sup>90</sup> They may enforce at their discretion a foreign money judgment which is final but subject to an appeal<sup>91</sup> or stay the enforcement proceedings until the appeal has been heard and determined.<sup>92</sup> American courts tend increasingly to recognize and enforce modifiable judgments (*e.g.* judgments for maintenance or alimony) provided they are final and enforceable under the law of the court of origin and will allow the party claiming the modifications to advance the same arguments that he could have made before the court of origin.<sup>93</sup>

In case of a foreign judgment which is irreconcilable with a local judgment, the foreign judgment need not be recognized.<sup>94</sup> In case of two or more foreign

85 *Bata v. Bata*, 39 Del. Ch. 258, 163 A.2d 493, 506 (1960), *cert. denied*, 366 U.S. 964 (1961); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 293 F. Supp. 892, 898-99 (S.D.N.Y. 1968), *modified on other grounds*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971); Smit, *supra* note 31, at 63; von Mehren & Trautman, *supra* note 78. *Contra* Gutteridge, *Reciprocity in Regard to Foreign Judgments*, 13 BRIT. Y. B. INT'L LAW 49 (1932). *See* compromise solution in Article 13 of U.K.-U.S.A. Convention.

86 *Newton v. Hunt*, 59 Misc. 633, 112 N.Y.S. 573 (Sup. Ct. 1908).

87 Miller, *The Premises of the Judgment as Res Judicata in Continental and Anglo-American Law*, 39 MICH. L. REV. 1-36, 238-66 (1940-41); von Mehren & Trautman, *supra* note 78, at 1674-77.

88 Peterson, *supra* note 26, at 224-29, 239. *But see* *Neporany v. Kir*, *supra* note 69, which went so far as to suggest that because of merger of the cause of action in the foreign judgment the original tort action was not subject to New York public policy.

89 CHESHIRE & NORTH, *PRIVATE INTERNATIONAL LAW* 631-32 (9th ed. 1974); DICEY & MORRIS, *CONFLICT OF LAWS* 1023-24 (9th ed. 1973). In *Carl Zeiss Stiftung v. Rayner and Keeler Ltd. No. 2*, [1967] 1 A.C. 853, 966, Lord Wilberforce criticized the non-merger effect as an "illogical anachronism." This was not accepted, however, by three of the other Law Lords. *Id.* at 917, 927 and 938.

90 *See* VON MEHREN & PATTERSON, *supra* note 17, at 47 and decisions cited therein.

91 Uniform Foreign Money Judgments Recognition Act, § 2.

92 *Id.* at § 6.

93 *Worthley v. Worthley*, 33 Cal. Rep. 2d 465, 474, 283 P.2d 19, 25 (1955); *Herczog v. Herczog*, 186 Cal. App. 2d 318, 9 Cal. Rep. 5 (1960); von Mehren & Trautman, *supra* note 78, at 1657-58; VON MEHREN & PATTERSON, *supra* note 17, at 48. *Cf.* RESTATEMENT OF CONFLICT OF LAWS, *supra* note 17, at § 109, Comment d. *See* Uniform Foreign Money Judgments Recognition Act, § 1(2), which excludes "a judgment for support in matrimonial family matters."

94 Uniform Foreign Money Judgments Recognition Act, § 4(b); U.K.-U.S.A. Convention, Art. 7(c)(i).

judgments, by analogy to the rule applicable to sister state judgments, the later judgment prevails,<sup>95</sup> unless the later judgment has no *res judicata* or collateral estoppel effect<sup>96</sup> or did not decide the effect of the first.<sup>97</sup> If the foreign judgment was rendered after proceedings on the same subject matter were commenced by the same parties in the United States, the foreign judgment is attributed no effect in the United States.<sup>98</sup>

#### H. *Enforcement Procedures*

The judgment of a federal court is enforced in another district by merely registering a certified copy of the judgment in the federal court of the district in which enforcement is sought.<sup>99</sup> Only judgments for the recovery of money or property can be so registered. The judgment must have become final by appeal or the time for appeal must have expired. The judgment will have the same effect as a judgment of the district of registration. The enforcement of a foreign country judgment by a federal court is subject to the rules that apply in the state in which the federal court adjudicates.<sup>100</sup>

The tendency in most states of the United States is to extend methods of enforcement of sister state judgments to foreign country judgments. A distinction must be made between money judgments and judgments ordering other relief. The procedure for enforcement of a foreign country money judgment varies from state to state and cannot be summarized. In most states a new action is required on the foreign judgment in the form of an action in debt and a new local judgment is obtained which is subsequently enforced.<sup>101</sup> It depends on the local procedure whether proceedings leading to a summary judgment can be used.

A considerable number of states have adopted the Uniform Enforcement of Foreign Judgments Act either in its 1948 version<sup>102</sup> or in its revised 1964 version.<sup>103</sup> The Uniform Enforcement of Foreign Judgments Act, according to its terms, applies only to sister state judgments. It provides for the registration of the judgment with the clerk of the court in which enforcement is sought. Notice of the enforcement proceedings is served upon the judgment-debtor.

The only states that have adopted both the Uniform Enforcement of

95 *Bata v. Bata*, *supra* note 85; *Ambatielos v. Foundation Co.*, 203 Misc. 470, 116 N.Y.S.2d 641 (Sup. Ct. 1952); *VON MEHREN & PATTERSON*, *supra* note 17, at 49. See RESTATEMENT OF CONFLICT OF LAWS, *supra* note 17, at § 114, as to sister state judgments; Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-In-Time Rule for Conflicting Judgments*, 82 HARV. L. REV. 798 (1969).

96 *Bata v. Bata*, *supra* note 85.

97 *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss Jena*, *supra* note 85.

98 *Kohn v. American Metal Climax Inc.*, 322 F. Supp. 1331, 1351 (E.D. Pa. 1970), *modified*, 458 F.2d 255 (3d Cir.), *cert. denied*, 409 U.S. 874 (1972); *Bouas v. Sociedad Maritima San Nicholas S.A.*, 252 F. Supp. 286 (S.D.N.Y. 1965); U.K.-U.S.A. Convention, Art. 7(c) (ii).

99 28 U.S.C. § 1963 (1948).

100 *Erie R. R. v. Tompkins*, 304 U.S. 64 (1938).

101 RESTATEMENT OF CONFLICTS OF LAW, *supra* note 17, § 100, Comments b, d.

102 9A U.L. ANN. 475 (Master ed. 1976). Illinois among other states, has adopted the 1948 version. See SMITH-HURD ILL. ANN. STAT. ch. 77 §§ 88-105 (1966, Suppl. 1977).

103 New York and Oklahoma, among other states, have adopted the 1964 version. See MCKINNEY'S N.Y. CIV. PRACT. §§ 5401-08 (1963, Supp. 1964-77); OKLA. STAT. ANN. §§ 711-19 (1960, Supp. 1977-78).



Foreign Judgments Act and the Uniform Recognition Act are Alaska, Illinois, New York, Oklahoma and Washington. According to § 3 of the Uniform Recognition Act, a foreign country judgment "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." Thus, in Illinois, for example, the following steps are to be taken: (1) Authentication of the foreign country judgment by having it translated into English, if necessary, and legalized by the United States Consular Service in the country of origin; (2) registration of the judgment with the Clerk of the court in which enforcement is sought; (3) filing of petition setting out the particulars of the judgment, stating that it is final and conclusive in the country of origin and binding on the person against whom enforcement is sought and praying for its enforcement; (4) summons to be served upon the judgment-debtor with copy of the petition. If the judgment-debtor fails to plead within the time specified in the summons or in any event within thirty days or if the court after hearing has refused to set the registration aside, the registered judgment shall become a final judgment of the court in which it was registered. The respondent in the enforcement proceedings can plead a defense, set-off, or counterclaim as in any other civil action.<sup>104</sup>

Unlike Illinois, New York has amended § 3 of the Uniform Recognition Act to the effect that the foreign country judgment is enforceable by an action on the judgment.<sup>105</sup> Summary proceedings leading to a summary judgment, however, can be used.<sup>106</sup> An affidavit is filed in support of a motion for a summary judgment. No filing of a complaint is necessary. A summons with copy of the motion and affidavit are served upon the judgment-debtor.

The position as to non-money judgments is uncertain. A foreign country judgment ordering an injunction or specific performance will probably be enforced in the United States by analogy to what applies to sister state judgments.<sup>107</sup> In the case of enforcement of a foreign non-money judgment, the rendering of a local judgment ordering the relief will be indispensable. Article 15 of the U.K.-U.S.A. Convention leaves it to the discretion of the court addressed to either refuse enforcement or order the appropriate local relief.

### III. Recognition and Enforcement in the United Kingdom

Basically the position is the same in the United Kingdom as it is in the United States. A foreign final and conclusive judgment if rendered by a court of origin which had jurisdiction according to the English conflict rule, after proper notice to the defendant and an opportunity to defend, will be recognized and enforced in the United Kingdom, unless it was obtained by fraud or it is contrary to public policy.

The aim of this part of the article is to focus on the differences between the

104 See SMITH-HURD, *supra* note 102 at §§ 90-95.

105 See MCKINNEY'S, *supra* note 103, at § 5303.

106 *Id.* at § 3212(b); VON MEHREN & PATTERSON, *supra* note 17, at 51.

107 RESTATEMENT OF CONFLICTS OF LAWS, *supra* note 17, at § 102. The Restatement gives only one case in connection with the enforcement of a foreign country non-money judgment: *Robin v. Long*, 60 How. Pr. (N.Y.) 200 (1880), in which the New York court ordered the defendant to convey land in Canada in compliance with a Canadian decree.

American and the English approach and to confirm an important similarity. There are five differences: (1) There is more extensive enforcement by registration in the United Kingdom. This is due to statutory provisions and the existence of bilateral conventions on reciprocal enforcement of judgments with the United Kingdom. Foreign judgments that do not come within the scope of the statutory provisions have to be enforced by action on the judgment according to common law rules. The judgment-creditor can apply for a summary judgment under Order 14 of the Rules of the Supreme Court. (2) There is some support in England for the doctrine of obligation as a basis for the recognition and enforcement of foreign judgments. (3) American courts tend to extend to the court of origin the same rules that they apply to their own transnational jurisdiction whereas English statutes and courts differentiate between the jurisdiction of an English court and the jurisdiction of the court of origin in a similar situation. (4) A foreign judgment can be impeached in England for both extrinsic and intrinsic fraud. (5) A modifiable foreign judgment cannot be enforced in England.

The important similarity to be confirmed is that the law in the United Kingdom as in the United States does not favor the review of merits of a foreign judgment or of the foreign court's choice of law.

#### A. *Statutory Registration*

Under the Judgments Extension Act of 1868, money judgments rendered by the High Court of Justice in England, the Court of Sessions in Scotland and the High Court of Justice in Northern Ireland can be enforced throughout the United Kingdom by registration. Registration is effected as of right by registering a certificate issued by the adjudicating court with either of the two other superior courts. Objections against the judgment must be raised in the jurisdiction in which it was rendered. The Act does not apply to probate, divorce, or non-money judgments that are therefore subject to the common law rules on enforcement.

The enforcement of money judgments obtained in a Commonwealth country is governed by the Administration of Justice Act of 1920. Enforcement is also effected by registration, but not as of right. Whether a Commonwealth judgment will be allowed to be registered depends on whether the court of origin had jurisdiction and on other available defenses which are similar to those prevailing in the United States and at common law. The court of origin is considered to have had jurisdiction if the defendant voluntarily submitted to its jurisdiction or was "ordinarily" resident or was carrying on business in the country of origin.<sup>108</sup> A notable difference in the defenses available under this Act and the common law defenses is that an appealable judgment may not be registered.<sup>109</sup> The Act is extended to countries of the Commonwealth by Order in Council and on a basis of reciprocity. Until 1933 it was extended to a number of Commonwealth countries, but since 1933 arrangements are being made under

108 Administration of Justice Act of 1920, § 9(2).

109 *Id.* at § 9(2)(e).

the Foreign Judgments (Reciprocal Enforcement) Act of 1933 which is gradually superseding the Administration of Justice Act of 1920.

The Foreign Judgments (Reciprocal Enforcement) Act of 1933 applies only to money judgments. It is extended to a particular country by Order in Council on a basis of reciprocity ensured by a bilateral convention between the United Kingdom and the country concerned. It has been extended to the Australian Capital Territory, Austria, Bangladesh, Belgium, India, Isle of Man, Israel, Italy, Federal Republic of Germany and West Berlin, France, Guernsey, Jersey, Norway, the Netherlands and Pakistan. The judgment of a superior court of any of these countries is enforced by registration in the superior courts of England, Scotland, or Northern Ireland. The registration *must* be set aside if the registering court is satisfied that: (1) The judgment is not within the scope of the Act; or (2) the court of origin had no jurisdiction; or (3) the judgment-debtor being the defendant in the original proceedings did not receive notice of the original proceedings in sufficient time to defend them and did not appear; or (4) the judgment was obtained by fraud; or (5) the enforcement of the judgment would be contrary to public policy; or (6) the rights under the judgment as not vested in the person applying for registration.<sup>110</sup> The registration *may* be set aside if the registering court is satisfied that the judgment is irreconcilable with a previous final and conclusive judgment of a court having jurisdiction.<sup>111</sup> The Act further specifies those situations in which the court of origin is considered to have properly exercised jurisdiction. The Act's rules as to jurisdiction will be mentioned below in Section C which deals generally with jurisdiction.

As soon as the European Convention becomes effective in the United Kingdom, it will supersede the existing bilateral conventions with member states of the European Community. Judgments of member states of the European Community that are at present within the scope of the Foreign Judgments (Reciprocal Enforcement) Act of 1933 will be dealt with under the terms of the European Convention.

### *B. Basis of Recognition and Enforcement*

While statutory enforcement is extended on a basis of reciprocity, the common law requires no reciprocity as a prerequisite to the recognition and enforcement of foreign judgments. Early English decisions based the recognition of foreign judgments on comity and on a public international law obligation.<sup>112</sup> Later, a doctrine of obligation was developed<sup>113</sup> which was formulated as follows by Blackburn J.:

110 Foreign Judgments (Reciprocal Enforcement) Act of 1933, § 4(1)(a).

111 *Id.* at § 4(1)(b).

112 *Roach v. Garvan*, [1748] 1 Ves. Sen. 157, 159; *Geyer v. Aguilar*, [1798] 7 Term. Rep. 681, 697; *Wright v. Simpson*, [1802] 6 Ves. 714, 730; *Alvis v. Bunbury*, [1814] 4 Camp. 28.

113 *Russell v. Smyth*, [1842] 9 M. & W. 810, 819; *William v. Jones*, [1845] 13 M. & W. 627, 633; *Goddard v. Gray*, [1870] L.R. 6 Q.B. 139, 149-50; CHESHIRE & NORTH, *PRIVATE INTERNATIONAL LAW* 630-31 (9th ed. 1974); DICEY & MORRIS, *CONFLICT OF LAWS* 987 (9th ed. 1973); GRAVESON, *CONFLICT OF LAWS* 618-19 (7th ed. 1974); READ, *RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS* 121-22 (1938).

We think that . . . the true principle on which the judgment of foreign tribunals is enforced in England is . . . that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts of this country are bound to enforce; and consequently that anything which negatives that duty or forms a legal excuse for not performing it, is a defence to the action.<sup>114</sup>

The doctrine of obligation can be criticized on several grounds. First, it is predicated on the misconception that the defendant *has* an obligation and the plaintiff *has* a vested right. Whether the defendant has an obligation and the successful plaintiff has a vested right depends on the conflict rules of the court addressed; it is therefore illogical to suggest that the basis of the conflict rules is the obligation allegedly imposed on the defendant. Secondly, it disregards that recognition or enforcement depends on conditions imposed by the law of the court addressed and on defenses provided by that law. Thirdly, all judgments do not impose an obligation; judgments on status or declaratory judgments determine the existence of a certain relationship or of a state of things.

### C. *Jurisdiction*

For a foreign judgment to be recognized and enforced in England, the court of origin must have had jurisdiction according to the English conflict rule. The emphasis in England, as in the United States, is on jurisdiction over the person rather than over the subject matter. The same distinction is drawn between actions *in personam* and actions *in rem*. It is generally accepted that a judgment dealing with a proprietary interest in either immovable or movable property, when rendered by a court of the country where the *res* was situated, will be recognized or enforced in the United Kingdom, if all other conditions for recognition and enforcement are satisfied. The cases cited in support of this proposition are cases dealing with judgments *in rem* determining proprietary interests in ship<sup>115</sup> or in a cargo.<sup>116</sup> In England as in the United States judgments *in rem* have been used in a wider sense to include judgments as to domestic status which are also universal in their effect when pronounced by a court of proper jurisdiction.<sup>117</sup> Jurisdiction and choice of law as to matters of domestic status, such as the validity of the marriage, divorce, legitimacy, and legitimation, are in English law, subject to few exceptions, dominated by the jurisdiction of the country of domicile and the application of its law. Matters of domestic status, of administration of estates, and of bankruptcy require special analysis which is outside the scope of this article.

In connection with foreign judgments dealing mainly with claims in contract and in tort, an English court will recognize jurisdiction in a foreign court when exercised on the following bases:

- (1) The defendant had, at the time when the action was brought, a place

114 *Schibsy v. Westenholz*, [1870] L.R. 6 Q.B. 155, 159.

115 *Castrique v. Imrie*, [1870] L.R. 4 H.L. 414.

116 *Cammell v. Sewell*, [1858] 3 H. & N. 617, *aff'd other grounds*, [1860] 5 H. & N. 728.

117 *See, e.g., Salvesen v. Administrator of Austrian Property*, [1927] A.C. 641.

of residence in the country of origin. Some English decisions<sup>118</sup> have supported the jurisdiction of the court of origin when founded on temporary presence and personal service of the defendant within the jurisdiction. English commentators, however, are almost unanimously opposed to such a view.<sup>119</sup> Furthermore, the Administration of Justice Act of 1920 which extended enforcement by registration to certain Commonwealth judgments requires the defendant to be "ordinarily" resident in the country of origin and the Foreign Judgment (Reciprocal Enforcement) Act of 1933 speaks of "residence." Article 10(1) of the Hague Convention and Article 10(b) of the U.K.-U.S.A. Convention refer to the "habitual residence" of the defendant and the European Convention appears to support a similar concept. Abstract definitions by the use of adjectives are of little use, it will be up to the courts to define in concrete situations what amounts to residence in this context.

(2) The defendant had, at the time when the action was brought, a place of business within the country of origin. The formulation of this basis of jurisdiction varies at common law, the Administration of Justice Act of 1920 and the Foreign Judgments (Reciprocal Enforcement) Act of 1933. At common law it is clear that doing business and the mere presence of a director of a corporation within the jurisdiction are not sufficient to found jurisdiction in the court of origin.<sup>120</sup> Nor is the presence of an agent of the corporation sufficient, if the agent had no power to enter into a contract on the corporation's behalf.<sup>121</sup> The Foreign Judgments (Reciprocal Enforcement) Act of 1933 requires that a corporation had, at the time when the action was brought, its "principal place of business" in the country of origin.<sup>122</sup> The same Act requires that an individual or corporate defendant had an office or place of business in the country of origin and "the original action was brought in respect of a transaction effected through or at that office or place."<sup>123</sup> A more comprehensive formulation is to be found in Article 10(1) and (2) of the Hague Convention which adds to the above, the country (or state) of incorporation or the country where the "seat" (*i.e.* the center of administration) of an association is situated. As we shall see, when dealing with the European Convention, civil law countries have no system of incorporation and provide that an association is domiciled at the place where its "seat" is situated. The Hague Convention is closely followed by Article 10(b), (c) and (e) of the U.K.-U.S.A. Convention. The U.K.-U.S.A. Convention dealing with recognition and enforcement of judgments between two common law countries makes no reference to the "seat" of an association. On the other hand it makes an important addition and a useful clarification: The addition concerns enterprises conducting business on a continuing basis within the territory of origin which had appointed or had a duty to appoint an agent to receive service of process there in respect of such business. Such enterprises include

118 *Schibsbj v. Westenholz*, [1870] L.R. 6 Q.B. 155; *Carrick v. Hancock*, [1895] 12 T.L.R. 59; *Emanuel v. Symon*, [1908] 1 K.B. 302.

119 *CHESHIRE & NORTH*, *supra* note 113, at 640-41; *DICEY & MORRIS*, *supra* note 113, at 1003-04; *cf.* *GRAVESON*, *supra* note 113, at 621.

120 *Littauer Glove Corporation v. F. W. Millington Ltd.*, [1928] 44 T.L.R. 726.

121 *Vogel v. R. & A. Kohnstamm Ltd.*, [1973] 1 Q.B. 133.

122 Foreign Judgments (Reciprocal Enforcement) Act of 1933, § 4(2) (a) (iv).

123 *Id.* at 4(2) (a) (v).

"overseas companies" carrying on business in England that have to be registered with the Registrar of Companies. They also include foreign corporations which in most states of the United States have to obtain a certificate of authority. Jurisdiction exercised on such enterprises by the court of origin in proceedings related to their local business is to be recognized by the court addressed. The clarification concerns subsidiaries. Having merely a subsidiary within the territory of origin is not sufficient to found jurisdiction against the parent enterprise.

(3) The defendant submitted to the jurisdiction of the court of origin. This includes the submission of present or future disputes. The former is usually effected by voluntary appearance and the latter by means of choice of forum clauses. It is not clear whether appearance under protest to dispute the foreign court's jurisdiction amounts to submission. In *Harris v. Taylor*,<sup>124</sup> the Court of Appeal held that the defendant who had protested to the jurisdiction of a Manx court had submitted to jurisdiction. The defendant, a domiciled Englishman resident in England, had committed a tort in the Isle of Man and had been served by process outside the jurisdiction pursuant to a Manx rule equivalent to Order 11 rule 1(1)(h) of the English Rules of the Supreme Court which permits, at the discretion of the English court, service of process outside the jurisdiction when a tort was committed in England.

The decision in *Harris v. Taylor* has since been explained by the Court of Appeal in *Re Dulles' Settlement (No. 2)*<sup>125</sup> as resting on the grounds that jurisdiction exercised by a foreign court on a rule equivalent to an English rule will be recognized in England and also that denying effect to the defendant's protest was res judicata and therefore binding on the English court. The Foreign Judgments (Reciprocal Enforcement) Act of 1933<sup>126</sup> introduced an important improvement as to judgments that come within its scope. It provides that appearance "for the purpose of protecting or obtaining the release, of property seized, or threatened with seizure . . . or of contesting the jurisdiction" does not amount to submission.

Despite these decisions, the position at common law is still unsettled. Some decisions suggest an illogical distinction between appearance to have seized property released (this not counting as submission) and appearance to protect property threatened to be seized (which does amount to submission).<sup>127</sup> Another proposition which requires clarification is whether submission as to future disputes must be effected by express agreement or can also be effected by an implied agreement. An ingenious, but nevertheless incorrect reasoning by Diplock, J. in *Blohn v. Desser*<sup>128</sup> suggested that an English resident who was a partner in a family partnership which carried on business in Vienna and who was registered as a partner in the commercial register in Vienna had impliedly submitted to the jurisdiction of the Austrian courts. This reasoning was not followed in *Vogel v.*

124 [1915] 2 K.B. 580.

125 [1951] Ch. 842.

126 § 4(2)(a)(i).

127 *De Cosse Brissac v. Rathbone*, [1861] 6 H. & N. 300; *Voinet v. Barrett*, [1885] 55 L.J.Q.B. 39, 41; *Guiard v. De Clermont Donner*, [1914] 3 K.B. 145.

128 [1962] 2 Q.B. 116.

*Kohnstamm*,<sup>129</sup> where it was held that submission must be express. Article 10(5) of the Hague Convention and Article 10(d) of the U.K.-U.S.A. Convention require that submission of disputes either present or future should be effected by an agreement in writing or an oral agreement confirmed in writing, as does the European Convention.

According to the majority of English commentators, an English court will not recognize the following bases of jurisdiction in the recognition and enforcement of foreign judgments: nationality<sup>130</sup> or domicile<sup>131</sup> or temporary presence<sup>132</sup> of the defendant, or mere presence of an asset of the defendant within the jurisdiction unless the action was to assert a proprietary interest in an immovable or movable.<sup>133</sup> The rejection of these jurisdictional bases agrees with the Hague Convention and its Supplementary Protocol of October 15, 1966, with American law and is clearly expressed in the U.K.-U.S.A. Convention.<sup>134</sup>

While English law commendably follows general trends in accepting certain jurisdictional bases and in rejecting others, it suffers from a serious shortcoming by denying to foreign courts jurisdictional bases frequently used by English courts in similar transnational situations. Order 11 rule 1 of the Rules of the Supreme Court permits in certain cases, by leave of the court to be given at its discretion, the service of process outside the jurisdiction. Such cases include, among others, contractual claims on a contract which was made in England or on a contract that is governed either expressly or impliedly by English law, or for a breach of contract that occurred in England. Without going into much detail, such exercise of jurisdiction is, if anything, wider than the jurisdiction which is exercised by American courts under the long-arm statutes of some states. Another basis used for the exercise of jurisdiction by an English court which is equivalent to long-arm provisions in American state statutes is in an action in tort for a tort which was committed in England. In spite of these wide provisions which can be used to confer jurisdiction to an English court, it has been repeatedly held that an equivalent basis when used by a foreign court will not be recognized when it comes to the recognition or enforcement of a foreign judgment in England.<sup>135</sup>

129 See note 121 *supra*.

130 The nationality of the defendant as a basis of jurisdiction found some support in early decisions, but is now under general criticism and should be considered as practically abandoned. See CHESHIRE & NORTH, *supra* note 113, at 640-41; DICEY & MORRIS, *supra* note 113, at 1003-04; GRAVESON, *supra* note 113, at 621-22.

131 See CHESHIRE & NORTH; DICEY & MORRIS, note 130.

132 See notes 118, 199 *supra*.

133 Thus American judgments rendered by the exercise of a jurisdiction quasi in rem and German judgments rendered by the exercise of jurisdiction according to Article 23 of the German Code of Civil Procedure will not be recognized in England. See *Emanuel v. Symon*, [1908] 1 K.B. 302; *Sirdar Gurdial Singh v. Raiah of Faridkote*, [1894] A.C. 670, 685; CHESHIRE & NORTH, *supra* note 115, at 641-42. *Contra* *Becquet v. Macarthy*, [1831] 2 B. & Ad. 951; GRAVESON, *supra* note 113, at 624-25, who states that American judgments quasi in rem should be recognized and enforced. It should be noted that recovery under an American judgment quasi in rem is limited to the value of the asset which is usually attached under garnishment proceedings and service of process is effected on the garnishee as representative of the absent defendant. On the other hand German judgments under Article 23 of the German Code of Civil Procedure are not limited to the value of the asset.

134 See notes 2, 3 *supra*.

135 It was decided in *Emanuel v. Symon*, *supra* note 133, at 309, that:

In actions in personam there are five cases in which the courts of this country will enforce a foreign judgment: (1) Where the defendant is a subject of the foreign country in which the judgment has been obtained; (2) where he was resident in the

There are two notable indications that this approach by the English courts will be reversed. The first concerns the recognition in England of foreign divorce decrees rendered by a court of a country in which the husband is not domiciled on an exceptional jurisdictional ground which is also provided by an English statute. This occurred in *Travers v. Holley*<sup>136</sup> in which the Court of Appeal recognized a divorce decree of a court of New South Wales in Australia against a husband who was domiciled in England. The court in Australia had exercised jurisdiction on a ground similar to an existing statutory ground in England. Hodson L.J. made the following observation:

I would say that where, as here, there is in substance reciprocity, it would be contrary to principle and inconsistent with comity if the courts of this country were to refuse to recognise a jurisdiction which *mutatis mutandis* they claim for themselves.<sup>137</sup>

In a later case Hodson L.J. attempted to limit the import of his observation by confining it to matrimonial cases.<sup>138</sup>

The second indication, although merely dictum, is important because the dictum referred to a case in which the court of origin had exercised jurisdiction over a foreign non-resident defendant on the ground that a tort had been committed within the jurisdiction. Denning L.J. in *Re Dulles Settlement (No. 2)*<sup>139</sup> referred to *Harris v. Taylor*,<sup>140</sup> whose facts were given above, and said:

I do not doubt that our courts would recognize a judgment properly obtained in the Manx courts for a tort committed there, whether the defendant voluntarily submitted to the jurisdiction or not; just as we would expect the Manx courts in a converse case to recognize a judgment obtained in our courts against a resident in the Isle of Man, on his being properly served out of our jurisdiction for a tort committed here.

The above observations of Lord Hodson and Lord Denning M.R. are particularly pertinent in the case of American judgments as the American courts have gone a long way in recognizing judgments rendered by English courts exercising jurisdiction equivalent to the long arm jurisdiction of some American courts.<sup>141</sup> Reciprocity of treatment in this particular context will be ensured by the ratification of the U.K.-U.S.A. Convention. The Convention contains three compromise provisions, two relate to actions in contract and the third to actions in tort. The court of origin has jurisdiction in the case of a contract for the supply of goods or services when the invitation to treat was advertised in or otherwise directed to the country of origin and the contemplated performance

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foreign country when the action began; (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued; (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained; *Phillips v. Batho*, [1913] 3 K.B. 25, 29; *Societe Cooperative Sidmetal v. Titan International Ltd.*, [1966] 1 Q.B. 828, 841.

136 [1953] P. 246.

137 *Id.* at 257.

138 *In re Trecca Mines Ltd.*, [1960] 1 W.L.R. 1273, 1281-82.

139 [1951] 1 Ch. 842, 851.

140 *See* note 124 *supra*.

141 *See* notes 43, 44, 45 *supra*.



was substantially to occur in the country of origin.<sup>142</sup> It also has jurisdiction when both parties to the contract resided or had places of business in the country of origin and the obligation in issue was mainly to be performed there.<sup>143</sup> The third provision which deals with the jurisdiction of the court of origin in actions in tort was discussed above.<sup>144</sup>

### C. *Fraud*

A foreign judgment will not be recognized or enforced in England if it was obtained by fraud.<sup>145</sup> This can either be fraud *by* the court,<sup>146</sup> which is rare, or *on* the court.<sup>147</sup> While English judgments cannot be set aside for fraud on the strength of evidence that was available to the original court, the English conflict rule denies recognition or enforcement to a foreign judgment which was obtained by fraud even though no new evidence is produced.<sup>148</sup> In other words, when it comes to recognition and enforcement of foreign judgments English courts unlike the American courts<sup>149</sup> do not distinguish between intrinsic and extrinsic fraud. The English approach has been criticized particularly on the ground that a defendant can withhold a defense of fraud available in foreign proceedings and raise it when enforcement of the judgment is sought in England.<sup>150</sup>

### D. *Finality*

English courts like American courts will not recognize and enforce foreign provisional or interlocutory judgments or judgments or orders of a similar nature.<sup>151</sup> On the other hand foreign final judgments that are appealable, even if the appeal is pending, will be recognized and enforced,<sup>152</sup> unless the English court at its discretion stays execution<sup>153</sup> or the pending foreign appeal has the effect to suspend the execution of the foreign judgment.<sup>154</sup>

A distinguishing feature of note between the trend in the United States and that in England is that foreign judgments that are subject to modification (*e.g.*

142 U.K.-U.S.A. Convention, Art. 10(f).

143 *Id.* at Art. 10(g).

144 See note 48, Part II Section B of text *supra*.

145 Administration of Justice Act of 1920, § 9(2); Foreign Judgments (Reciprocal Enforcement) Act of 1933, § 4(1)(a)(iv).

146 *Price v. Dewhurst*, [1837] 8 Sim. 279.

147 *Ochsenbein v. Papelier*, [1873] L.R. 8 Ch. App. 695, in which the trick was on the court and on the defendant and was only discovered later.

148 See CHESHIRE & NORTH, *supra*, note 113 at 657-61; DICEY & MORRIS, *supra* note 113, at 1028-29; *Abouloff v. Oppenheimer*, [1882] 10 Q.B.D. 295; *Vadala v. Lawes*, [1890] 25 Q.B.D. 310; *Syal v. Heyward*, [1948] 2 K.B. 443, for detailed criticism.

149 See part II Section D of text *supra*.

150 CHESHIRE & NORTH, *supra* note 113, at 661; READ, *supra* note 113, at 279-93; WOLF, PRIVATE INTERNATIONAL LAW § 247 (2d ed. 1950).

151 *Nouvion v. Freeman*, [1889] 15 A.C. 1; *In re Ridell*, [1888] 20 Q.B.D. 512, 516; *Blohn v. Desser*, [1962] 2 Q.B. 116.

152 *Scott v. Pilkington*, [1862] 2 B. & S. 11.

153 *Id.*; *Nouvion v. Freeman*, *supra* note 151, at 13.

154 *Patrick v. Shedden*, [1853] 2 E. & B. 14; *cf. Berliner Industrie Bank A.G. v. Jost*, [1971] 2 Q.B. 463, 470-71.

for maintenance or alimony) are not enforceable in England except as to arrears which cannot be modified.<sup>155</sup>

#### E. No Review of Merits or of Choice of Law

The English courts, like the American courts, do not review the merits of a foreign judgment and are not concerned with errors of the court of origin on questions of fact or law. This was carried to an extreme when it was decided that even a glaring mistake as to English law could not be raised as a defense to enforcement.<sup>156</sup>

English courts are also not concerned with the correctness of the conflict rule applied by the court of origin and the result reached. They only become concerned if the result reached is contrary to English concepts of Justice, which is merely an application of "natural justice" or public policy, and they may on this ground refuse to recognize a foreign judgment or decree.<sup>157</sup> Such exceptional exclusion on grounds of public policy is not tantamount to even a limited review. In the light of the English approach we must again<sup>158</sup> express our objection to Article 7(e) of the U.K.-U.S.A. Convention which introduces a choice of law test on preliminary questions concerning, *inter alia*, personal status and the status of corporations.

#### IV. Recognition and Enforcement under the European Convention

It is a fundamental characteristic of the European Convention that in addition to conditions for the recognition and enforcement of judgments it contains direct rules as to jurisdiction.<sup>159</sup> These rules provide when a court in a member state of the European Community which has ratified the Convention (to be referred to as a "Contracting State") can exercise jurisdiction over a person or over a subject matter in a transnational situation.<sup>160</sup>

In contrast, the Hague Convention, the U.K.-U.S.A. Convention and the more modern bilateral conventions on reciprocal recognition and enforcement of judgments<sup>161</sup> contain indirect rules as to jurisdiction. They merely provide on what jurisdictional bases a judgment will be recognized and enforced. Even after the U.K.-U.S.A. Convention becomes effective, American and English courts will not be obliged to exercise jurisdiction over the other nation's citizens, corporations, and domiciliaries in accordance with the jurisdictional bases con-

155 Harrop v. Harrop, [1920] 3 K.B. 386; Beatty v. Beatty, [1924] 1 K.B. 807.

156 Godard v. Gray, [1870] L.R. 6 Q.B. 139, in which a French court came to a blatantly wrong decision as to the effect of a penalty clause in a charterparty which was governed by English law and the French judgment was enforced by action in England.

157 Gray v. Formosa, [1963] P. 259; Lepre v. Lepre, [1965] P. 52.

158 See Part II Section F of text *supra*.

159 Pointon, *The EEC Convention on the Recognition and Enforcement of Civil and Commercial Judgments and Its Implications for English Law* in LEGAL ISSUES OF EUROPEAN INTEGRATION (1975); M. WESER, CONVENTION COMMUNAUTAIRE SUR LA COMPETENCE JUDICIAIRE ET L' EXECUTION DES DECISIONS 51-76 (1975); Zaphiriou, *The EEC Convention on Jurisdiction and Enforcement of Judgments*, JOURNAL OF BUSINESS LAW 74, 75 (1969).

160 It is stated in the Preamble of the European Convention that the Convention determines the "international jurisdiction" of the courts of the Contracting States.

161 See WESER, *supra* note 159, at 52.

tained in the U.K.-U.S.A. Convention. They will apply their own rules as to jurisdiction. Thus a federal court sitting in Illinois or a Circuit Court of Cook County, Illinois, may exercise jurisdiction over an English corporation which transacted only one transaction in Illinois, in compliance with § 17(1)(a) of the Civil Practice Act of Illinois and the minimum contact requirement of the United States Constitution. The only consequence of such exercise of jurisdiction would be that the judgment to be recovered against the English corporation would not be recognized or enforced in England. Similarly an American or an English court could exercise jurisdiction over a transient defendant served within the jurisdiction, but the judgment against such a defendant would not be recognized or enforced under the U.K.-U.S.A. Convention.<sup>162</sup> The consequences would be quite different if a court of a Contracting State were to exercise jurisdiction by not complying with the direct jurisdictional rules of the European Convention. First, the defendant would have local means of recourse open to him and secondly, if the defendant were domiciled in another Contracting State, that other Contracting State could complain to the appropriate Community institution and in certain cases ask for measures to be taken. In addition, the judgment would not be recognized and enforced in any of the Contracting States.

The aim of the European Convention is to achieve a measure of uniformity throughout the European Community as to jurisdictional rules and as to the recognition and enforcement of judgments of the Contracting States. In order to achieve this measure of uniformity, the six original member states signed a Protocol in Luxembourg on June 3, 1971, in which they agreed to submit matters concerning the interpretation of the European Convention to the European Court of Justice for a preliminary ruling.<sup>163</sup> The Protocol has been ratified by the six and will be acceded to by the new member states. Courts of first instance of the Contracting States are not empowered to request a preliminary ruling. The power is vested in the courts of appeal and the supreme courts of the Contracting States which can do so at their discretion, if they consider that a preliminary ruling is necessary. The European Court of Justice only interprets the particular provision or principle and leaves its concrete application to the facts of the case to the adjudicating court of the member state.<sup>164</sup>

### A. *The Direct Jurisdictional Rules*

#### 1. General Jurisdiction

General jurisdiction is exercised by the courts of the Contracting State in

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<sup>162</sup> Even though the judgment will not be recognized or enforced under the U.K.-U.S.A. Convention it may be recognized and enforced in accordance with a statute or the common law. Article 3 of the U.K.-U.S.A. Convention provides expressly that the Convention does not prevent recognition or enforcement in accordance with the law otherwise applicable. See as to the recognition in the United States of the courts of original jurisdiction over a transient defendant, the Uniform Foreign Money Judgments Recognition Act §§ 4(6), 5(1) *supra*. As to the position in England, see the decisions in note 118 *supra*.

<sup>163</sup> WESER, *supra* note 159, at 400-03.

<sup>164</sup> ZAFIRIOU, *EUROPEAN BUSINESS LAW* 29 (1970).

which the defendant is "domiciled."<sup>165</sup> This applies both to individuals and to associations. "Association" is used here as a generic term comprising corporations, companies, partnerships, foundations, and other associations of natural or legal persons with or without legal personality.

As to the definition of "domicile" there are differences between the present Contracting States (the original six member states) even though they are all civil law countries.<sup>166</sup> It is submitted that the differences are only slight and can in any event be synthesized into a comprehensive concept. Domicile contains the element of physical presence (*corpus*) coupled with an intention (*animus*) to stay for some duration. It clearly excludes the two extremes, namely, mere presence in which there is *corpus* and no *animus* and the domicile of origin as understood in England and in Scotland<sup>167</sup> in which there may be *animus* and no *corpus*. The best functional term that comes to mind is "habitual residence," but it is difficult to suggest this term in view of Article 59 of the European Convention which, as we shall see, refers to defendants "domiciled or habitually resident" in a third state.

Article 52 of the European Convention provides that whether a party is domiciled in the Contracting State in which the adjudicating court sits will be determined by the court's "internal law." If the adjudicating court, by applying local statute or precedent, comes to the conclusion that the defendant is domiciled in its jurisdiction, it need go no further. But if the court comes to the conclusion that the party is domiciled in another Contracting State it must look into the "law" of that State and also, it is submitted, into existing guidelines and precedents of European community law. If this investigation reveals that the party is domiciled in the Contracting State in which the court adjudicates, the court should assume jurisdiction. If there is any doubt which the court cannot resolve, a preliminary ruling can be obtained on appeal from the European Court of Justice.

Article 53 of the European Convention provides that an association is domiciled in the country where it has its seat and that this matter will be determined by the conflict rules of the adjudicating court. According to the conflict rules of the civil law member states, the seat of an association is in the country (or state) in which it has its center of administration. The seat is stated in the articles of association and is known as the contractual seat (*siège statutaire*). The contractual seat is at the place where the association is registered and coincides with the place of incorporation as understood in England or the United States. An association, however, may have its center of administration in a country (or state) other than the country (or state) in which it is incorporated or registered or organized. In that case it acquires according to the civil law countries a real seat (*siège réel*) in this other country (or state).<sup>168</sup> The situation is, in substance, the same under American or English law: a corporation may be incorporated in one country (or state) and have its headquarters or principal place of business in another country (or state). For jurisdictional

165 European Convention, Art. 2.

166 GRAVESON, *supra* note 113, at 101.

167 See generally GRAVESON, *supra* note 113, at 195-207.

168 ZAPHIRIOU, *supra* note 164, at 124-28.

purposes it is clear that a corporation can be sued either in the country (or state) in which it is incorporated or in the country (or state) in which it has its headquarters or principal place of business. A partnership can be sued in the country (or state) in which it is organized or registered and in which it carries on its business.<sup>169</sup>

## 2. Special Jurisdiction

According to Article 5 of the European Convention a person domiciled in one Contracting State may be sued in another Contracting State as to the following subject matters:

- (1) as to contractual matters, in the courts for the place of performance of the obligation at issue;<sup>170</sup>
- (2) as to maintenance, in the courts for the place of domicile or habitual residence of the person that claims maintenance;
- (3) as to a tort, delict or quasi-delict in the courts for the place where "the harmful event occurred";<sup>171</sup>
- (4) as to civil claims for damages or restitution arising out of a criminal offense, by filing the claim with the court which has jurisdiction over both the criminal offense and the related claim;
- (5) as regards disputes arising out of operations of a branch, agency, or other establishment in the courts for the place where the branch, agency or establishment is situated. The European Court of Justice decided in a preliminary ruling<sup>172</sup> that an exclusive dealership did not constitute either a branch or an agency and that "establishment" should be construed *ejusdem generis* (i.e. as being in the same category) with the terms "branch" and "agency" which precede it.

## 3. Jurisdiction as to Co-defendant or Third Party Proceedings

According to Article 6 of the European Convention a defendant who is domiciled in a Contracting State may also be sued in the court of another Contracting State in which action was brought against his co-defendant or where he is properly joined under third party proceedings.

## 4. Jurisdiction in Matters Relating to Insurance, Installment Sales and Loans

169 *Hellfeld v. Rechnitzer*, [1914] 1 Ch. 748 (C.A.); *Blohn v. Desser*, [1962] 2 Q.B. 116.

170 In *Industrie Tessili Italiana Como v. Dunlop A.G.*, [1977] 1 COMM. MKT. L.R. 26, the European Court of Justice held in a preliminary ruling that the place of performance has to be determined according to the law that governs the contract and that the law governing the contract must be determined by the conflict rule of the court of the Contracting State which is seized of the matter. In *Ets. A. De Bloos Sprl v. Ets. Boyer S.A.*, *id.*, it was held that the court of the Contracting State must look, for the determination of the place of performance, at the particular obligation in issue and not at the contract as a whole.

171 In *Handelswekerij G. J. Bier B. V. and Stichting Reinwater v. Mines de Potasse d'Alsace S.A.*, [1977] COMM. MKT. L.R. 284, the European Court of Justice held in a preliminary ruling that the place where "the harmful effect occurred" can be either the place where the tortious conduct took place or where the effect occurred and that the plaintiff has the option, when conduct and effect occurred in different countries, to bring an action in either.

172 *Ets. A. De Bloos Sprl v. Ets. Boyer S.A.*, [1977] 1 COMM. MKT. L.R. 60.

The European Convention, in Articles 7-15, has special rules on jurisdiction, including choice of forum clauses in matters of insurance, installment sales, and loans made to finance the sale of goods and repayable by installments. The rules are designed to protect the weaker party *i.e.* the insured the purchaser, and the borrower under what are usually contracts of adhesion.<sup>173</sup>

## 5. Exclusive Jurisdiction

Article 16 of the European Convention determines which courts have exclusive jurisdiction, regardless of the domicile of the defendant. Article 16 applies to all individuals whether they are domiciled in a Contracting State or not, and to all associations whether they have a seat in a Contracting State or not.<sup>174</sup>

According to Article 16(1), the courts of the Contracting State in which immovable property is situated have exclusive jurisdiction "in matters relating to rights *in rem* in, or tenancies of, immovable property." English law does not stress the exclusive jurisdiction of certain courts as much as the civil procedures of civil law countries which are reflected in Article 16. It accepts, however, the exclusive *in rem* jurisdiction of the courts of the country in which immovable property is situated. Thus, when the European Convention will become effective in the United Kingdom, the jurisdiction of the English courts as to foreign immovable property will not be affected. But English courts will continue to exercise jurisdiction over immovable property situated in the other Contracting States in the exceptional cases of the administration of an English trust or of the estate of a person that died domiciled in England that comprises such immovable property.<sup>175</sup> Also, in cases of bankruptcy of persons domiciled in England when the assets include immovable property situated abroad.<sup>176</sup> The European Convention does not apply to the administration of estates and to bankruptcy. It is clear from the wording of Article 16(1) that the exclusive jurisdiction of the courts of the situation is limited to rights *in rem* and, therefore, the English courts will be able to exercise *in personam* jurisdiction as to matters relating to immovable property even if this is situated in a Contracting State. In any event, a judgment *in personam* rendered by an English court in the exercise of its equitable jurisdiction requires no recognition or enforcement abroad, it can be enforced against the defendant when within the jurisdiction.<sup>177</sup> The defendant can be compelled to comply with the requirements of the country in which the immovable property is situated.

Other courts which have exclusive jurisdiction, according to Article 16, are: (1) the courts of the Contracting State in which an association has its seat as to its constitution, nullity, dissolution and the powers of its officers and directors; (2) the courts of the Contracting State in which a public register is kept as to the validity of entries in the registry; (3) the courts of the Contracting State in which

173 See Zaphiriou, *supra* note 159, at 77-78.

174 European Convention, Art. 4(1).

175 Nelson v. Bridport, [1846] 8 Beav. 547; In re Stirling, [1908] 2 Ch. 344; In re Hoyles, [1911] 1 Ch. 179; In re Ross, [1930] 1 Ch. 377; In re Duke of Wellington, [1947] Ch. 506.

176 Bankruptcy Act of 1914, §§ 53, 167.

177 Penn v. Lord Baltimore, [1750] 1 Ves. Sen. 444; British South Africa Co. v. De Beers Consolidated Mines, [1910] 1 W.L.R. 392.

the deposit or registration of a patent, mark, design or other similar right has been applied for or has taken place or deemed to have taken place under an international convention, as to matters relating to the registration or validity of these rights; (4) the courts of the Contracting State in which a judgment is sought to be enforced as to matters pertaining to enforcement.

As in the case of immovable property, the jurisdiction of the English courts will not be much affected by these exclusive jurisdictions, when the European Convention will become effective in the United Kingdom. Subjecting matters of dissolution of an association to the exclusive jurisdiction of the Contracting State in which the association has its seat could have affected the jurisdiction of English courts as to the winding up of companies that are domiciled in a Contracting State.<sup>178</sup> Winding-up, however, has been expressly excluded from the scope of the European Convention.<sup>179</sup>

## 6. Jurisdiction by Consent

Parties of whom one or more are domiciled in a Contracting State, may submit by an agreement in writing or by an oral agreement confirmed in writing, present or future disputes arising in connection with a particular legal relationship, to the exclusive jurisdiction of a court or courts of a Contracting State.<sup>180</sup> The agreement must be in writing or confirmed in writing. Unilateral written confirmation by a seller in general conditions of sale containing a choice of forum clause will not suffice.<sup>181</sup>

The submission will be ineffective if it purports to exclude the jurisdiction of the courts of a Contracting State which have exclusive jurisdiction according to Article 16 of the European Convention (*see* previous Section of this article). It will also be ineffective if it is contrary to Articles 12 or 15 of the European Convention which provide that choice of forum clauses in insurance policies or in agreements for installment sales or in loan agreements for financing such sales must comply with one or more of the following requirements: (1) they must be for present and not future disputes, or (2) they must leave the choice of forum to the option of the assured or beneficiary under the insurance policy, the buyer under the installment sale and the borrower under the financing agreement, or (3) they must submit disputes to the courts of the Contracting State in which both parties to the policy or agreement are domiciled provided such submission is not contrary to the law of that State.

Article 2 of the Italian Code of Civil Procedure provides that a choice of forum clause is only effective if both parties are aliens or one party is an alien and the other an Italian not domiciled in Italy. According to the European Convention,<sup>182</sup> this provision does not apply to persons domiciled in a Contracting State. It may, however, be applied to persons not domiciled in a Con-

178 Companies Act of 1948, § 399; *Banque des Marchands de Moscou v. Kindersley*, [1951] ch. 112; *In re Compania Merabello San Nicholas S.A.*, [1973] ch. 75, 88.

179 European Convention, Art. 1.

180 *Id.* at Art. 17.

181 *Galeries Segoura Sprl v. Firma Rahim Bonakdarian*, [1977] COMM. MKT. L.R. 36; *Colzani v. Ruwa Postereimaschinen GmbH*, [1977] COMM. MKT. L.R. 345.

182 European Convention, Art. 3(2).

tracting State. Thus an American corporation which agrees in writing with an Italian interprise to submit disputes to the jurisdiction of an American court can be sued in an Italian court having jurisdiction otherwise, even if this jurisdiction is not exclusive. Courts of other member states generally comply with choice of forum clauses in transnational commercial agreements.<sup>183</sup>

## 7. Jurisdiction by Appearance

A court of a Contracting State acquires jurisdiction by the defendant's appearance, unless the appearance was solely entered to contest jurisdiction or there is another court having exclusive jurisdiction by virtue of Article 16 of the European Convention.<sup>184</sup>

## 8. Consideration of Jurisdiction by Adjudicating Court

A court of a Contracting State when seized of a matter will have to consider of its own motion whether another court of a Contracting State has exclusive jurisdiction.<sup>185</sup> In case of default of appearance of a defendant who is domiciled in a Contracting State, the court must be satisfied that the defendant was duly served and also that the European Convention's rules as to jurisdiction have been complied with.<sup>186</sup> If the court comes to the conclusion that it has no jurisdiction it shall decline to exercise it. If the defendant has not been duly served or had no sufficient time to arrange for his defense, the court shall stay the proceedings as long as is necessary.

## 9. Excessive Jurisdiction

Article 3(1) of the European Convention provides that an individual or an association domiciled in a Contracting State can only be sued according to the jurisdictional rules of the Convention. Article 3(2) lists the provisions of the law of some Contracting States which have as a result become inapplicable. The following jurisdictional bases cannot be used against persons domiciled in a Contracting State:

- (1) Jurisdiction founded on the nationality of the plaintiff (Article 14 of the French Civil Code, Article 14 of the Luxembourg Civil Code, Article 127 of the Netherlands Code of Civil Procedure);
- (2) jurisdiction founded on the domicile or residence of the plaintiff (Article 638 of the Belgian "*Code Judiciaire*" of 1967,<sup>187</sup> Article 126(3) of the Netherlands Code of Civil Procedure);
- (3) presence or seizure within the jurisdiction of an asset belonging to the defendant (Article 23 of the German Code of Civil Procedure; Article 4(2) of the Italian Code of Civil Procedure; Scottish law,<sup>188</sup> to be added upon the

183 G. DELAUME, *TRANSNATIONAL CONTRACTS* § 8.11 (1977); Zaphiriou, *supra* note 83.

184 European Convention, Art. 18.

185 *Id.* at Art. 19.

186 *Id.* at Art. 20.

187 WESER, *supra* note 159, at 106 n.22.

188 See note 37 *supra*.



- accession of the United Kingdom to the European Convention);
- (4) nationality of the defendant (Article 15 of the French Civil Code, Article 15 of the Luxembourg Civil Code);
- (5) mere presence of the defendant and service of process on the defendant within the jurisdiction (to be added upon the accession of Ireland and the United Kingdom to the European Convention);
- (6) exercise of jurisdiction in violation of a choice of forum clause on the ground that the parties to the agreement are nationals or one is a national domiciled in the Contracting State in which the court exercised jurisdiction (Article 2 of the Italian Code of Civil Procedure);
- (7) elected domicile or residence or unilateral submission (Article 4(1) of the Italian Code of Civil Procedure).

All the above jurisdictions, which are known as "excessive" or "exorbitant" jurisdictions, can be used against individuals and corporations that are not domiciled in a Contracting State. This is expressly provided in Article 4(1) of the European Convention. In fact according to Article 4(2) any person domiciled in a Contracting State can avail himself of these excessive jurisdictions. Thus not only a Frenchman but also an American who is domiciled in France can bring an action against a person domiciled in Brazil pursuant to Article 14 of the French Civil Code. What appears as an extension of excessive jurisdictions was brought about by the European Community's clumsy attempt not to interfere with the right of member states to deal as they wish with persons not domiciled in the European Community and also to abolish any discrimination which is based on nationality. Instead the European Community should have insisted that the member states should repeal the offensive provisions as being contrary to generally accepted standards.<sup>189</sup>

The harm stemming from this state of affairs is somewhat mitigated by Article 59 of the European Convention. This enables a Contracting State to assume the obligation towards a third state, by a convention on recognition and enforcement of judgments, not to recognize or enforce judgments rendered in another Contracting State against defendants domiciled or habitually resident in the third state, when the court of origin exercised an excessive jurisdiction. It is by virtue of this provision that the U.K.-U.S.A. Convention contains in Article 18(1) the undertaking by the United Kingdom not to recognize or enforce, at the request of the judgment-debtor, a judgment that was rendered by a court contrary to a treaty provision (*e.g.* contrary to a provision of the European Convention) against a person (either an individual or an association) who is a national of the United States or who has a domicile, a place of residence, or a place of business, or is incorporated or has its registered office in the United States. The same obligation was also undertaken by the United States, but is at present of no importance as the United States is not a party to a convention on recognition and enforcement of judgments. Article 18(2) contains the mutual undertaking by the United Kingdom and the United States to apply in recogni-

<sup>189</sup> Carl, *The Common Market Judgments Convention—Its Threat and Challenge to Americans*, 8 INT'L LAWYER 446 (1974); Nadelmann, *The Common Market Judgments Convention and a Hague Conference Recommendation—What Steps Next?* 82 HARV. L. REV. 1282 (1969).

tion or enforcement proceedings against each other's citizens, domiciliaries, and residents the same standards as to jurisdiction and notice requirements that are applied to their own. In compliance with this undertaking, an American court could conceivably deny recognition to a community judgment against an English domiciliary or resident because the judgment was rendered by a court of origin exercising jurisdiction that does not satisfy the minimum contact requirement of the United States Constitution.

### B. Other Prerequisites for Recognition and Enforcement

The court addressed must first be satisfied that the court of origin had jurisdiction. In case of a community judgment if the court of origin exercised jurisdiction according to the direct rules of the European Convention the court addressed is bound to uphold its jurisdiction. Furthermore, the court addressed will be bound by the findings of fact on jurisdiction of a community court of origin. The court addressed is not entitled to review the jurisdictional findings of the community court of origin and cannot apply the public policy reservation to the jurisdictional findings.<sup>190</sup>

Once the court addressed is satisfied that on the face of it the judgment complied with the direct jurisdictional rules, it will be recognized and enforced, unless recognition is contrary to public policy or the defendant was not duly served and did not appear, or the judgment is irreconcilable with a local judgment.<sup>191</sup>

The judgment is not to be reviewed as to its merits.<sup>192</sup> As was mentioned above,<sup>193</sup> however, the court addressed is entitled to refuse recognition if the court of origin resolved a preliminary question relating to personal status or capacity, or to proprietary rights between spouses, or to wills or succession, by applying a conflict rule which differs from the conflict rule of the court addressed and reached a result that differs from the result that the court addressed would have reached if it were called upon to determine the matter in the first instance.<sup>194</sup>

## V. Conclusion

At present, judgments rendered in the United States through an exercise of jurisdiction based on long-arm statutes will probably not be recognized in the United Kingdom. There are some slight indications, however, that this attitude is changing. In contrast, judgments rendered in the United Kingdom by the exercise of jurisdiction based on long-arm provisions that are equivalent to American provisions, have been recognized and enforced in the United States. If the U.K.-U.S.A. Convention is ratified, it will enable the recognition and enforcement in either country of judgments that satisfy jurisdictional requirements representing a compromise between American and English long-arm provisions.

190 European Convention, Art. 28(a).

191 *Id.* at Art. 27.

192 *Id.* at Art. 29.

193 See Part II Section F of text *supra*.

194 European Convention, Art. 27(4).

A further important result of the U.K.-U.S.A. Convention will be the protection of United States citizens, domiciliaries, and residents, whether individuals or corporations, from the excessive jurisdiction of some courts in the European Community. Such excessive jurisdictions include jurisdiction based on the nationality or domicile of the plaintiff or the mere presence of an asset of the defendant within the territorial jurisdiction of the adjudicating court or the exercise of jurisdiction in violation of a choice of forum clause on the ground that a party to the agreement is a national domiciled in the member state in which the court exercised jurisdiction. A judgment recovered against a United States national, domiciliary, or resident by the exercise of an excessive jurisdiction will not be recognized and enforced in the United Kingdom. The U.K.-U.S.A. Convention may be followed by other similar conventions between the United States and the other individual member states, thereby extending the protection throughout the European Community.

The Hague Draft Convention, the European Convention, and the bilateral conventions on the reciprocal recognition and enforcement of civil judgments in Europe and in the British Commonwealth, as well as the anticipated conventions on recognition and enforcement of judgments with the United States, represent a wide consensus on standards for the recognition and enforcement of foreign judgments and indirectly on the proper exercise of civil jurisdiction in transnational cases. Although the recognition and enforcement of foreign judgments remain in a state of flux, the conventions discussed above signal the emergence of certain general standards as to civil jurisdiction and the basic prerequisites for recognition and enforcement of money judgments. We are now at the threshold of new and exciting developments.