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Foreign Nation Judgements: Recognition and Enforcement of Foreign Judgements in Florida and the Status of Florida Judgements Abroad

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NOTES

FOREIGN NATION JUDGMENTS: RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN FLORIDA AND THE STATUS OF FLORIDA JUDGMENTS ABROAD*

INTRODUCTION

In recent years, Florida has become a mecca for international trade and investments.[1] Eighty major multinational corporations[2] have established their Latin American headquarters in southern Florida.[3] In 1977, goods exported from Florida were valued at $5 billion,[4] and it is estimated that the value of total exports will increase at the rate of $1 billion annually.[5] Participation in the international market is not limited to the largest companies in the state.[6] Last year sixty-eight Florida companies traveled abroad to participate in trade shows throughout Latin America, Europe and the Far East, generating an estimated $39 million in sales.[7]

The recent boom in transnational commercial relations and travel heralds the dawn of Florida's role in the international market. As an increasing number of Florida companies and business persons become involved in the international market,[8] legal disputes of an international nature will arise

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1. *See* Berman, *Miami Saved Again*, FORBES, Nov. 1, 1977, at 37-40; Range, *Sex in America: Miami*, PLAYBOY, Dec., 1978, at 144, 186; Woodburry, *It's Your Turn in the Sun: Miami*, TIME, Oct. 16, 1978, at 48, 51-52; *Miami: Headquarters Town for Latin Business*, BUSINESS WEEK, Aug. 7, 1978, at 40-41 [hereinafter cited as *Miami: Headquarters*]; *Florida is a Steal of a Deal for Foreign Investors*, FLORIDA TREND, Nov. 1978, at 34-43 [hereinafter cited as *Florida is a Steal*].

2. Among these corporations are Exxon, Dupont, and General Electric. Woodburry, *supra* note 1, at 52; *Florida is a Steal*, *supra* note 1, at 43.

3. *Miami: Headquarters*, *supra* note 1, at 40; *Florida is a Steal*, *supra* note 1, at 43.

4. In 1976 the figure was four billion dollars. *Florida is a Steal*, *supra* note 1, at 35.

5. *Id.*

6. Conversation between FLORIDA TREND journalist Jeffrey Tucker and Lois Yates, a trade specialist with the Florida Department of Commerce. *Id.*

7. *Id.*

8. *Id.* The expansion of international trade and investment has also affected the once primarily domestically-oriented banking services and personnel. Last year, one Miami-based bank's international department received deposits in excess of $600 million, while another smaller bank kept correspondent banking relationships with some 22 foreign banks to aid in financing international transactions. There are now 13 Edge Act banks authorized by law to transact foreign business. Six foreign-controlled banks and 12 foreign-owned banks compete for foreign business and trade agreements. Deposits in Miami-based Edge Act banks are reported to be over $1 billion. *Id.* at 35-41.

Florida real property has also become a major source of foreign investments. It is reported that acreage owned by foreigners amounts to about 1.4 million acres, or an area roughly as large as the Everglades.

The impact of international trade and investment in southern Florida is demonstrated by

more frequently.[9] For example, a commercial dispute resolved by a judgment rendered in the court of a foreign nation might remain unsatisfied because the real and personal assets of the debtor, perhaps along with the debtor himself, are in Florida. An international legal dispute might also arise if a Florida court entered a judgment against a foreign investor who had insufficient assets within Florida to satisfy the judgment.

The central question in these international disputes is whether the courts in Florida or abroad will recognize and enforce the adjudication of a foreign court. This note will consider factors affecting the resolution of this question as well as matters related to the recognition and enforcement process. The term "foreign judgment" will be used to depict the adjudication of a court of a foreign country rather than a judgment of a sister state or territory of the United States.[10] The discussion will focus on civil money judgments rather than other types of judgments which may involve strong national interests and thus merit different consideration.[11] Nevertheless, because of the scarcity of Florida authority dealing exclusively with money judgments, judgments in

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the official bilingual and bicultural status of the region. Some 500,000 Latin travelers are expected to come to the area during the 1978-1979 period. *Florida is a Steal, supra* note 1, at 42-43. This number will add to the present Spanish-speaking population, estimated to be well over 430,000 in south Florida alone. The statewide estimate of Spanish-speaking citizens is 669,000. Woodburry, *supra* note 1, at 51. *See also* Berman, *supra* note 1, at 40.

9. *See* Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L.J. 291, 295-96 (1963).

10. This is the definition adopted in Lopez v. Avery, 66 So. 2d 689 (Fla. 1953). A judgment may be defined as "the sentence of the law pronounced by the court on the matter appearing from the pleadings in the action that puts an end to the action." H. TRAWICK, FLORIDA PRACTICE AND PROCEDURE, *Judgments* §25-1, at 357 (1978).

11. For example, real property interests within a nation's boundaries and judgments pursuant to criminal laws or concerning marriages or adoptions involve special state interests. *See generally* Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44 (1962). Adjudication of status is generally recognizable in the United States and abroad because of the special interest in providing security of adjudication. Nevertheless, these judgments, which compose the largest number of foreign judgments for which enforcement is sought, have been denied recognition because of improper jurisdiction, "changed circumstances," or public policy considerations. *See* von Mehren & Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601, 1638 (1968).

In Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), a New York court recognized a one-day Mexican divorce obtained by New York domiciliaries. For a discussion of *Rosenstiel, see* Currie, *Suitcase Divorce in the Conflict of Laws:* Simons, Rosenstiel *and* Borax, 34 U. CHI. L. REV. 26, 44-64 (1966). The Court of Appeals for the Third Circuit has followed the *Rosenstiel* approach, requiring that a "quicky" Mexican divorce, rendered with mutual consent must be recognized in the Virgin Islands. Perrin v. Perrin, 408 F.2d 107 (3d Cir. 1969). *But see* Warrender v. Warrender, 79 N.J. Super. 114, 190 A.2d 684 (App. Div. 1963), *aff'd*, 42 N.J. 287, 200 A.2d 123 (1964) (nonrecognition of such a Mexican divorce).

In custody cases, the general rule applicable to sister-state adjudications, under which the child's "best interest" is the primary consideration, also applied in the international context. *See, e.g.*, Adamsen v. Adamsen, 151 Conn. 172, 195 A.2d 418 (1963) (equating the effect of child custody adjudications by a state court with those of a foreign court). *See generally* Ehrenzweig, *Recognition of Custody Decrees Rendered Abroad*, 2 AM. J. COMP. L. 167 (1953).

other legal areas must be analyzed in order to clarify substantive and procedural questions of Florida law.

While the terms "enforcement" and "recognition" are used interchangeably in the context of foreign judgments,[12] each depicts a unique process. A foreign nation decree is said to be recognized if a court determines that the particular subject matter has been fairly and finally adjudicated in the foreign jurisdiction.[13] If such a determination is made, the court will not relitigate the issue and will render its own judgment based on the foreign decree.[14] The court's reduction of the foreign judgment to a judgment of the forum recognizes the foreign adjudication as conclusive[15] and subject to the enforcement procedures applicable to a domestic judgment.[16] Such recognition of a foreign nation judgment is, indeed, a prerequisite to its enforcement. The enforcement process affords a party affirmative relief pursuant to the right which was initially recognized by the foreign court.[17]

While recognition must precede enforcement, a party may seek recognition without seeking enforcement.[18] For example, a judgment rendered by a foreign nation court could be presented by a party to the action as a complete or partial defense,[19] or a party might bring forth a declaratory judgment or determination of status which does not alone entitle him to any affirmative relief.[20] In such cases the judgment is recognizable but not enforceable.[21]

Recognition of a Foreign Judgment: The Applicable Law

In the United States the determination of the applicable substantive law

12. von Mehren & Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 Law & Pol'y Int'l Bus. 37, 38 (1974).

13. *See generally* von Mehren, *Enforcement of Foreign Judgments in the United States*, 17 Va. J. Int'l L. 401 (1977).

14. The recognition of an *in rem* judgment affecting property interests or personal status is conclusive as against the entire world. On the other hand, recognition of an *in personam* judgment is limited to the effects of res judicata and collateral estoppel as to the issues litigated. Such judgments are binding only upon the parties to the original action. Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 Notre Dame Law. 734, 734 (1978).

15. *See* Zaphiriou, *supra* note 14, at 734.

16. *See* von Mehren, *supra* note 13, at 404; Zaphiriou, *supra* note 14, at 748.

17. Restatement (Second) of Conflict of Laws §92, Introductory Note (1971). The term "judgment on the judgment" has been used to depict the enforcement process. In effect, it is the judgment of a reviewing forum pursuant to a claim based upon a foreign court's decree. Ginsburg, *Recognition and Enforcement of Foreign Civil Judgments: A Summary View of the Situation in the United States*, 4 Int'l Law. 720, 721 n.4 (1971).

18. *See* von Mehren, *supra* note 13, at 402.

19. Use of a foreign judgment as a defense requires only that the defendant have the foreign decree properly authenticated for the judgment to be admitted into evidence. *See, e.g.*, Willson v. Willson, 55 So. 2d 905 (Fla. 1951). See notes 101-108 *infra* and accompanying text.

20. Restatement (Second) of Conflict of Laws §98, Introductory Note (1971).

21. This possibility is illustrated by Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1947). In *Ogden* the defendant predicated her motion to dismiss a divorce suit upon a prior divorce decree rendered in her favor by the High Court of Justice in England. See text accompanying notes 145-150 *infra*.

depends on the nature of the particular question and not on whether the matter is brought before a state or federal court.[22] If the question presented involves interpretation and application of the United States Constitution, an act of Congress or a treaty, the question is federal in nature and governed by federal law.[23] Substantive issues which do not involve a federal question are resolved by applying substantive state laws.[24]

The United States Supreme Court has not determined whether the recognition and enforcement of foreign judgments presents federal questions.[25] The United States Constitution vests the power to conduct foreign affairs in the federal government.[26] Accordingly, the Supreme Court might conclude that both recognition and enforcement of foreign judgments is so closely tied to international relations that the applicable standards should be established by one uniform national body of law rather than by potentially conflicting state laws.[27] If confronted with the question, the Court has sufficient basis to rule that either federal or state law should control.[28] Nevertheless, foreign judgment recognition and enforcement has been and will continue to be governed by state law until the Court confronts and resolves this issue.[29]

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22. *See* von Mehren, *supra* note 13, at 402, 407.

23. *See* Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938); McAllister v. St. Louis Merchants Bridge Terminal Ry. Co., 324 Mo. 1005, 25 S.W.2d 791, 792 (1930). Issues dealing with federal securities law present federal questions. *See, e.g.*, Kahn v. American Metal Climax, Inc., 458 F.2d 255 (3d Cir. 1972), *cert. denied*, 409 U.S. 874 (1970); Abdul-Rahman Omar Adra v. Clift, 195 F. Supp. 857 (D. Md. 1961).

24. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 478 (1941). Erie R.R. v. Tompkins, 304 U.S. 64 (1938). *See also* Republic of Iraq v. First Nat'l Bank of Chicago, 350 F.2d 645, 647 (7th Cir.), *cert. denied*, 383 U.S. 906 (1965).

25. Ginsburg, *supra* note 17, at 722. *See generally* Comment, *Judgments Rendered Abroad—State Law or Federal Law?*, 12 VILL. L. REV. 618 (1967).

26. United States v. Belmont, 301 U.S. 324, 331 (1937); United States v. Curtis-Wright Export Corp., 299 U.S. 304 (1936). *See also* von Mehren & Patterson, *supra* note 12, at 39.

27. *See* von Mehren & Patterson, *supra* note 12, at 39. *But see* Golomb, *Recognition of Foreign Money Judgments: A Goal-Oriented Approach*, 43 ST. JOHN'S L. REV. 604, 641 (1969) (declaring that the area of foreign judgments is not so diplomatically sensitive as to require federal preemption).

28. von Mehren, *supra* note 13, at 407. Legal scholars do not agree on the issue of whether state or federal law should govern. Some suggest that one uniform federal law should apply. *See* Henkin, *The Foreign Affairs Power of the Federal Courts: Sabbatino*, 64 COLUM. L. REV. 805, 820 (1964); Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 788 (1950). Others urge that state law should govern unless an individual state law is found to interfere with the exclusive federal domain of foreign affairs. *See* Homburger, *Recognition and Enforcement of Foreign Judgments*, 18 AM. J. COMP. L. 367, 389-90 (1970); Scoles, *Interstate and International Distinctions in Conflict of Laws in the United States*, 54 CALIF. L. REV. 1599, 1607 (1966); Comment, *supra* note 25, at 630. The distinction between these two views may prove to be merely academic. Even if federal preemption occurred, the substantive rules now applied by individual states might not be altered. *See* von Mehren, *supra* note 13, at 408.

29. This is the view of both federal and state courts. *See generally* Aetna Life Ins. Co. v. Tremblay, 233 U.S. 185 (1912); 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 Nat'l Bank, 350 F.2d 645 (7th Cir. 1965); Svenska Handelsbanken v. Carlson, 258 F. Supp. 448 (D. Mass. 1966). *See also* Johnson v. Compagnie Générale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (1926); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §98, Comment 3 (1971); von

In *Erie Railroad v. Tompkins*[30] and *Klaxon Co. v. Stentor Electric Manufacturing Co.*,[31] the United States Supreme Court restricted the freedom of federal courts to apply federal common law in cases where jurisdiction is based upon diversity of citizenship.[32] The *Erie* case held that "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in a case is the law of the State. . . . There is no federal general common law."[33] The *Klaxon* Court, following *Erie*, determined that the conflicts law of the state where the case is brought determines the choice of law when a question exists concerning which law is applicable.[34]

The Supreme Court established a rule of federal common law applicable to foreign judgments in the pre-*Erie* 1895 decision of *Hilton v. Guyot*.[35] The question in *Hilton* was whether to recognize a judgment rendered in France against United States defendants who resided in New York. The Court declined to accord conclusive effect to the French judgment because a United States judgment would be denied conclusive effect in a French court.[36] The law applied in *Hilton* was not the substantive law of the forum state; rather, it was based on the international theories of "mutuality" and "reciprocity."[37]

The *Hilton* doctrine of reciprocity became the federal common law in the area of recognition of foreign judgments.[38] No Supreme Court case since

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Mehren & Patterson, *supra* note 12, at 39. *Compare* Homburger, *supra* note 28, at 383-85 *with* Golomb, *supra* note 27, at 635 *and* von Mehren, *supra* note 13, at 407.

30. 304 U.S. 64 (1938).

31. 313 U.S. 487 (1941).

32. *Compare Erie with* Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842). In *Swift*, the Court applied federal common law in a case involving diversity of citizenship.

33. 304 U.S. at 78 (1938). *See* Friendly, *In Praise of Erie and of the New Federal Common Law*, 39 N.Y.U.L. REV. 383, 405-07 (1964). For a discussion of the development of "federal common law" subsequent to *Erie, see* Comment, *supra* note 25, at 622-23.

34. Federal courts have followed *Erie* by applying state substantive law rather than federal common law. *See* Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971); Republic of Iraq v. First Nat'l Bank, 350 F.2d 645, 647 (7th Cir. 1965); Svenska Handelsbanken v. Carlson, 258 F. Supp. 448, 450 (D. Mass. 1966). To date, no case has recognized the existence of a uniform federal law in this area having possible effects on foreign affairs.

35. 159 U.S. 113 (1895) (5-4 decision). Pre-*Hilton* decisions dealing with foreign judgment recognition were based on English precedent. The English cases held that although an action on a foreign money judgment was permissible, the foreign adjudication would serve only as prima facie evidence of the existing debt. American courts usually permitted all defenses which were or could have been raised in the initial action to be reexamined in the second action. *See* Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, 72 COLUM. L. REV. 220, 224-30 (1972).

36. 159 U.S. at 227-28. The American defendants had been doing business in France but fled to the United States before the judgment was satisfied; consequently, the Frenchmen brought suit on the foreign judgment in federal court in New York.

37. *Id.* For an explanation of reciprocity, see text accompanying notes 133-152 *infra*.

38. Since *Hilton*, there have been two United States Supreme Court cases dealing with the effect accorded judgments from foreign nations. Neither case confronted the issue of reciprocity. *See* Ingenohl v. Olsen & Co., 273 U.S. 541 (1927) (recognizing a judgment from a British court in Hong Kong brought before a United States Territorial Court in the Philippines); Hapai v. Brown, 239 U.S. 502 (1916) (recognizing a judgment rendered in the Kingdom of Hawaii prior to annexation). *Compare* Peterson, *supra* note 35, at 233-36

Hilton has recognized the existence of a uniform federal common law in the area of foreign judgments. The decision represents the only Supreme Court exposition on the subject. The Supreme Court's position, if presented with the question in light of the *Erie* decision's disposal of a federal common law, is not entirely predictable.[39]

Two United States Supreme Court decisions in the 1960's may shed some light on the Court's position with respect to the applicable law in the area of foreign judgments. Although neither of the cases concerned recognition of a foreign decree, the Court studied analogous issues. In the 1964 case of *Banco Nacional de Cuba v. Sabbatino*,[40] the Court determined that federal law and policy apply to matters which involve foreign expropriation decrees. The case involved Cuba's seizure without compensation of sugar owned by an American. According to the Court, the action could not be questioned by United States courts since it constituted an act of state.[41] Mr. Justice Harlan, writing for the majority, concluded that the act of state doctrine was "intrinsically federal"[42] and thus binding upon both state and federal courts as a matter of federal common law.[43]

The *Sabbatino* case is one of the major recent decisions expanding the body of federal common law to promote national uniformity and increase the role of federal policy in the area of foreign affairs.[44] Although the question presented in *Sabbatino* involved the rights of private individuals, the Court found that federal law governed because the matter pertained to "ordering our relationship with other members of the international community."[45] The decision focused not on whether a cause of action is private or public in nature, but rather on "the federal nature of the function involved or the need for uniformity in an area of national concern."[46] This indicates that in the

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(confirming the existence of authority for the inference that recognition will be given if reciprocity is found to exist) *with* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §98(e) (1971).

39. *See* Golomb, *supra* note 27, at 634; Peterson, *supra* note 35, at 224; Zaphiriou, *supra* note 14, at 748 n.100; Comment, *supra* note 25, at 618, 626-27. Some commentators have concluded that state courts are not bound by *Hilton*'s reciprocity requirement. *See* Zaphiriou, *supra* note 14, at 737. See notes 133-152 *infra* and accompanying text.

40. 376 U.S. 398 (1964) (8-1 decision).

41. The Court, in describing the "act of state" concept, referred to Underhill v. Hernandez, 168 U.S. 250, 252 (1897): "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves." 376 U.S. at 416. Congress promptly reassessed the *Sabbatino* holding and declared that an act of state is reviewable by the United States court to search for possible violations of international law. The Foreign Assistance Act of 1964, Pub. L. 88-633, §301(d), 78 STAT. 1013 (amending 22 U.S.C. §2370(e) (1964)).

42. 376 U.S. at 427.

43. *Id. See also* Republic of Iraq v. First Nat'l City Bank, 353 F.2d 47, 49 (2d Cir. 1965). *See generally* Edwards, *The Erie Doctrine in Foreign Affairs Cases*, 42 N.Y.U.L. REV. 674 (1967).

44. 376 U.S. at 424-25. *See* Henkin, *supra* note 28, at 819.

45. 376 U.S. at 425.

46. Comment, *supra* note 25, at 625.

context of adjudications by courts of foreign nations, the fact that the case involves a private dispute may not determine the applicable law. Rather, the question of which law applies may depend on whether the court finds that foreign judgments are akin to acts of state,[47] thus requiring the application of a uniform national policy.[48] Such an extension of the *Sabbatino* rational is possible if the judiciary of a foreign country is viewed as an arm of the sovereign.[49]

The direction taken by *Sabbatino* was followed in the 1968 Supreme Court case of *Zschernig v. Miller*.[50] In *Zschernig*, the Court invalidated a state law which denied inheritance rights to residents of foreign nations if those nations did not grant reciprocal rights to United States citizens.[51] The majority reasoned that such a state law requires inquiries into and value judgments about the administration of foreign law, thus intruding on the exclusive federal domain of international and diplomatic relations.[52]

The Supreme Court's opinions in *Sabbatino* and *Zschernig* appear to support the application of federal law when international overtones are involved.[53] By the same rationale, the issue of foreign judgment recognition and enforcement might be categorized as federal in nature. This would seem particularly likely if, when deciding whether to recognize a foreign judgment, a state court conducts inquires into or makes value judgments about the legal system of the rendering nation.[54] The application of a federal common law to resolve disputes concerning foreign judgments would not be inconsistent with *Erie* in light of the constitutional supremacy of federal law in the area of foreign affairs.

Strong practical arguments have been advanced in favor of a uniform federal law to govern the area of judgment recognition.[55] It has been suggested that judgments from United States state courts frequently are not recognized abroad because the foreign court assumes that an American state court would not accord reciprocal recognition to its judgments.[56] This assumption results from the fact that there is no clear federal common law nor any federal statute or treaty which specifies the treatment to be accorded by the United States.

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47. *See* Scoles, *supra* note 28, at 1605-07, which analogizes acts of state and foreign judgments.

48. *See* Reese, *supra* note 28, at 788; von Mehren & Patterson, *supra* note 12, at 39; Comment, *supra* note 25, at 625-26.

49. *See* Henkin, *supra* note 28, at 820; Comment, *supra* note 25, at 627. *But see* Golomb, *supra* note 27, at 611.

50. 389 U.S. 429 (1968).

51. The statute was ORE. REV. STAT. §111.070 (1968).

52. 389 U.S. at 440-41. *See* Golomb, *supra* note 27, at 638-39; von Mehren, *supra* note 13, at 408.

53. *See* von Mehren, *supra* note 13, at 402 n.5, 407 (possibility of foreign judgments being governed by a uniform federal law because of their effect on foreign affairs). *But see* Golomb, *supra* note 27, at 641 (suggesting that the area of foreign judgment recognition is not so diplomatically sensitive).

54. von Mehren, *supra* note 13, at 408. *But see* Golomb, *supra* note 25, at 641.

55. *See* Homburger, *supra* note 29, at 389-90; Scoles, *supra* note 28, at 1607; von Mehren, *supra* note 13, at 408, 414-15; Comment, *supra* note 25, at 628.

56. See text accompanying notes 133-152 *infra* for a discussion of reciprocity.

The foreign court, unfamiliar with the bifurcated federal and state judicial structure, might not search for the appropriate state law and therefore conclude that no United States law allows for reciprocal recognition of judgments.[57] A federal law, treaty, or state version of a uniform act would enable the foreign court to more easily comprehend federal or state law on judgment recognition.[58] This would lead to more effective enforcement of American judgments abroad.[59]

SOURCES OF SUBSTANTIVE LAW

The applicable sources of law which determine the effectiveness of a foreign nation judgment can be classified into three groups: statutory law, treaties, and the common law. Several states have enacted statutes to regulate the recognition of foreign adjudications[60] while treaties and multinational conventions have also developed.[61] Although Florida law is presently created strictly by the judiciary,[62] the possibility that Florida will codify its common law or be subject to an international treaty regulating judgment recognition requires consideration of all three sources.

Statutory Law: Trends Toward Codification

In recent years some states have taken steps to enact legislation regulating

57. *See* von Mehren, *supra* note 13, at 408; Comment, *supra* note 25, at 630. See notes 63 & 65 *infra*.

58. *See* Golomb, *supra* note 27, at 644-45; Homburger, *supra* note 29, at 368 n.3.

59. On December 29, 1972, the Committee on International Law of the New York State Bar Association submitted the following report and resolution to the House of Delegates of the New York State Bar Association: "Judgments rendered in foreign countries have generally been recognized and enforced in the United States provided only that the rendering court had jurisdiction and that the defendant was given adequate notice and adequate opportunity to be heard. On the other hand, non-recognition of United States' judgments abroad is the rule rather than the exception. Starting with the Common Market countries, United States judgments are not enforceable in the Netherlands because its law requires the existence of a treaty; they are reexamined on the merits in Belgium; they are subject to a statutory reciprocity requirement in Germany that is often difficult to establish to the satisfaction of the German courts, which are accustomed to look to statutes rather than to court decisions; and they are by statute subject to reexamination on the merits in Italy if rendered by default. In the Scandinavian countries, a treaty is needed for enforcement. In the rest of Western Europe, as well as in Latin America, the situation does not differ substantially. Under the Code of Quebec, any defense which might have been made in the original action may be pleaded against a judgment rendered outside Canada. Conclusive effect is also denied United States judgments in some other Canadian provinces as well." N.Y. STATE BAR ASSOCIATION, REPORT AND PROPOSED RESOLUTION OF COMMITTEE ON INTERNATIONAL LAW (1972) (quoted in von Mehren, *supra* note 13, at 406 n.25).

60. *See* Ginsburg, *supra* note 17, at 720.

61. See notes 76-82 *infra* and accompanying text.

62. See text accompanying notes 144-242 *infra* for an analysis and discussion of the Florida case law dealing with foreign judgments. Throughout other states, judgment recognition is governed primarily by common, rather than statutory, law. *See* Comment, *supra* note 25, at 620. *See also* H. SMIT & A. MILLER, INTERN(TION(L CO-OPER(TION IN CIVIL LITIGATION — A REPORT ON PRACTICES AND PROCEDURES PREVAILING IN THE UNITED STATES 28-29 (1961); Reese, *supra* note 28, at 788.

the area of foreign judgment recognition. There are isolated state statutes dealing with judgments from specified nations,[63] particular kinds of judgments,[64] or procedural or evidentiary matters.[65] The most recent goal-oriented codification is the Uniform Foreign Money-Judgments Recognition Act.[66] To date, eleven states have adopted the Uniform Act.[67]

The Uniform Act does not attempt to introduce a revolutionary method for handling the recognition of foreign judgments: it merely codifies the common law.[68] The Uniform Act pertains only to recognition of money judgments, and other judgments will continue to be governed by separate statutes, if any, or uncodified common law rules. The purpose of the codification is to provide statutory authority for the code-conscious civil law countries. Many of those jurisdictions have required reciprocal recognition of their final decrees and have failed to find adequate authority for such recognition in the common law.[69] Although codification does not guarantee solution of the

63. *See, e.g.*, N.H. REV. STAT. ANN. §524:11 (Supp. 1972), which provides for reciprocal recognition of Canadian judgments to the extent that the state's judgments are enforceable in Canada.

64. *See, e.g.*, N.Y. DOM. REL. LAW §31 (McKinney Supp. 1972-1973). This statute deals with the reciprocal recognition of Canadian support decrees.

65. For a review of legislation related to foreign judgment recognition, *see* Peterson, *supra* note 9, at 296-99. A discussion of Florida procedural statutes relating to recognition of a foreign judgment is found at text accompanying notes 101-129 *infra*.

Montana and Oregon are among the states which have enacted statutes on the enforcement of foreign judgments. *See* MONT. REV. CODES ANN. §93-1001-27 (1947); ORE. REV. STAT. §43.190 (1953).

66. 13 U.L.A. 269 (1975) [hereinafter cited as Uniform Recognition Act]. For a detailed analysis of the Act, *see generally* Kulzer, *Recognition of Foreign Country Judgments in New York: The Uniform Foreign Money-Judgments Recognition Act*, 18 BUFFALO L. REV. 1 (1968). The full text of the Uniform Act appears in von Mehren & Patterson, *supra* note 12, at 41 n.14.

67. Alaska, California, Georgia, Illinois, Maryland, Massachusetts, Michigan, New York, Oklahoma, Oregon and Washington have enacted the Uniform Recognition Act. ALASKA STAT. §§09.30.100-.180 (1972); CAL. CIV. PROC. CODE §§1713.1-1713.8 (West Supp. 1977); GA. CODE ANN. tit. 110, §§1301-1308 (Supp. 1978); 2 ILL. REV. STAT. ch. 77, §§121-129 (1969); MD. CODE ANN. art. 35, §10-701-709 (1974 amend.) MASS. GEN. LAWS ANN. ch. 235, §23A (Supp. 1976); MICH. GEN. LAWS ANN. §§691.1151-59 (1968); N.Y. CIV. PROC. LAW §§5301-5309 (McKinney Supp. 1975); OKLA. STAT. ANN. tit. 12 §§710-718 (Supp. 1975); WASH. REV. CODE ANN. §§6.40.010-.915 (Supp. 1976); ORE. REV. STAT. §§24.200-.255 (1977) (cited in Scoles & Aarnas, *The Recognition and Enforcement of Foreign Nation Judgments: California, Oregon, and Washington*, 57 ORE. L. REV. 377, 382 (1978)).

68. *See* Carl, *Recognition of Texas Judgments in Courts of Foreign Nations and Vice Versa*, 13 HOUS. L. REV. 680, 688-97 (1976); Kulzer, *supra* note 66, at 5. *See also* Commissioners' Prefatory Note, Uniform Recognition Act, 13 U.L.A. 269, 269-70 (1975) [hereinafter cited as Prefatory Note].

69. *See* Uniform Recognition Act, 13 U.L.A. at 273-74. *See* also §4 of the Prefatory Note, 13 U.L.A. at 269. *See also* Homburger, *supra* note 28, at 370 n.10; Kulzer, *supra* note 66, at 1. *See generally* Lenhoff, *Reciprocity and the Law of Foreign Judgments: A Historical-Critical Analysis*, 16 LA. L. REV. 465 (1956).

Other common law countries, recognizing the nonrecognition problem, have responded with uniform national legislation. For example, in 1933 Great Britain adopted the Foreign Judgment Recognition and Enforcement Act, which codified British law and provided for a speedy enforcement procedure. Foreign Judgments (Reciprocal Enforcement) Act of 1933, 23 & 24 Geo. 5, c.13. Canada has enacted similar statutory authority. *See generally* Castel,

reciprocal recognition problem, the state will comply with civil law preferences without sacrificing its own established jurisprudence by merging the common law case system into the civil law codification system. Legal scholars have long advocated codification of the rules regulating recognition of foreign money judgments in this country as a step toward uniform treatment and recognition of United States judgments abroad.[70] Thus, codification could be a step toward international uniformity and stability.[71]

Under the Uniform Act, a final judgment from a foreign nation will be presumed conclusive unless proven otherwise. Nonrecognition results from proof of a valid affirmative defense. The traditional common law defenses which will permit, rather than require, the reviewing court to deny recognition have been codified in the Uniform Act. For example, a foreign judgment is nonconclusive if the rendering tribunal is not impartial, does not follow procedures which meet the requirements of due process, or has no basis for jurisdiction over the case.[72] Other defenses include fraud, insufficient notice, public policy, finality, inconvenience of the first forum and prior settlement between the parties.[73]

Personal jurisdiction exists under the Uniform Act if the defendant was served personally within the adjudicating state, made a voluntary and nonspecial appearance in the initial proceeding, agreed to submit to the jurisdiction of the foreign court, was domiciled in the foreign state, or if the claim arose from operation of a motor vehicle or aircraft in the foreign state.[74] In addition, a foreign court may exercise personal jurisdiction over a corporate defendant if the corporation had its principal place of business or had acquired corporate status in the foreign state, or if it had a business office in the foreign state and the initial proceedings were related to the business conducted through that office.[75]

Jurisdiction and Money Judgments Rendered Abroad: Anglo-American and French Practice Compared, 4 McGILL L.J. 152 (1958).

70. *See* Carl, *supra* note 68, at 686-87; Kulzer, *supra* note 66, at 2-3; Nadelmann, *Non-Recognition of American Money Judgments Abroad and What To Do About It*, 42 IOWA L. REV. 236, 252 (1957). Some commentators have stressed the need for a federal statute or treaty. *See generally* Groupner, *Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe*, 12 INT'L & COMP. L.Q. 367 (1963).

71. In its Prefatory Note to the Uniform Foreign Money-Judgments Recognition Act, the National Conference of Commissioners declared that "[c]odification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad." Prefatory Note, 13 U.L.A. at 269.

72. Uniform Recognition Act, 13 U.L.A. §4(a), at 273.

73. *See, e.g.*, Uniform Recognition Act, 13 U.L.A. §4(b)(5)-(6), at 273-76.

74. *Id.* §5(a) at 275.

75. *Id.* However, United States courts have upheld the foreign courts' jurisdictional grounds even though they were not in compliance with the provisions of the Uniform Recognition Act. *See generally* Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972) (sufficient basis of jurisdiction existed where defendant's contact was made through an English distributor); H.L. Wilkinson & Co. v. Calvine Mills, Inc., 28 App. Div. 2d 675, 282 N.Y.S.2d 655 (1967) (sufficient jurisdictional basis existed for breach of contract action in England, because the contract had been made there); Plugmay, Ltd. v. National Dynamics Corp., 48 Misc. 2d 913, 266 N.Y.S.2d 240 (Civ.

Treaties: A Federal Solution

Treaties may be the most effective means to encourage mutual recognition of judgments.[76] At present, the United States is not a party to any treaty which would obligate contracting nations to recognize judgments rendered pursuant to its terms.[77] In recent years, however, there have been notable efforts by the United States, as well as by other major trading countries, to use the treaty method to accomplish greater stability in private international law.[78] For example, the member nations of the European Economic Community have recently entered into a multilateral treaty regulating judgment recognition.[79]

Ct. N.Y. 1966), *rev'd*, 53 Misc. 2d 451, 278 N.Y.S.2d 896 (App. Term 1967) (sufficient basis of jurisdiction found where default judgment entered by English court arose from goods sold and shipped to England by defendant, constituting a "single act" as required by New York statute to establish proper jurisdiction). *But see* Bank of Montreal v. Kough, 430 F. Supp. 1243, 1246 (N.D. Cal. 1977) (citing CALIF. CIV. PROC. CODE §1713.5(b) (West)).

76. Golomb, *supra* note 27, at 645-52; Nadelmann, *Uniform Legislation Versus International Conventions Revisited*, 16 AM. J. COMP. L. 28, 31-33 (1968); von Mehren, *supra* note 13, at 413; Comment, *supra* note 25, at 629. The federal government has the power to enter into a bilateral or multilateral treaty providing for the recognition of foreign judgments. *See* Homburger, *supra* note 28, at 368 n.3. *But see* Kulzer, *Some Aspects of Enforceability of Foreign Judgments: A Comparative Summary*, 16 BUFFALO L. REV. 84 (1966).

77. Carl, *supra* note 68, at 681; Scoles & Aarnas, *supra* note 67, at 395; von Mehren & Patterson, *supra* note 12, at 43.

78. The treaty approach has been widely used in civil law countries. *See* Groupner, *supra* note 71, at 368.

79. The Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters [hereinafter cited as the European Convention] became effective on Feb. 1, 1973. 15 J.O. COMM. EUR. (No. L 299) 32 (1972) (translated in 2 COMM. MKT. REP. (CCH) ¶6003). For discussion of the various drafts of the Convention, *see generally* Hay, *The Common Market Preliminary Draft Convention on the Recognition and Enforcement of Judgments — Some Considerations of Policy and Interpretation*, 16 AM. J. COMP. L. 149 (1968). The six original members of the European Economic Community (EEC) — Belgium, France, Germany, Italy, Luxemburg, and the Netherlands — were parties to the European Convention. The new member states — Denmark, Ireland, and the United Kingdom — were bound by the European Convention pursuant to article 220 of the European Economic Treaty; *see* 1 COMM. MKT. REP. (CCH) and article 3(2) of the Act of Accession, 2 COMM. MKT. REP. (CCH) ¶7035.

Most judgments excluded from recognition by the Hague Convention, see note 81 *infra*, are excluded from recognition under the European Convention, with the exception of judgments involving maintenance matters (European Convention, arts. 1, 5(2)), and judgments which determine the status of companies and other legal persons or adjudicate the powers of these entities' officers and directors. *See* Zaphiriou, *supra* note 14, at 736. It has been suggested that these judgments were not excluded from recognizable judgments as in other conventions because the European Economic Community is an economic union attempting to attain judgment recognition characteristics similar to those of the United States federal system. The effect of the treaty has been compared with the workings of the full faith and credit clause of the United States Constitution. *Id.*

The primary aim of the European Convention is to provide uniformity and stability to member nations of the European Economic Community. *See* 2 COMM. MKT. REP. (CCH) ¶6255. The European Convention demands that member state A recognize the judgments of member state B which are rendered against a nondomiciliary of state A. *See* von Mehren, *supra* note 13, at 414. The effect of the provision is that any judgment rendered in state B which is covered by the treaty, including one which would have been improperly rendered

In 1968, the United States acceded to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards.[80] Based on the rising incidence of arbitration clauses in transnational commercial agreements, this step may be nearly as significant as a treaty on judgment recognition. In addition, since 1963 this country has participated in the Hague Conference on Private International Law and the International (Rome) Institute for Uniform Private Law.[81] Widespread participation in these multinational conventions reflects worldwide concern over the problem of nonrecognition.

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in state A because of a major jurisdictional defect, would be recognizable and enforceable against the assets of the unsuccessful litigant within the territorial limits of state A. For example, if an *in personam* judgment is rendered by a German court against a United States defendant who did not voluntarily appear in Germany or was not domiciled or otherwise present within the German jurisdiction, the German judgment would be enforceable against the assets of the American defendant located within the jurisdiction of the addressed member state. *Id.* Unquestionably, this result would be inimical to the most fundamental law and public policy of that member state. See text accompanying notes 206-216 *infra.*

Article 59 of the European Convention allows member nations to deny recognition through the execution of bilateral treaties with third nonmember nations when, for example, the original judgment was based on an exorbitant jurisdictional base not in compliance with the jurisdictional requirements as provided in the bilateral treaty. It appears, therefore, that the United States should adopt the bilateral treaty approach to avoid seizure of its residents' property abroad. The addressed EEC member state would then be able to deny recognition to judgments rendered by other EEC nations against a United States defendant if the jurisdictional base was not in compliance with the bilateral agreement. The United Kingdom-United States Convention, see note 82 *infra*, will protect United States defendants against enforcement by the United Kingdom of a judgment obtained in another EEC country based on exorbitant jurisdictional concepts. *See* de Winter, *Excessive Jurisdiction in Private International Law*, 17 INT'L & COMP. L.Q. 706, 715-16 (1968). *See also* von Mehren, *supra* note 13, at 414.

80. June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3 (effective Dec. 29, 1970) [hereinafter cited as Foreign Arbitral Awards Convention]. S. RES. 313, 90th Cong., 2d Sess. (1968). In approving the international agreement, the United States Senate stated that the United States would apply reciprocity principles in recognizing and enforcing awards covered by the Convention. Foreign Arbitral Awards Convention, art. 1, §3. In addition, the treaty provides that only those awards which were conclusive in countries assenting to the Convention would be subject to recognition. *Id.* at art. V, §1. The Convention is limited in scope to awards arising from matters considered commercial under United States law. Recognition of arbitral awards is related to, but nevertheless distinct from, recognition of foreign judgments. The latter is not within the domain of the Foreign Arbitral Awards Convention. For further discussion on the Convention, *see generally* von Mehren & Patterson, *supra* note 12, at 76.

81. *See generally* Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, *reprinted in* 15 AM. J. COMP. L. 362 (1967) [hereinafter cited as Hague Convention] 5 INT'L LEGAL MAT. 636 (1966). *See also* Nadelmann, *The United States Joins the Hague Conference on Private International Law*, 30 LAW & CONTEMP. PROB. 291 (1965). United States delegates have registered their support for the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, the main text of which was adopted in 1966, with a later supplementary protocol in the same year pertaining to questions of jurisdiction. Supplementary Protocol to the Hague Convention, *reprinted in* 15 AM. J. COMP. L. 369 (1967).

Article 21 of the Hague Convention provides that for the treaty to take effect between any two nations, the member countries must enter into a supplementary agreement providing for specific adoption. This requirement will permit the contracting countries to alter

The most recent and dramatic step in seeking favorable treatment of this nation's judgments abroad is an already initialed treaty between the United States and the United Kingdom which will provide for recognition and enforcement in either country of judgments that satisfy the jurisdictional requirements set forth in the treaty.[82] The United Kingdom-United States Convention has not been submitted to the United States Senate for ratification as of this writing. If the Convention is ratified, it will have the distinction of being the first substantial action taken by the United States to ensure the recognition abroad of judicial decrees of this nation's states. Moreover, it could serve as the foundation for future bilateral and multilateral negotiations between the United States and other nations.

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certain terms of the Convention under article 23. The parties may further clarify any of the terms appearing in the original draft of the Hague Convention and may add to the existing list of agreements with any of the participating nations. Those participating members include Austria, Finland, Greece, Israel, Japan, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Arab Republic. *See generally* Zaphiriou, *supra* note 14, at 735.

The Hague Convention reflects international concern over the problem of nonrecognition. Article 1 of the Convention covers the recognition of most judicial decrees except those which either determine the status or capacity of an individual or relate to family matters (whether personal or proprietary in nature), or which demand payment of any customs duty, tax, or penalty. The last exception is in accord with the general view that foreign judgments pertaining to revenue or penal matters will not be enforced. See notes 237-241 *infra* and accompanying text. Similarly, this provision of the Hague Convention was incorporated in subsection 1(2), the Uniform Recognition Act, which expressly excludes the recognition of "a judgment for taxes, a fine, or other penalty . . . ." Zaphiriou, *supra* note 14, at 735 n.7. See note 66 *supra*. In addition, the Hague Convention does not cover judicial decrees which order provisional or protective measures, or judgments rendered by any administrative body. *See* Hague Convention, art. 2(2).

82. Convention between the United Kingdom of Great Britain and Northern Ireland and the United States of America Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, Oct. 26, 1976, *reprinted in* 16 INT'L LEGAL MAT. 71 (1977). [hereinafter cited as the United Kingdom-United States Convention]. Negotiations between the United Kingdom and the United States began in 1973, culminating in the agreement on reciprocal recognition of judgments. The United Kingdom-United States Convention will affect judgment recognition between contracting nations in a manner similar to that contemplated by the Hague Convention. See note 81 *supra*. Under article 15(1), the United Kingdom-United States Convention will cover judgments other than money judgments if such are in accordance with the laws of the reviewing nation. The treaty will exclude the recognition of judgments "to the extent that they are punitive or multiple damages." United Kingdom-United States Convention, art. 2(2)(b). Thus, an award of treble damages in a civil matter would not be recognizable pursuant to the treaty. *See* Zaphiriou, *supra* note 14, at 736. *See also* Hay & Walker, *The Proposed Recognition-of-Judgments Convention between the United States and the United Kingdom*, 11 TEX. INT'L L.J. 421 (1976).

Because of criticism primarily from British insurance interests, the 1976 draft of the Convention was reviewed in a Cambridge, Massachusetts meeting held in September, 1978. According to the United States delegation, there are two changes in the most recent version of the Convention which are of fundamental importance: the addition of article 8A and the deletion of article 3. A copy of the proposed text may be obtained from the Legal Advisor's Office. It is hoped that in the forthcoming negotiations between the delegations of the two nations, a second and final *ad referendum* text will be initialed and subsequently ratified by both nations. Memorandum from the Office of Michel H. Cardozo, American Association of Law Schools Representative of the Secretary of State's Advisory Committee on Private International Law, to Law School Deans (March, 1979).

The Common Law: Florida's Approach

Substantive rules which have arisen under the common law generally provide the basis for the recognition and enforcement of foreign judgments. A number of theories in support of recognition and enforcement of foreign judgments have been advanced in the United States and other nations.[83] Among the policy considerations which support the existing theories are the desires to protect successful parties from continued harassment by previously unsuccessful litigants, minimize duplication of efforts and the resulting waste of time and money, and foster stability and uniformity in an international sphere.[84]

The Florida supreme court has expressly noted that the recognition and enforcement of foreign judgments is not governed by the full faith and credit clause of the federal Constitution[85] because that clause is applicable solely to the judgments of sister-states.[86] Florida courts have relied on the doctrines of international or judicial comity in dealing with the recognition of foreign judgments[87] or issues of reciprocity.[88] Unlike the full faith and credit clause, comity[89] allows the reviewing court the flexibility necessary to balance con-

83. *See* Ginsburg, *supra* note 17, at 723; Kulzer, *supra* note 76, at 86-87.

84. von Mehren & Trautman, *supra* note 11, at 1602-05. All of the theories seek to advance "the elements of stability and unity essential to an international order in which many aspects of life are not confined within the limits of any single jurisdiction." *Id.* at 1603. *See also* Golomb, *supra* note 27, at 618-19; Reese, *supra* note 28, at 783-86.

Legal scholars generally favor measures to promote finality by ending continued harassment by unsuccessful parties. These same policies support the principles of res judicata and collateral estoppel. *See, e.g.*, Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F. Supp. 892 (S.D.N.Y. 1968), *modified*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971); H. GOODRICH & E. SCOLES, CONFLICT OF LAWS §217 (4th ed. 1964); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §98, Comment b (1971).

85. U.S. CONST. art. 4, §1; 28 U.S.C. §1738 (1976) (implementing statute). Under this mandate, a valid judgment of one state must be conclusively recognized by a sister-state, notwithstanding conflicts with the public policy of the recognizing state. For a thorough review of the history of this clause, see Costigan, *The History of the Adoption of Section 1 of Article IV of the United States Constitution and a Consideration of the Effect on Judgments of that Section and of Federal Legislation*, 4 COLUM. L. REV. 470 (1904). *See generally* Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949); Sumner, *Full Faith and Credit for Judicial Proceedings*, 2 U.C.L.A. L. REV. 441 (1955).

86. Pawley v. Pawley, 46 So. 2d 464, 475 (Fla. 1950); Ogden v. Ogden, 159 Fla. 604, 610, 33 So. 2d 870, 874 (1947); Parker v. Parker, 155 Fla. 635, 636-38, 21 So. 2d 141, 141-42 (1945). *See generally* Peterson, *supra* note 9.

Some commentators suggest that the full faith and credit clause mandates that foreign judgments be recognizable to the same extent as those from sister-states. *See, e.g.*, Golomb, *supra* note 27, at 606.

87. Schwartz v. Schwartz, 143 So. 2d 901, 902 (Fla. 2d D.C.A. 1962); Ogden v. Ogden, 159 Fla. 604, 608-09, 33 So. 2d 870, 873-74 (1947). For a historical overview of the comity of nations doctrine, *see* Golomb, *supra* note 27, at 613; Smit, *supra* note 11, at 54.

88. Warren v. Warren, 73 Fla. 764, 792-93, 75 So. 35, 45 (1917). See text accompanying notes 144-152 *infra* for a discussion of the reciprocity issue in Florida in relation to defending an action on a foreign judgment.

89. The "comity" concept as it relates to foreign judgments was first advanced by the United States Supreme Court in Hilton v. Guyot, 159 U.S. 113 (1895). At the interstate level, the comity standard has been applied if the full faith and credit clause is inapplicable. *See, e.g.*, Milwaukee County v. M.E. White Co., 296 U.S. 268, 273 (1935); Ogden v. Ogden, 159 Fla. 604, 610, 33 So. 2d 870, 874 (1947).

flicting policy considerations.[90] These considerations include the interest in protecting the successful litigant from duplicative efforts, thus promoting international stability, and the state's interest in protecting its domiciliaries against judgments which may be subversive to concepts of fundamental due process and fairness.[91]

Florida courts have usually looked for elements which "would support it [the foreign judgment] if procured in this country"[92] before using the doctrines of judicial comity or reciprocity. Florida case law indicates that these elements include grounds for bringing the action,[93] fair trial on the merits,[94] domicile,[95] jurisdiction over the parties and subject matter,[96] notice,[97] finality,[98] and the absence of fraud.[99] The Florida common law dealing with substantive defenses is analyzed in greater detail in subsequent sections of this note.[100]

FLORIDA LAW: PROCEDURES FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

A Florida practitioner might be asked to have a judgment rendered by a foreign nation court executed against the assets of a judgment debtor located within Florida. Because the foreign judgment must be recognized before it is enforced, the party seeking execution must initiate an action introducing the foreign decree as proof of his claim and remedy. Section 92.032 of the Florida Statutes establishes the procedure to be followed in this situation.[101] The peti-

90. As noted in Hilton v. Guyot, 159 U.S. at 163-64, comity "is neither a matter of absolute obligation . . . nor of mere courtesy and good will. . . . [I]t is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws."

91. On the other hand, recognition of a judgment from the court of a sister-state is mandated by the full faith and credit clause, although such recognition might be contrary to the reviewing state's public policy. *See generally* Currie, *The Constitution and the "Transitory" Cause of Action* (pt. 2), 73 HARV. L. REV. 268 (1959); Comment, *Full Faith and Credit to Judgments: Law and Reason Versus the Restatement Second*, 54 CALIF. L. REV. 282 (1966).

92. Ogden v. Ogden, 159 Fla. 604, 610, 33 So. 2d 870, 874 (1947) (citing Parker v. Parker, 155 Fla. 635, 21 So. 2d 141 (1945)).

93. Schwartz v. Schwartz, 143 So. 2d 901, 902 (Fla. 2d D.C.A. 1962).

94. Mathor v. Lloyd's Underwriters, 174 So. 2d 71, 72 (Fla. 3d D.C.A. 1965).

95. Schwartz v. Schwartz, 143 So. 2d 901, 902 (Fla. 2d D.C.A. 1962).

96. Pawley v. Pawley, 46 So. 2d 464, 467 (Fla. 1950). *See also* Willson v. Willson, 55 So. 2d 905 (Fla. 1951); Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967). See text accompanying notes 153-176 *infra*.

97. Pawley v. Pawley, 46 So. 2d 464, 467 (Fla. 1950); Mathor v. Lloyd's Underwriters, 174 So. 2d 71, 72 (Fla. 3d D.C.A. 1965). *See also* Parker v. Parker, 155 Fla. 635, 21 So. 2d 141 (1945).

98. Ogden v. Ogden, 159 Fla. 604, 607-08, 33 So. 2d 870, 873 (1947). See text accompanying notes 217-224 *infra*.

99. Parker v. Parker, 155 Fla. 635, 636, 21 So. 2d 141, 142 (1945); Warren v. Warren, 73 Fla. 764, 789-90, 75 So. 35, 44 (1917); Mathor v. Lloyd's Underwriters, 174 So. 2d 71, 72 (Fla. 3d D.C.A. 1965). See text accompanying notes 206-216 *infra*.

100. See text accompanying notes 144-242 *infra*.

101. FLA. STAT. §92.032 (1977) states: "Foreign documents; procedure for admitting in evidence. — A copy of any official foreign document or record or entry therein, certified by

tion for recognition must state the nature of the claim and the final foreign adjudication. In support of the petition, the judgment must be submitted into evidence pursuant to a mandatory three-step authentication procedure. First, the petitioner must procure a copy of the original decree certified by a lawful custodian of the rendering court. Secondly, the decree must be accompanied by a certificate issued by an official of the foreign government, confirming that the lawful custodian who certified the foreign decree acted in his official capacity and that the certification complied with the laws of the foreign nation. Finally, the decree must be certified by the United States consulate in the foreign country and confirm, under the seal of his office, both the government official's capacity to sign as an official of the foreign nation and the genuineness of the government official's signature.[102]

The question of adequate authentication of a foreign judicial decree has been litigated in Florida. In *Jackson v. Stelco Employees' Credit Union, Ltd.*,[103] the court was confronted with the question of whether to recognize a Canadian money judgment rendered against a Florida domiciliary.[104] At trial, the creditor-plaintiffs presented the Canadian decree for admission into evidence without the authentication required by section 92.032. The decree was accompanied only by an affidavit signed by the president of the creditor corporation. The appellate court found the affidavit to be incompetent and insufficient.[105] The *Jackson* court recognized that a contended foreign judgment presents a question of fact which must be properly authenticated to be admitted as valid.[106]

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the lawful custodian thereof, shall be admissible in evidence in all courts of this state in all cases now pending or hereafter commenced to prove the contents thereof when accompanied by a certificate of an official of such foreign government that such lawful custodian has certified such copy in his official capacity and in accordance with the laws of such foreign country and when this accompanying certificate is authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, that the person signing such accompanying certificate is such official of such foreign government and the signature appearing on such accompanying certificate is genuine."

102. *Id.* Foreign decrees which do not conform to the statute's three-step authentication procedure are generally inadmissible. *See, e.g.*, Martens v. Martens, 284 N.Y. 363, 31 N.E.2d 489 (1940).

103. 178 So. 2d 58 (Fla. 2d D.C.A. 1965).

104. Recognition of the foreign money judgment was eventually denied on grounds of improper jurisdiction over the Florida domiciliaries. Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669, 670 (Fla. 4th D.C.A. 1967).

105. 178 So. 2d at 59. The Second District Court of Appeal reversed the lower courts because the improperly authenticated foreign decree was the basis for the plaintiff's motion for summary judgment. *Id.* at 61.

106. Quoting 3 B. JONES, EVIDENCE §671 (1958), the court stated: "In an early case in the Supreme Court of the United States, it was determined that foreign judgments may be authenticated in the following modes: (1) By an exemplification under the great seal; (2) by a copy proved to be a true copy; (3) by the certificate of an officer authorized by law, which certificate itself must be properly authenticated. These are the usual, and appear to be the most proper, if not the only modes of verifying foreign judgments. If they be all beyond the reach of the party, other testimony inferior in its nature may be received. It is evident that this includes the common law method of proof by a sworn copy." 178 So. 2d at 59.

In addition to holding that the judgment did not meet the requirements of section 92.032, the court found that the affidavit submitted by the president of the Canadian corporation did not authenticate the foreign decree because it did not "attempt to authenticate the purported copy attached to the complaint," or "even state that he [the president] has ever seen the original or compared the copy [of the Canadian decree] with the original."[107] This language implies that an alternative procedure for authenticating a foreign judgment exists when for certain reasons all requirements of section 92.032 cannot be met. For example, if the original official document is lost by the foreign court and the only existing record of the judgment is the copy in the hands of the party seeking recognition, that party may be able to authenticate the document by submitting a full and complete affidavit proclaiming the copy of the judgment to be a true and correct copy of the lost original document. The question of whether the document is authentic would then be an issue of fact.[108]

The litigant seeking recognition or the party objecting to enforcement might also have to prove the existence of a particular foreign law dealing with jurisdiction, notice, or any other potential ground for nonrecognition.[109] Under section 92.04 of the Florida Statutes, which deals with the introduction of foreign nation laws into evidence,[110] the reviewing court is allowed complete discretion with regard to the use of parol evidence to show the existence and effect of the foreign law. The court may, however, demand that a copy of the foreign law be submitted if the foreign law can be found in a written statute or code.[111]

The provisions of section 92.04 may be relevant when responding to a defense raised by the party opposing recognition of the foreign judgment. For example, the party seeking recognition may introduce into evidence the law of the foreign nation concerning notice if the opposing party attempts to have the judgment impeached on the ground that he did not have adequate notice as required under Florida law in such circumstances.[112] The opposing litigant may then demonstrate to the Florida court that although the notice did not precisely conform with Florida law, it did conform with the law of the foreign nation and did not conflict with Florida's public policy.[113] Similarly, a foreign statute may be submitted by the party seeking recognition to show that the foreign court accords reciprocal recognition to Florida judg-

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107. 178 So. 2d at 60.

108. *Id.* at 59.

109. *See, e.g.*, Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1947) (jurisdiction); Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950) (notice).

110. FLA. STAT. §92.04 (1977) states: "Foreign laws.—The existence and the tenor or effect of all foreign laws may be proven as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law which is not accompanied by a copy of such code or statute."

111. *Id.*

112. Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950).

113. *Id.* at 473-75.

ments.[114] This is important because Florida law is unclear as to whether reciprocity is a precondition to recognition and enforcement of other nations' judgments.[115]

In Florida, an action founded on a foreign nation judgment is neither ancillary to the original suit[116] nor a proceeding in aid of execution of the judgment rendered by the foreign court.[117] It is a new and independent action.[118] Florida Rule of Civil Procedure 1.120(e) governs the process of plead-

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114. Ogden v. Ogden, 159 Fla. 604, 610-11, 33 So. 2d 870, 874 (1947).

115. See text accompanying notes 144-152 *infra*.

116. Generally, in the case of foreign judgments, the original cause of action is not merged into the judgment of the foreign court. Jackson v. Stelco Employees' Credit Union, Ltd. 203 So. 2d at 670. The judgment-creditor may choose to assert the original cause of action de novo. *See* Kulzer, *supra* note 66, at 21-22.

117. *See* Crane v. Nuto, 157 Fla. 613, 26 So. 2d 670 (Fla. 1946) (concerning a judgment from a sister-state). Unlike Florida, some jurisdictions have enacted the Uniform Enforcement of Foreign Judgments Act, 9A U.L.A. 795 (Master ed. 1976) [hereinafter cited as the Enforcement Act] to provide for a speedy procedure to enforce foreign state judgments. There are two versions of the Enforcement Act. The first was adopted by the National Conference of Commissioners on Uniform Laws and the American Bar Association in 1948. *See* Enforcement Act, 13 U.L.A. 181 (1975). This version has been adopted by five states: Arkansas, Illinois, Missouri, Nebraska and Oregon. In 1964, the second revised version was approved by the Commissioners and the American Bar Association. *See* Enforcement Act, 13 U.L.A. 173 (1975) (revised 1964). It has been adopted in fifteen states: Alaska, Arizona, Colorado, Connecticut, Idaho, Kansas, Maine, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, Wisconsin, Washington and Wyoming. Under the Enforcement Act, the original judgment is registered with the clerk of the court where enforcement is sought. The defendant is then served with proper notice of the pending proceeding.

The Enforcement Act expressly provides that it is applicable to sister-state judgments. A foreign judgment "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit" under the Uniform Recognition Act, 13 U.L.A. §3 at 269, 272 (1975). Thus, it seems reasonable that in those states that have adopted both the Uniform Recognition Act and the Uniform Enforcement Act (Alaska, Illinois, New York, Oklahoma, Oregon and Washington) a foreign nation judgment might well be within the registration process of the Enforcement Act. In New York, for example, a plaintiff can have a foreign judgment enforced by an action on the judgment. N.Y. CIV. PRAC. LAW §5302 (McKinney Supp. 1976). There is no need to file a complaint. The judgment debtor is served with a summons, a copy of the motion for summary judgment and the affidavit filed in support of the summary judgment motion. *Id.* §3212(b). A foreign judgment in Illinois, on the other hand, must be authenticated and registered with the clerk of the court in which enforcement is sought in order to be enforced. Unlike New York, a complaint is then filed seeking enforcement of the final and conclusive foreign judgment and the defendant is served with a summons and copy of the complaint. The judgment is then enforced if the respondent does not respond, the response is not made within 30 days, or the court, after hearing, finds the respondent's defense, set-off, or counterclaim insufficient to set aside the registration. *See* ILL. ANN. STAT. ch. 77, §§90-95 (Smith-Hurd 1966 & Supp. 1977); ALASKA STAT. §09.30-100-.270 (1973); N.Y. CIV. PRAC. LAW §5302 (McKinney Supp. 1976); OKLA. STAT. tit. 12, §§710-726 (1971); WASH. REV. CODE §§6.36.010-.910, 6.40.010-.915 (1976).

118. *See* Milligan v. Wilson, 107 So. 2d 773 (Fla. 2d D.C.A. 1958) (action founded on a sister-state money judgment); von Mehren, *supra* note 13, at 402. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS, §100, Comments (b) & (d) (1971) (general procedure for enforcing a foreign judgment in most states is an action on a debt, resulting in a new local judgment subsequently enforced).

ing a foreign judgment or decree.[119] The rule expressly states that when suing on a foreign judgment a litigant need only allege the actual rendition of the judgment and attach a copy of the duly authenticated judgment as part of the complaint. The complaint should disclose the amount due the plaintiff and should allege that the foreign judgment has not been reversed, modified, partially paid or satisfied.[120] It need not set forth matters showing jurisdiction of the court of rendition.[121] Lack of jurisdiction over one of the parties or the subject matter is an affirmative defense which should be presented in the answer of the party attempting to preclude recognition and enforcement of the judgment. If, however, the plaintiff chooses to plead the proper jurisdiction of the rendering forum, the defendant may challenge the sufficiency of the allegations by a motion to dismiss.[122]

The plaintiff's presentation of the foreign judgment is pursuant to the Florida summary judgment rule, Florida Rule of Civil Procedure 1.510,[123] a prima facie showing that no material fact is disputed,[124] and the plaintiff may promptly move for summary judgment.[125] The burden then shifts to the opponent to bring forth one of the recognized affirmative defenses to demonstrate a flaw in the original judgment which would prevent recognition or enforcement by the reviewing Florida court.[126] If, in the discretion of the court, the pleading and other documents attached thereto do not demonstrate the existence of any material factual dispute, the reviewing court will render a judgment accordingly.[127] The judgment rendered will be in all respects a new judgment of the reviewing forum rather than an execution of the original judgment,[128] and whatever modes of enforcement are available for domestic judgments may be invoked.[129]

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119. FLA. R. CIV. P. 1.120(e) (1977) states: "(e) Judgment or Decree. In pleading a judgment or decree of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decree without setting forth matter showing jurisdiction to render it."

120. 6 BENDER'S FLA. FORMS ¶270A.04 (Supp. 1978).

121. Futterman v. Gerber, 109 So. 2d 575 (Fla. 3d D.C.A. 1959); Milligan v. Wilson, 107 So. 2d 773 (Fla. 3d D.C.A. 1958).

122. Milligan v. Wilson, 107 So. 2d 773, 775 (Fla. 3d D.C.A. 1958); Pacific Mills v. Hillman Garment, 87 So. 2d 599, 601 (Fla. 1956).

123. FLA. R. CIV. P. 1.510 (1977) (summary judgments).

124. Jones v. Stoutenburgh, 91 So. 2d 299 (Fla. 1956). An immaterial issue of fact in dispute will not bar the court from granting a summary judgment motion. *See* Enes v. Baker, 58 So. 2d 551 (Fla. 1952); Boyer v. Dye, 51 So. 2d 727 (Fla. 1951); Mathor v. Lloyd's Underwriters, 174 So. 2d 71 (Fla. 3d D.C.A. 1965).

125. *Compare* Humphreys v. Jarrell, 104 So. 2d 404 (Fla. 2d D.C.A. 1958) *with* Jackson v. Stelco Employees' Credit Union, Ltd., 178 So. 2d 58 (Fla. 2d D.C.A. 1965) *and* Warring v. Winn-Dixie Stores, Inc., 105 So. 2d 915 (Fla. 3d D.C.A. 1958).

126. Manning v. Clark, 71 So. 2d 508 (Fla. 1954).

127. FLA. R. CIV. P. 1.510(c) (1977). For detailed discussion of summary judgments in Florida, *see* H. TRAWICK, *supra* note 10, at §25-5.

128. *See* Scoles & Aarnas, *supra* note 67, at 379-80.

129. *See* FLA. R. CIV. P. 1.570 (1977) (pertains to enforcement of final judgment).

NONRECOGNITION OF FOREIGN JUDGMENTS — FLORIDA CASE LAW

A foreign judgment brought before a Florida court for recognition and enforcement will be presumed valid and conclusive against the parties to the original action.[130] The objecting party must bear the burden of coming forth with a recognized affirmative defense demonstrating a sufficient basis for nonrecognition.[131] Such defenses include improper jurisdiction, insufficient notice, public policy, fraud, lack of finality, prior satisfaction of the claim, default nature of the judgment, a government claim and possibly the lack of reciprocity.[132]

The Reciprocity Requirement After Hilton *and* Ogden

The question of whether the nonexistence of reciprocal recognition practices in the foreign nation constitutes a sufficient basis for denying recognition of a foreign judgment is the most widely discussed of all issues which pertain to judgment recognition.[133] Purportedly the reciprocity requirement was established by the United States Supreme Court in *Hilton v. Guyot*.[134] In that case a French judgment was denied recognition on the ground that French courts would not enforce United States judgments without retrial of

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130. Mathor v. Lloyd's Underwriters, 174 So. 2d 71 (Fla. 3d D.C.A. 1965). In *Mathor*, the court noted that adjudications of the foreign judiciary "are valid on their face and entitled to a presumption that the tribunal passing upon the matter had jurisdiction, that due notice was given, that the proceedings were regular and that the orders are free from fraud and prejudice." *Id.* at 72.

131. *Id. See also* Willson v. Willson, 55 So. 2d 905 (Fla. 1951); Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917).

132. The Supreme Court's opinion in Hilton v. Guyot, 159 U.S. 113 (1895), contains a general statement of the conditions required for recognition. Those conditions have been incorporated into Florida's common law. *See* Warren v. Warren, 73 Fla. 764, 789-90, 75 So. 35, 44 (1917). These conditions are that "[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 law under which it is sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect . . . ." 159 U.S. at 202-03.

133. Some states have removed the reciprocity requirement while others have either adopted specific statutes on the matter, or provided in their judicial pronouncements that the reciprocity element is a prerequisite to recognition and enforcement of any judgment from a foreign nation. New York has expressly rejected the rule of reciprocity. Johnson v. Compagnie Générale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (1926); Cowands 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). Minnesota has also recently overruled its previous rule on reciprocity. Nicol v. Tanner, 310 Minn. 68, 78, 256 N.W.2d 796, 801 (1976). For an extensive discussion on the doctrine of reciprocity, *see* 2 BEALE, CONFLICT OF LAWS 1381-89 (1935). *See also* MASS. ANN. LAWS ch. 235, 23A (Michie/Law. Co-op 1974 & Supp. 1977); N.H. REV. STAT. ANN. §524:11 (1973), Gull v. Constam, 105 F. Supp. 107 (D. Colo. 1952).

134. 159 U.S. 113 (1895).

the merits.[135] Recognition has not been denied solely on lack of reciprocity in any reported case since *Hilton*;[136] rather, the reciprocity requirement has been severely criticized.[137] It has been suggested that the *Hilton* holding did not turn on the lack of reciprocity alone, but also on allegations of fraud in securing the original French judgment.[138]

Since *Hilton*, the judicial trend has been away from requiring reciprocity as a condition for the recognition and enforcement of foreign judgments.[139] Generally, courts from states other than Florida have held that the persuasiveness of a judgment may determine its recognition.[140] Although constitutional considerations could preclude the requirements of reciprocity[141] by state

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135. Id. at 228.

136. See note 38 *supra*.

137. *See, e.g.*, Carl, *supra* note 68, at 684-85; Golomb, *supra* note 27 at 615, Homburger, *supra* note 28, at 381-90; Peterson, *supra* note 35, at 233-36.

138. *See* Hilton v. Guyot, 159 U.S. at 207-10; Carl, *supra* note 68, at 685. *See also* Johnson v. Compagnie Generale Transatlantique 242 N.Y. 381, 152 N.E. 121 (1926).

Hilton was the first and last case on the reciprocity requirement to reach the United States Supreme Court. The case was decided more than 80 years ago during a period in history when international interdependence was not fully realized. Because of the number of years which have elapsed and the changes which have occurred in the world's commercial community since *Hilton*, scholars question whether the Supreme Court would uphold the requirement of reciprocity today. *See, e.g.*, Homburger, *supra* note 28, at 382-85; Reese, *supra* note 28, at 790; von Mehren & Patterson, *supra* note 12, at 48 n.55.

The *Hilton* decision was made at a time when federal courts could apply federal common law in diversity of citizenship actions. The United States Supreme Court subsequently ruled in Erie R.R. v. Tompkins, 304 U.S. 64 (1938), that "[t]here is no federal general common law." *Id.* at 78. See text accompanying notes 30-34 *supra*. Furthermore, *Hilton*'s holding, if it retains validity, is limited in application; reciprocity will be required only when there is an attempt by a foreign national to enforce an *in personam* foreign judgment against a domiciliary of the United States. 159 U.S. at 202-03. *In rem* judgments, status adjudications, judgments in favor of or against American domiciliaries and judgments between foreigners are not within the ambit of *Hilton*'s reciprocity requirement. *Id.* at 167-68, 170-71. *See* Banco Nacional de Cuba v. Sabbatino, 376 U.S. at 411; Ginsburg, *supra* note 17, at 724; Reese, *supra* note 29, at 791-92. State courts generally have not considered themselves bound by *Hilton*, although some have adopted its reasoning. *See* A. EHRENZWEIG, CONFLICT OF LAWS 165-75 (1962).

139. *See, e.g.*, Nicol v. Tanner, 310 Minn. 68, 78, 256 N.W. 2d 796, 801 (1976). Generally, courts which have considered cases involving the recognition and enforcement of foreign judgments have either ignored or rejected the requirement. *See* von Mehren & Patterson, *supra* note 12, at 46. *But see* Svenska Handelsbanken v. Carlson, 258 F. Supp. 448 (D. Mass. 1966).

140. *See, e.g.*, Bata v. Bata, 39 Del. 258, 163 A.2d 493 (1960); Coulborn v. Joseph, 195 Ga. 723, 25 S.E. 2d 576 (1943); Johnson v. Compagnie Générale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (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). *But see* Hager v. Hager, 1 Ill. App. 3d 1047, 274 N.E. 2d 157 (1971). The cases which have impliedly held that reciprocity is required may be of little significance, because most were decided prior to *Erie*'s mandate of the application of state substantive law in federal cases. *See also* von Mehren & Patterson, *supra* note 12, at 47 nn.47 & 48.

141. See text accompanying notes 50-52 *supra*. *See also* Shames v. Nebraska, 323 F. Supp. 1321 (D. Neb. 1971), *aff'd*, 408 U.S. 901 (1972). These cases reasoned that only the federal government should be involved in foreign affairs and diplomatic relations. *See generally* von Mehren & Patterson, *supra* note 12.

statutes,[142] questions of reciprocity will continue to be governed by individual state substantive laws.[143]

Response to the reciprocity issue in Florida is not clear.[144] This uncertainty prevails for three reasons. First, there is no specific statute on the matter. Second, few Florida cases address the question, and these cases are not recent. Finally, the discussion of reciprocity is mere dicta in a 1947 Florida supreme court case that is generally cited as support for the reciprocity requirement.[145]

That case, *Ogden v. Ogden*,[146] involved recognition of a status and alimony decree rendered by an English court in favor of an English woman and against a United States domiciliary. The judgment was presented to the Florida court by the British subject in defense to a subsequent divorce suit initiated by Mr. Ogden. The Florida court, considering whether to recognize the English judgment as dispositive of the divorce action, resolved the questions by applying a rule of international and judicial comity. That rule, according to the court, was sometimes called the rule of reciprocity, and the court recognized that "the general rule is that the judgment of a foreign court will be enforced only when the courts of the jurisdiction where the cause first arose would afford relief under the same circumstances to the judgments of the forum."[147] Based upon expert testimony, the court determined that English courts would not have given conclusive effect to a similar Florida judgment.[148]

One commentator has noted that both *Hilton* and *Zschernig* "deal with situations in which reciprocity is thought to serve as an inducement to foreign nations to respect American rights abroad; both raise the fundamental policy question whether reciprocal arrangements in private litigation are well suited to attain that goal; both deprive claimants caught by the reciprocity rule of significant benefits, namely in one case the right to inherit, and in the other the opportunity to collect on a valid judgment without a new trial; both dispose of private litigation on grounds which do not consider the merits of the claims and run counter to basic notions of fairness guarantees to citizens and aliens within and without the country; and both raise the possibility of an affront to the nation affected by the court's ruling." Homburger, *supra* note 28, at 387.

142. MASS. ANN LAWS ch. 235, §23A (Michie/Law. Co-op 1974 & Supp. 1977); N.H. REV. STAT. ANN. §524:11 (1973). New Hampshire's statute requiring reciprocity was enacted primarily as a reaction to Quebec's provision that New Hampshire judgments would only be given the effect accorded to their judgments in New Hampshire.

143. See note 28 *supra*.

144. *But see* 19 FLA. JUR., *Judgments and Decrees* §348 (1958): "The general rule is, however, that there must be reciprocity; that is, the judgment of a foreign court will be given force and effect only when the courts of the foreign country where the cause arose would afford relief under the same circumstances as to the judgments of the forum state" (footnotes omitted). *See also* Warren v. Warren, 73 Fla. 764, 75 So. 35, 45 (1917), which referred to the *Hilton* rule in dicta.

145. Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1947), *cert. denied*, 340 U.S. 866 (1951). *See* 19 FLA. JUR., *Judgments and Decrees* §348 (1958).

146. 159 Fla. 604, 33 So. 2d 870 (1947), *cert. denied*, 340 U.S. 866 (1951).

147. *Id.* at 608, 33 So. 2d at 873.

148. The application of the rule was demonstrated by the framing of a question regarding whether or not the English courts would recognize and give conclusive effect to a Florida judgment against an English subject. Expert testimony, referring to English law on foreign judgment recognition, demonstrated that a foreign judgment to restore conjugal rights "would not be given effect in England because it was a final judgment." The court then found that it similarily would not be required to recognize the non-final judgments of the English court under the rule of international comity. *Id.*

The court's denial of recognition, however, did not turn on the issue of reciprocity or the finality of the English judgment. Instead, the court declined recognition on due process and jurisdictional grounds, insofar as the English court had failed to acquire personal jurisdiction over the United States domiciliary.[149]

Due to the number of years which have elapsed since *Odgen*'s rule of reciprocity and the fact that the holding was based on improper jurisdiction rather than the absence of reciprocal recognition, the requirement of reciprocity is uncertain today.[150] In more recent years, the question of reciprocity has not been directly addressed by Florida courts. In 1975, the Fifth Circuit recognized the judgment of a Costa Rican court and implied that reciprocal recognition was required, although the Court did not cite *Hilton* or *Ogden*.[151] However, in two Florida district court cases the question of reciprocal recognition was never mentioned.[152] Thus, it is uncertain whether Florida law recognizes reciprocity as a defense in an action to enforce a foreign judgment.

Improper Jurisdiction

The defense most frequently presented in a suit for recognition is the foreign court's lack of jurisdiction to render the judgment in question.[153] However, Florida courts will generally presume the existence of a proper basis for jurisdiction over both the parties and the subject matter in litigation. The party opposing recognition bears the burden of proving the existence of a material jurisdictional defect.[154]

A material jurisdictional defect does not result merely because the require-

149. *Id.*

150. See notes 250-52 *infra* and accompanying text. *See also* Pawley v. Pawley, 46 So. 2d 464, 468 (Fla. 1950) (referring to the doctrine of "judicial comity or reciprocity," quoting Ogden v. Ogden, 159 Fla. at 608, 33 So. 2d at 874).

151. Atlantic Ship Supply, Inc. v. M/V Lucy, 392 F. Supp. 179 (M.D. Fla. 1975), *aff'd*, 553 F.2d 1009 (5th Cir. 1977). The district court found that "under Costa Rican law a foreign judgment or decree is entitled to full faith and credit and . . . the court should give equal treatment to the judgment and decree of the Court of Costa Rica which had subject matter jurisdiction and properly exercised that jurisdiction in this instance." 392 F. Supp. at 183.

152. Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967); Mathor v. Lloyd's Underwriters, 174 So. 2d 71 (Fla. 3d D.C.A. 1965).

153. von Mehren & Patterson, *supra* note 12, at 48. When considering jurisdiction as a defense it is important to distinguish *in rem* status, *in rem* property, and *in personam* judgments. The jurisdictional requirements differ for each category.

154. This rule was recognized by the Third District Court of Appeal in the 1965 case of Mathor v. Lloyd's Underwriters, 174 So. 2d 71 (Fla. 3d D.C.A. 1965). The plaintiff-insureds had initiated an action against the defendant-insurers to recover losses resulting from a confiscation of cargo. The defendants presented the Florida court with the final Bolivian decree rendered in their favor by the National Jury of Customs of Bolivia. The appellate court affirmed the trial court's grant of summary judgment in favor of the defendants, reasoning that the foreign judgment was "entitled to a presumption that the tribunals passing upon the matter had jurisdiction . . . ." *Id.* at 72. *See also* Ritchie v. McMullen, 159 U.S. 235 (1895); *In re* Malaszenko, 204 F. Supp. 744 (D.N.J. 1962). Nevertheless, there are exceptions to this presumption of validity. *See, e.g.*, Gaylord v. Gaylord, 45 So. 2d 507, 510 (Fla. 1950); Schwartz v. Schwartz, 143 So. 2d 901, 902 (Fla. 2d D.C.A. 1962).

ments of Florida law are not met.[155] The Florida view with respect to proper jurisdiction in foreign status adjudications is that the judgment will be recognized as long as there has been sufficient notice and an opportunity to be heard and at least one of the parties was domiciled in the foreign nation at the time the decree was rendered. Thus, in *Pawley v. Pawley*[156] a divorce decree to the husband awarded by a Cuban court was presented as a conclusive defense to the wife's Florida action for alimony. The former husband claimed that the Cuban judgment was recognizable under the state's doctrine of international comity and that the ex-wife should be barred from relitigating the matter. The wife had not voluntarily appeared in the foreign divorce proceeding and had not been served with process within the jurisdiction of the adjudicating Cuban tribunal.[157] The Cuban court had claimed jurisdiction through substituted service that was valid under Cuban law but not under Florida law.[158] The wife in the Florida action argued that the Cuban judgment should not be recognized as a defense because of this material jurisdictional defect.[159]

The *Pawley* court conclusively recognized the Cuban divorce decree as to the defendant's marital status. In addressing the issue of whether the difference between the jurisdictional laws of Florida and the foreign nation would result in nonrecognition of a judgment rendered in full compliance with the laws of the judgment-rendering nation.[160] However, the court did not foreclose the right to question the propriety of the alimony issue. The court based its recognition of foreign jurisdiction on the nature of the action. In an *in personam* judgment for alimony, unlike in status adjudication, proper jurisdiction depends upon legally binding personal service.[161] According to the

155. Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950), *petition denied*, 47 So. 2d 546, *cert. denied*, 340 U.S. 866 (1951). *But see* Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967); Rzeszotarski v. Rzeszotarski, 296 A.2d 431 (D.C. Ct. App. 1972).

Article 7 of the Hague Convention states that recognition may not be denied solely because the law applied by the adjudicating court was not the law which would have been applied by the reviewing court. *See* Hague Convention, *supra* note 81, at 363. *See, e.g.*, Rzeszotarski v. Rzeszotarski, 296 A.2d 431 (D.C. Ct. App. 1972). For a discussion of due process as it relates to jurisdiction of foreign courts, *see* Zaphiriou, *supra* note 14, at 739. Uncertainty exists as to the result if jurisdiction were acquired in accordance with the law of the reviewing forum while the adjudicating court purported to act pursuant to a jurisdictional basis considered unsatisfactory by the reviewing forum. *Cf.* Supplementary Protocol to the Hague Convention, *supra* note 81, art. 2 (providing that recognition would, in such cases, be discretionary).

156. 46 So. 2d 464 (Fla. 1950), *petition denied*, 47 So. 2d 546, *cert. denied*, 340 U.S. 866 (1951).

157. 46 So. 2d at 467. The Cuban divorce action was brought by the husband on the grounds of desertion. The defendant wife had been a Florida resident for several years prior to the action. *Id.* at 467, 471 & n.1.

158. *Id.* at 468, 473. Although the defendant wife received only constructive notice in Cuba, she was aware of the action but chose to ignore it. *Id.* at 468.

159. *Id.* at 467.

160. *Id.* at 472.

161. *Id.* at 468. The court relied on United States Supreme Court opinions, stating that: "[I]n a divorce action where legally binding personal service had not been had upon

Pawley court, "[i]t is only in those cases wherein all parties litigant were personally (actually or by legally sufficient personal service of process) before the court that all justiciable controversies may be said to have been conclusively determined."[162]

Foreign judgments are also denied conclusive effect in Florida if the foreign court exercised improper jurisdiction over the subject matter. For example, Florida recognizes that jurisdiction is improper when a judgment was rendered by a tribunal of a nation in which neither party was domiciled. In *Schwartz v.*

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the defendant wife and where she had not voluntarily appeared, her right to the enforcement of a prior award of separate maintenance was not destroyed." *Id.* at 472. The court reasoned that the defendant wife had not had her day in court or an opportunity to be heard upon the subject of her right to alimony. The court found that the personal obligation of the husband to support his wife survived the adjudication of the marital status. *Id.* at 472-73. Upon dismissal of the wife's action for separate maintenance, the court suggested the proper action to be a suit for divorce on the statutory grounds of a spouse's prior foreign divorce and a request for relief by way of support or alimony. *Id.* at 474-75.

In an *in personam* alimony proceeding, proper jurisdiction must be demonstrated to be in accordance with Florida law. *See* Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1947); Jackson v. Stelco Employee's Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967). In *Ogden* the court did not recognize an English decree which had restored the conjugal rights of a United States domiciliary's English wife. The husband had been served with notice while in New York. He appeared before the English court only for the purpose of contesting the question of jurisdiction over his person. The Florida court found this basis of jurisdiction to be insufficient, declaring that "jurisdiction of the parties is the first prerequisite to a valid judgment in this country and it makes no difference whether the parties are lounge lizards or the highest ranking citizens." 159 Fla. at 610-11, 33 So. 2d at 874. Recognition was denied, notwithstanding a showing that pursuant to English law there had been proper jurisdiction. The court concluded that the English law of jurisdiction and due process were "so different from what we understand it to be in this country, and what our law requires to support it, that a judgment secured there in a case like this would not be recognized and enforced in Florida on the basis of international comity." *Id.*

162. 46 So. 2d at 473. It may be difficult to predict how flexible the Florida courts will be in recognizing status judgments from other nations. The *Pawley* court found that "Mrs. Pawley knew of the pending of the divorce action for she was given personal notice of the existence of the Cuban divorce suit in two separate occasions," and that "[s]ubstituted service conformable to the law of Cuba was had upon Mrs. Pawley." 46 So. 2d at 467. It is questionable what the court would have done if the law of the foreign nation did not even require substituted service in order to obtain jurisdiction over the defendant. For example, article 14 of the French Civil Code gives French courts *in personam* jurisdiction over the defendant whenever the plaintiff in the action is a French national. C. CIV. art. 14 (translated in A. VON MEHREN & D. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS, CASES AND MATERIALS ON CONFLICT OF LAWS 668 (1965)), Similarly, article 23 of the West German Code of Civil Procedure allows the court to adjudicate a matter based solely on the location of any property belonging to the nonresident defendant within the court's jurisdiction. German courts are authorized to take *in personam* jurisdiction over the defendant even when the asset had no relationship or minimal connection with the action initiated. ZPO §23 (1877) (translated in A. VON MEHREN & D. TRAUTMAN, *supra*, at 673-74). This basis of jurisdiction is similar to our *quasi-in-rem* jurisdictional basis except that, unlike the United States, a judgment will not be limited to the property located within the jurisdiction. The cause of action need not have any relation to the property attached as the jurisdictional basis. In these situations it would appear that even if a judgment was rendered in conformance with the jurisdictional requirements of the foreign nation, such a jurisdictional basis would be so inimical to Florida law and public policy that recognition might be denied. See text accompanying notes 197-205 *infra.*

Schwartz,[163] the appellate court denied recognition to a Mexican divorce decree which incorporated a separation agreement procured *ex parte* when neither party was a Mexican domiciliary.[164] Florida's recognition of status decrees will generally be limited to situations where at least one spouse was domiciled in the foreign court's jurisdiction.[165] It is uncertain whether recognition of status will be accorded where both parties were subject to the court's *in personam* jurisdiction, as in the case of "one-day" consent divorces.[166]

Proper jurisdiction in other types of *in rem* judgments depends upon the location of the res.[167] In *Atlantic Ship Supply, Inc. v. M/V Lucy*,[168] the district court considered an action brought by a Florida plaintiff to foreclose maritime liens for supplies furnished to a vessel while anchored in a Florida port. The plaintiffs alleged that when the vessel was later confiscated and sold by the Costa Rican government pursuant to a mortgage foreclosure, they were denied due process rights and were not bound by the decree ordering foreclosure and sale. The district court concluded that since the action was *in rem* and all procedural requirements were in accordance with Costa Rican law, the decree would be "binding on the entire world."[169] The court noted that *in rem* jurisdiction exists when the res is located within the jurisdiction and control of the court.[170] Because the foreign court had exercised proper jurisdiction over the subject matter, the Florida court held that the seizure of the "thing itself" was constructive notice sufficient to comply with due process requirements.[171]

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163. 143 So. 2d 901 (Fla. 2d D.C.A. 1962).

164. Citing *Pawley*, the *Schwartz* court declared that "to actuate the doctrine of judicial comity a foreign judgment must partake of the elements which would support it if procured in this country . . . ." *Id.* at 902.

165. *See, e.g.*, Willson v. Willson, 55 So. 2d 905 (Fla. 1951); Schwartz v. Schwartz, 143 So. 2d at 902. *See also* von Mehren & Trautman, *supra* note 11, at 1638.

The rationale behind this general rule is that because the marriage itself is the "thing" which follows the domicile of the parties, the court will have the power to adjudicate the status of the parties when the rest is within its territorial limits. *See* von Mehren & Patterson, *supra* note 12, at 50 n.66 (citing Litvaitis v. Litvaitis, 162 Conn. 540, 295 A.2d 519 (1972)).

166. *Compare* von Mehren & Patterson, *supra* note 12, at 50-51 (recognition will be limited to situations in which at least one spouse was domiciled within the court's jurisdiction or both parties were subject to the *in personam* jurisdiction of the court) *with* Ginsburg, *supra* note 17, at 732 (jurisdiction over the party will not extend if the defendant has appeared only to contest jurisdiction). *See also* Ogden v. Ogden, 159 Fla. at 607-09, 33 So. 2d at 873; Uniform Recognition Act, 13 U.L.A. §5(a)(2), at 269, 275 (1975). Although one of the parties is domiciled in the foreign nation at the time the judgment is rendered, the foreign country must have personal jurisdiction in compliance with Florida law to render an *in personam* judgment against the other party. See note 164 *supra*.

167. Neither the Uniform Recognition Act, see notes 66-75 *supra* and accompanying text; the European Convention, see note 79 *supra*; nor the United Kingdom-United States Convention, see note 82 *supra* and accompanying text, includes a provision dealing with jurisdiction in *quasi-in-rem* actions. However, under provisions 1 and 4 of the Supplementary Protocol to the Hague Convention, *supra* note 81, there may be a proper jurisdictional basis to render a *quasi-in-rem* judgment when the action is to assert a proprietary interest in the property attached. *See, e.g.*, Shaffer v. Heitner, 433 U.S. 186 (1977).

168. 392 F. Supp. 179 (M.D. Fla. 1975).

169. *Id.* at 181.

170. *Id.* at 182. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§56-65 (1971).

171. 392 F. Supp. at 181 (citing E. BENEDICT, THE AMERICAN ADMIRALTY, ITS JURISDICTION

Although Florida courts have provided flexible jurisdictional standards for adjudicating foreign status and other *in rem* actions, these standards preclude recognition when the jurisdiction and due process laws of the adjudicating nation are inimical to Florida's public policy.[172] Recognition has been denied to *in personam* judgments when the defendant was not served with process, either personally or through an authorized agent, within the jurisdiction of the adjudicating forum.[173] While this ground for denying recognition of *in personam* judgments has been accepted by some United States courts,[174] others have adopted increasingly expansive jurisdictional concepts based on "long-arm" contacts or relationships with the adjudicating nation. These courts hold that such contacts make it fair and reasonable to compel the defendant's attendance.[175] Nevertheless, "long-arm" jurisdiction has not been well received

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AND PRACTICE §231 (7th ed. 1950). The court also cited the 1929 Fifth Circuit case of Zimmern Coal Co. v. Coal Trading Ass'n of Rotterdam, 30 F.2d 933, 934 (5th Cir. 1929), in which, like *Atlantic Ship Supply*, the court found that the seizure would be "sufficient to impart notice" when an action is *in rem*.

172. See text accompanying notes 197-205 *supra*.

173. The court in Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967) denied recognition to an *in personam* money judgment rendered by a Canadian court without proper personal jurisdiction over the defendant. The judgment had been rendered in Canada against the Florida resident, although the defendant had not consented to the action by voluntary appearance and had not been properly served within the jurisdiction of the Canadian court. Jurisdiction was obtained by serving the "papers" upon the Florida defendants in Florida. The defendants asserted the affirmative defense that the Canadian court lacked *in personam* jurisdiction to enter the money judgment against them. The defense was dispositive of the action. The court noted that "a judgment of a foreign country entered under such circumstances did not comport with American ideals relating to 'due process' and should not be recognized in Florida under rules of comity." *Id.* at 670. *See also* Markham v. Nisbet, 60 So. 2d 393 (Fla. 1952); Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950).

174. *See, e.g.*, Banco Minero v. Ross, 138 S.W. 224 (Tex. Civ. App. 1911), *aff'd*, 106 Tex. 522, 172 S.W. 711 (1915). *See* Carl, *supra* note 68, at 683 n.20. *See also* H. GOODRICH, CONFLICT OF LAWS §§24-29 (3d ed. 1949). The Uniform Recognition Act, 13 U.L.A. §4(a)(2), at 269, 273 (1975), expressly provides that money judgments obtained when the foreign court has not acquired jurisdiction over the defendant's person will not be enforceable.

175. *See, e.g.*, Perrin v. Perrin, 408 F.2d 107 (3d Cir. 1969); Rosentiel v. Rosentiel, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), *cert. denied*, 384 U.S. 971 (1966); von Mehren, *supra* note 13, at 412 n.53 and cases cited therein. These expansive concepts of "long-arm" jurisdiction have been incorporated into the Uniform Recognition Act. See text accompanying notes 74-75 *supra*. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§27-39 (1971).

However, recognition of an *in personam* judgment will probably not extend if the judgment is rendered pursuant to an exorbitant jurisdictional basis. For example, in a 1968 paternity suit, an Austrian court acquired *in personam* jurisdiction over Jean Claude Killy by ordering the seizure of underwear left behind by the skier in an Austrian hotel. SKI NEWS INT'L, Feb. 3, 1968, at 1. The pertinent provision of the Austrian Code vests *in personam* jurisdiction over any person with assets of any value in Austria. Nadelmann, *supra* note 70, at 261. In France, article 14 of the Civil Code provides for *in personam* jurisdiction over any person if the plaintiff is a French national. *See* von Mehren, *supra* note 13, at 413 n.57. Under article 23 of the Code of Civil Procedure, West Germany, like Austria, is granted general jurisdiction over a person having any property located within that court's jurisdiction. *Id.* See note 162 *supra*. *See also* Zaphiriou, *supra* note 14, at 739 n.37 (citing DUNCAN & DYKES, PRINCIPLES OF CIVIL JURISDICTION 71-103 (1911) (Scottish law permits the court to

by Florida courts adjudicating foreign judgments against local domiciliaries.[176]

Insufficient Notice

The applicable standards for determining the adequacy of notice in the international context are similar to the standards applied in domestic proceedings.[177] This determination focuses on whether sufficient notice was received rather than whether notice was given in accordance with the laws of the foreign nation.[178] Insufficient notice exists not only when no notice is given but also when actual notice is given but does not adequately appraise the defendant of the nature or time of the proceeding or of the issues to be litigated.[179] In Florida, improper notice which is shown to have resulted in denial of the defendant's opportunity to be heard may be grounds for nonrecognition or nonenforcement of the foreign judgment.[180]

The notice required for an *in rem* action differs from that required for an *in personam* action. Personal notice is required for *in rem* actions; however, personal service is not necessary.[181] Substituted service may provide adequate notice, particularly when such service is in accordance with the law of the foreign tribunal and the manner of service is not contrary to the law and public policy of the state.[182] Seizure of the res will sufficiently impart notice,[183]

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exercise *in personam* jurisdiction by merely attaching an asset of the person located within the court's jurisdiction). Judgments obtained under these exorbitant jurisdictional bases will probably be denied recognition because they violate the state's public policy against improper jurisdiction over the United States domiciliary.

176. *See* Jackson v. Stelco Employees' Credit Union, Ltd., 203 So. 2d 669 (Fla. 4th D.C.A. 1967). See note 173 *supra*. For the view under the Uniform Recognition Act, see notes 74-75 *supra* and accompanying text.

177. *See* Reese, *supra* note 28, at 789 n.36 and cases cited therein.

178. Parker v. Parker, 155 Fla. 635, 637, 21 So. 2d 141, 142 (1945).

179. *Cf.* Bank of Montreal v. Kough, 430 F. Supp. 1243 (N.D. Cal. 1977) (sufficient notice includes consideration of the amount of time allotted to the defendant to enter an appearance); Julen v. Larsen, 25 Cal. App. 3d 325, 101 Cal. Rptr. 796 (Dist. Ct. App. 1972) (insufficient notice if complaint is in a language unknown to the party sought to be notified); Hager v. Hager, 1 Ill. App. 3d 1047, 274 N.E.2d 157 (1971) (no hearing date); Fantony v. Fantony, 21 N.J. 525, 122 A.2d 593 (1956) (inadequate appraisal of issues to be litigated).

180. Parker v. Parker, 111 Fla. 635, 637, 21 So. 2d 141, 142 (1945). This requirement is incorporated in the Uniform Recognition Act, 13 U.L.A. §4(b), at 269, 273-74, (1975), which provides that a foreign judgment "need not be recognized" if it is shown either that the defendant had no notice or that the notice did not allow him sufficient time to defend the action. Although this provision is discretionary, case law indicates that recognition will not be granted when the defendant did not have either actual or proper notice. *See In re* Estate of Paramythotis, 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). *See also* Julen v. Larsen, 25 Cal. App. 3d 325, 101 Cal. Rptr. 796 (Dist. App. 1972); Hager v. Hager, 1 Ill. App. 3d 1047, 274 N.E.2d 157 (1971).

181. See text accompanying notes 167-171 *supra*.

182. See text accompanying notes 156-162 *supra*, 197-205 *infra*. In situations in which sufficient notice is provided although not mandated, the difference in notice laws between the two jurisdictions will not in itself lead to nonrecognition. *See* von Mehren & Trautman, *supra* note 11, at 1663. *But see* Wuchter v. Pizzutti, 276 U.S. 13, 18-19 (1928) (Brandeis, Holmes, and Stone, J.J., dissenting) (sister-state judgment denied recognition); Boivin v. Talcott, 102 F. Supp. 979, 981 (N.D. Ohio 1951) (denied recognition to Canadian judgment by applying *Wuchter* because service by publication, as required by foreign law, was in-

although commentators contend that this is insufficient if a judgment is entered against a party whose interests were known to the foreign court but who was deliberately not notified.[184]

The degree of notice imparted in an *in personam* action is more strictly scrutinized and lacks the flexibility permitted in an *in rem* adjudication. If the defendant is not served personally within the jurisdiction and does not submit voluntarily to the foreign court's jurisdiction, the *in personam* judgment will not be recognized despite a showing of personal notice through substituted service in accordance with the foreign law.[185]

Foreign Law and Procedure Offensive to Natural Justice and Public Policy

The judgment may be denied recognition[186] if the challenging party can show that the law and procedure upon which the foreign court based its findings of fact were so arbitrary and capricious as to offend a United States court's sense of "natural justice."[187] In essence, this means that the foreign country in which the judgment was rendered must have an impartial, civilized system of jurisprudence.[188] The practical utility of this defense is minimal because most judgments for which execution is sought are rendered in nations with well-developed jurisprudential systems.[189]

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sufficient to impart notice although actual notice was received by mail); Ogden v. Ogden 159 Fla. at 611-13, 33 So. 2d at 875 (constructive notice through substituted service is insufficient to acquire jurisdiction over a United States domiciliary in an action for divorce and alimony).

183. In Atlantic Ship Supply, Inc. v. M/V Lucy, 392 F. Supp. 179 (M.D. Fla. 1975) *aff'd*, 553 F.2d 1009 (5th Cir. 1977), capture of the res was found to be sufficient to impart proper notice even though there had never been personal or other adequate substitute service to provide the affected party with notice of the pending sale. *See also* Zimmern Coal Co. v. Coal Trading Ass'n, 30 F.2d 933 (5th Cir. 1929). *But cf.* China Mutual Ins. Co. v. Force, 142 N.Y. 90, 36 N.E. 874 (1874) (notice of distribution of proceeds from the sale of salvage was required if the persons whose interest were affected were known, even though the actual order to sell was proper without notice).

184. *See* Peterson, *supra* note 35, at 228; von Mehren & Patterson, *supra* note 12, at 58.

185. See notes 156-162 *supra* and accompanying text.

186. *See* Golomb, *supra* note 27, at 626; Reese, *supra* note 28, at 795-96.

187. This precise term was used by the English courts. *See, e.g.*, Robinson v. Fenner, 3 L.J.K.B. 835, 842-43 (1913). The concept was later adopted by American states under a variety of labels. *See, e.g.*, Coulborn v. Joseph, 195 Ga. 723, 733, 25 S.E.2d 576, 581 (1943) (fundamental concepts of justice); Sawyer v. Maine Fire & Marine Ins. Co., 12 Mass. 291, 295 (1815) ("substantial requisite of judicial inquiry").

188. Hilton v. Guyot, 159 U.S. at 202; Mathor v. Lloyd's Underwriters, 174 So. 2d 71, 72 (Fla. 3d D.C.A. 1965). *See also* Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917). See note 234 *infra*.

189. *See* Golomb, *supra* note 27, at 626; von Mehren & Patterson, *supra* note 12, at 59 n.116. *But see* Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F. Supp. 892 (S.D.N.Y. 1968), *modified*, 433 F.2d 686 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971). In denying recognition to an East German judgment, the court considered a possible violation of "natural justice" because adjudications were not made by impartial arbiters. The federal district court characterized the East German court as one which orients its judgments "according to the wishes of the leaders of the socialist state" rather than as "an independent judiciary of the type found in the United States." 293 F. Supp. at 906. *Cf.* Zschernig v. Miller, 389 U.S. 429

Existence of the "natural justice" concept as a valid defense can be traced to *Hilton v. Guyot*.[190] The *Hilton* court recognized that the presence of "natural justice" was a prerequisite to the enforcement of a foreign judgment in this nation. The majority declared that the judgment must have been rendered "upon regular proceedings, after due citation or voluntary appearance . . . and under a system of jurisprudence likely to secure an impartial administration of justice. . . ."[191]

This defense would probably be recognized in Florida, although it has not been expressly invoked in this state. Its validity is indicated in two Florida cases. In *Mathor v. Lloyd's Underwriters*[192] the court granted recognition to a Bolivian customs judgment, reasoning that Bolivia was a "sovereign government with a civilized jurisprudence and laws regulating its custom matters."[193] Similarly, the court in *Parker v. Parker*[194] noted that foreign judgments would not be recognized if the foreign legal system contained no counterparts of good faith and due process.[195] A combined reading of these cases suggests that due process is at the heart of Florida's concept of "civilized jurisprudence" and "natural justice."[196]

In Florida, a foreign court decree will not be given effect under the rule of international and judicial comity if the objecting party demonstrates that recognition of the judgment would be "subversive of any Florida policy or interest."[197] A judgment is said to be adverse to public policy if the initial proceeding was conducted in a manner or based on a cause of action so repugnant

(1968) (criticism of foreign nation laws by individual states interferes with foreign diplomatic relations).

190. 159 U.S. 113 (1895).

191. *Id.* at 202.

192. 174 So. 2d 71 (Fla. 3d D.C.A. 1965).

193. *Id.* at 72.

194. 155 Fla. 635, 21 So. 2d 141 (1945).

195. According to the court, such judgments offend "the very bedrock on which our system of jurisprudence is constructed." *Id.* at 637, 21 So. 2d at 141. In addition, *Parker* demands that the judgment be rendered in "a system of jurisprudence likely to secure an impartial administration of justice between citizens of its own country and those of other countries . . . ." *Id.* at 637, 21 So. 2d at 142.

196. Pawley v. Pawley, 46 So. 2d at 467. In Banco Minero v. Ross; 138 S.W. 224 (Tex. Civ. App. 1911), *aff'd*, 106 Tex. 522, 172 S.W. 711 (1915), the Texas Supreme Court dealt with a situation in which a judgment had been rendered after summary proceedings denying the defendant a hearing and the subsequent denial of his appeal for failure to have sufficient documentary stamps on his papers. The court held that a judgment rendered under such a system of jurisprudence was inimical to this nation's fundamental concepts of due process and would not be recognizable. *Id.* at 536-37, 172 S.W. at 714-15.

197. Ogden v. Ogden, 159 Fla. 604, 610, 33 So. 2d 870, 874 (1947); Pawley v. Pawley, 46 So. 2d at 469. This defense is foreclosed as a matter of constitutional law in interstate cases. *See also* Fauntleroy v. Lum, 210 U.S. 230 (1908). *But see* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §117, Comment c (1971), which provides an exception to the constitutional obligation when dealing with foreign nation judgments. The standard is generally said to be that of repugnancy to fundamental notions of decency and justice in the state where enforcement is sought. Section (4)(b)(3) of the Uniform Recognition Act, 13 U.L.A. 269, 274 (1975), includes the provision that a foreign judgment need not be recognized if in the discretion of the reviewing court the judgment was based on a claim contrary to the state's public policy.

to the laws of the state that recognition of the judgment would be subversive to basic concepts of fairness.[198] Accordingly, Florida courts will refuse to recognize an adjudication based on a proceeding which failed to meet basic requirements of due process and fairness, contained elements of bad faith, or otherwise offended Florida law and policy.

Differences in law and practice of a foreign country from those of the reviewing forum do not mandate violations of Florida law and policy.[199] Case law from other jurisdictions indicates that recognition will not be denied automatically because, for example, the foreign country's rules of evidence are contrary to those of the state,[200] procedural rights differ,[201] or the foreign country creates presumptions not in harmony with those of the reviewing forum.[202] In addition, recognition might be granted although administrative procedures did not afford the defendant a hearing but provided instead for subsequent judicial review.[203] Recognition may also be accorded if the choice of law rules of the foreign state led to the application of a body of law which would not have been applied by the reviewing forum.[204] Conversely, Florida courts will deny recognition to a decree as a matter of public policy if the defendant has not been given a fair trial due to improper service or extrinsic fraud.[205]

Judgment Procured by Fraud

Fraud in procuring a foreign judgment has been acknowledged as another

198. Pawley v. Pawley, 46 So. 2d at 467. Examples of public policy violations are suits based on penal or fiscal laws, on local policy regulations, or upon actions repugnant to the public policy of the recognizing forum. *See, e.g.*, DeBrimint v. Penniman, 7 F. Cas. 309 (C.C.S.D.N.Y. 1873) (No. 3,715) (French court order to support son-in-law was unenforceable as contrary to public policy); Kordoski v. Belanger, 52 R.I. 268, 160 A. 205 (1932) (local character of judgment dealing with support order made it unenforceable); Rostron v. Rostron, 49 R.I. 292, 142 A. 162 (1928) (penal judgment inconclusive).

199. *See* von Mehren & Patterson, *supra* note 12, at 61-62 nn. 139-140 & 143-44. *See also* Naporany v. Kir, 5 App. Div. 2d 438, 173 N.Y.S.2d 146 (1958) (foreign judgment was enforced notwithstanding the nonexistence of such claim in New York).

200. Hilton v. Guyot, 159 U.S. at 204-05; Warren v. Warren 73 Fla. 764, 791-92, 75 So. 35, 44-45 (1917); Reese, *supra* note 28, at 795.

201. Hilton v. Guyot, 159 U.S. at 204.

202. *See, e.g.*, Newton v. Hunt, 59 Misc. 633, 112 N.Y.S. 573 (Sup. Ct. 1908), *modified*, 134 App. Div. 325, 119 N.Y.S. 3 (1909).

203. *See, e.g.*, Regierungspraesident Land Nordrhein-Westfalin v. Rosenthal, 17 App. Div. 2d 145, 232 N.Y.S.2d 963 (1962).

204. *See, e.g.*, Watts v. Swiss Bank Corp., 27 N.Y.2d 270, 279, 265 N.E.2d 739, 744, 317 N.Y.S.2d 315, 322 (1970). Interestingly, recognition was granted by a New York court to a foreign judgment based on a cause of action expressly repealed by statute in the reviewing state. Naporany v. Kir, 5 App. Div. 2d 438, 173 N.Y.S.2d 146 (1958). The New York court reasoned that the statute covered only acts committed within the jurisdiction. Accordingly, when such acts were committed in another nation, the repealing statute did not evince a strong public policy reason to foreclose enforcement of the foreign nation judgment. In contrast, the New York appellate court denied recognition to a foreign nation judgment that contravened a local policy disallowing actions against deceased persons. *In re* Estate of Davis, 31 Misc. 2d 270, 219 N.Y.S.2d 533 (Sup. Ct. 1961), *aff'd*, 16 App. Div. 2d 683, 227 N.Y.S.2d 894 (1962).

205. *See, e.g.*, Parker v. Parker, 155 Fla. 635, 21 So. 2d 141 (1945).

defense against its recognition and enforcement.[206] Fraud can exist in either extrinsic or intrinsic form.[207] Extrinsic fraud includes acts which occur outside the proceeding itself and prevent the unsuccessful party from having a fair trial. For example, extrinsic fraud is demonstrated when the prevailing party in the original action willfully prevented the unsuccessful party from participating in the foreign proceeding.[208] Intrinsic fraud consists of acts which occur in the proceeding before the foreign court and are material in determining the initial outcome. Such acts include perjury, misrepresentations and the use of forged evidence or unauthenticated documents.[209]

The landmark case of *Hilton v. Guyot*[210] laid the foundation for the validity of the fraud defense. The American defendant in *Hilton* challenged the foreign decree's enforceability by alleging that the French creditor had procured the judgment by fraudulent misrepresentations concerning the amount of his claims. According to the court, these misrepresentations constituted intrinsic fraud.[211] The Court noted that extrinsic fraud was usually required to defeat recognition or to impeach a domestic judgment. However, because the case was not decided on the issue of fraud, the question of whether intrinsic fraud would be sufficient to impeach a judgment from abroad was left unanswered.[212]

The Supreme Court of Florida confronted a judgment allegedly procured by extrinsic fraud in *Parker v. Parker*.[213] The divorce decree presented for defensive recognition had been awarded to the husband by a Cuban court while his wife was in the United States. The husband had advised the foreign court that proper service of the divorce petition was impossible because his wife's whereabouts were unknown to him. Consequently, the Cuban court allowed service by publication. It was learned later that Mr. Parker did know the location of his spouse throughout the proceeding. It was not until after the final decree had been entered and upon her return to the island that Mrs. Parker

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206. *See, e.g.*, Title Ins. & Trust Co. v. California Dev. Co., 171 Cal. 173, 152 P. 542 (1915). *See also* §4(b)(2) of the Uniform Recognition Act, 13 U.L.A. 269, 273 (Supp. 1977); United Kingdom-United States Convention, Oct. 26, 1976, art. 7(b) (*reprinted in* 16 INT'L LEGAL MAT. 71 (1977)). *But see* Cardy v. Cardy, 23 App. Div. 2d 117, 258 N.Y.S.2d 955 (1965).

207. *See* Zaphiriou, *supra* note 14, at 743-44; *Equitable Relief Against an Award Obtained by Perjury: The Extrinsic-Intrinsic Fraud Distinction*, 36 ILL. L. REV. 894, 895 (1941).

208. Tamimi v. Tamimi, 38 App. Div. 2d 197, 328 N.Y.S.2d 477 (1972). *See also* von Mehren & Patterson, *supra* note 12, at 60 nn.123-125 and cases cited therein; Zaphiriou, *supra* note 14, at 743-44.

209. *See* Zaphiriou, *supra* note 14, at 743.

210. 159 U.S. 113 (1895).

211. 159 U.S. at 207-10.

212. *Id. See* Reese, *supra* note 28, at 794 & n.59; *Accord*, McKay v. McAlexander, 268 F.2d 35 (9th Cir. 1959); Harrison v. Triplex Gold Mines, Ltd., 33 F.2d 667 (1st Cir. 1929); Lucas v. Lucas, 232 F. Supp. 466, 467-68 (D. Canal Zone 1964); Harges v. Harges, 46 Misc. 2d 994, 261 N.Y.S.2d 713 (Sup. Ct. 1965); Ginsburg, *supra* note 17, at 727. One commentator has noted: "American courts will ordinarily enforce a foreign judgment where the fraud alleged is deemed intrinsic, *i.e.*, where the [foreign] court had the opportunity to pass upon it." Golomb, *supra* note 27, at 626.

213. 155 Fla. 636, 21 So. 2d 141 (1945).

learned of her divorced status.[214] Reasoning that the decree had not been obtained through "good faith and due process,"[215] the Florida court denied recognition to the Cuban decree. Thus, *Parker* illustrates that a foreign judgment procured by extrinsic fraud will not be recognized.[216]

Nonfinality of the Decree

All jurisdictions allow a party to plead lack of finality of a foreign judgment as a defense to a petition for recognition of the judgment.[217] A final judgment has been defined as one which "determines and disposes of the whole merits of the cause before the Court by declaring that the plaintiff either is or is not entitled to recover by the remedy chosen, or completely and finally disposes of a branch of the cause which may be separate and distinct from other parts thereof."[218] In determining whether a judgment is final, the reviewing court will look to the law of the rendering forum to ensure that a decree will not be accorded greater effect in the reviewing jurisdiction than it would have been given by the rendering court.[219]

Nonfinality may preclude recognition if the foreign decree is either interlocutory or modifiable.[220] Judgments which are provisional, temporary, or subject to further judicial consideration are considered interlocutory.[221] Modifiable judgments, which include judgments for maintenance, custody, or alimony, may be altered upon a showing of changed circumstances.[222] If a decree is not final because it is subject to appeal, the reviewing court may, in its discretion, either enforce the judgment or permit a stay in the proceeding until the appeal is heard by the foreign court and a final judgment is entered.[223] The general

214. *Id.* at 636, 21 So. 2d at 141. It was shown that Mr. Parker had been sending his wife remittances while he was in Cuba and she in the United States. *Id.*

215. *Id.* at 637, 21 So. 2d at 141.

216. Jurisdictions other than Florida have also recognized that the presence of extrinsic fraud will impeach a foreign judgment. See cases cited in note 212 *supra.*

217. *See* Ogden v. Ogden, 155 Fla. at 609, 33 So. 2d at 874.

218. Irving Trust Co. v. Kaplan, 155 Fla. 120, 125, 20 So. 2d 351, 354 (1944).

219. *See* Ginsburg, *supra* note 17, at 728; Zaphiriou, *supra* note 14, at 747. *See also* Ramm v. Ramm, 34 App. Div. 2d 667, 310 N.Y.S.2d 111 (1970), *aff'd*, 28 N.Y.2d 892, 271 N.E.2d 558, 322 N.Y.S.2d 726 (1971). *But see* Flota Maritima Browning de Cuba, Sociedad Nononima v. Motor Vessel Ciudad de la Habana, 218 F. Supp. 938 (D. Md. 1963), *aff'd*, 335 F.2d 619 (4th Cir. 1964). *See generally* Gutteridge, *Reciprocity in Regard to Foreign Judgments*, 13 BRIT. Y.B. INT'L 49 (1932).

220. *See, e.g., In re* Cleland's Estate, 119 Cal. App. 2d 18, 258 P.2d 1097 (1953); Willson v. Willson, 55 So. 2d 905 (Fla. 1951); *In re* Rutherford, 182 Misc. 1019, 46 N.Y.S.2d 871 (Sup. Ct. 1944). *See also* von Mehren & Patterson, *supra* note 12, at 69; Zaphiriou, *supra* note 14, at 747.

221. von Mehren & Patterson, *supra* note 12, at 69.

222. Willson v. Willson, 55 So. 2d 905, 906 (Fla. 1951). Section 1(2) of the Uniform Recognition Act, 13 U.L.A. 269, 271 (1975), precludes the recognition of "a judgment for support in matrimonial or family matters."

223. *Compare* Algazy v. Algazy, 135 N.Y.S.2d 123 (Sup. Ct. 1954), *aff'd*, 285 App. Div. 2d 1140, 142 N.Y.S.2d 365 (1955) (New York court entertained action while French alimony proceeding was pending), *with* Oakland Truck Sales, Inc. v. United States, 149 F. Supp. 902 (Ct. Cl. 1957) (action stayed pending final adjudication of foreign proceeding). Section (2) of the Uniform Recognition Act, 13 U.L.A. 269, 271 (1975), provides for recognition and en-

rule dealing with modifiable judgments focuses on the conditions necessary for modification by the foreign court. Such a judgment may be modified by the reviewing court to the extent that the rendering court could modify it, and the judgment be enforced to the extent that it is shown to be final and conclusive under the laws of the rendering forum.[224]

Prior Satisfaction of the Judgment

The general rule applicable to interstate judgments regarding payment or other discharge of debt in accordance with the decree is also applicable in the international context.[225] The rule states that if a judgment is entered in one state, reduced to judgment in a second state, and subsequently satisfied in either state, such satisfaction is a conclusive defense to an attempt to enforce the same claim in the courts of the other state. In the international context there is an added variable of varying national currencies and fluctuations in currency exchange rates which may affect the application of this defense of "satisfaction of judgment." Florida follows the rule that the measure of a foreign money judgment presented to a court for recognition and execution is equal to the value in United States dollars of the amount awarded by the foreign court.[226] However, the applicable rate of exchange could be the rate when suit was filed in Florida, when the Florida court recognized the foreign judgment,[227] or when the foreign court granted the initial award to the creditor.[228]

Although no Florida case has dealt with this alternative exchange date

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forcement of money judgments which are "final and conclusive and enforceable where rendered even though an appeal therefrom is pending or . . . [the judgment] is subject to appeal." In addition, §6 of the Uniform Recognition Act, 13 U.L.A. at 276, permits a stay of the enforcement procedings pending final adjudication by the foreign court.

224. Willson v. Willson, 55 So. 2d 905, 906 (Fla. 1951). *See also* Herczog v. Herczog, 180 Cal. App. 2d 318, 9 Cal. Rptr. 5 (1960); von Mehren & Patterson, *supra* note 12, at 48; von Mehren & Trautman, *supra* note 11, at 1657-58. *Cf.* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §109, Comment d (1971) (respondent given the same opportunity to relitigate as would have been afforded by the original court).

When confronted with two inconsistent foreign judgments, a court will apply the general rule applicable to sister-state judgments. The later judgment will prevail unless shown to be void by any res judicata or collateral estoppel effect. *See, e.g.*, Bata v. Bata, 39 Del. 258, 163 A.2d 493 (1960), *cert. denied*, 366 U.S. 964 (1961); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §114 (1971); von Mehren & Patterson, *supra* note 12, at 70 nn. 185-186 and cases cited therein. *See generally* Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-In-Time Rule for Conflicting Judgments*, 82 HARV. L. REV. 798 (1969).

225. *See* Reese, *supra* note 28, at 798-99.

226. Jackson v. Stelco Employees' Credit Union, Ltd., 178 So. 2d at 60. In addition, courts have generally held that interest accrued from the date of the initial foreign judgment may be awarded. *See* Island Territory of Curacao v. Solitron Devices, Inc., 356 F. Supp. 1 (S.D. N.Y. 1973).

227. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §101, Comment d (1971); Riesenfeld, *Collection of Money Judgments in American Law: A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155 (1957); von Mehren & Patterson, *supra* note 12, at 76.

228. *See generally* Jones, *The Spurious Judgment Day Rule for Converting Foreign Currency into Dollars: What Suit is Brought Upon an Obligation Governed by Foreign Law*, 3 INT'L LAW. 277 (1969).

problem, a 1928 New York case addressed the issue. In *In re James' Will*,[229] the court was faced with a conversion of French francs to dollars. Originally, the judgment was rendered for the creditor in New York for the amount of 65,133.25 dollars. This judgment was then taken before the French court for recognition and was reduced to a judgment for 2,300,000 francs.[230] The French court set the exchange rate as of the date the American judgment was presented for recognition. When the amount awarded by the French court was finally paid, the francs vis-à-vis the dollar had been greatly devalued, and the creditor received an amount much less than that which had been awarded by the New York court. The creditor returned to the New York courts, requesting that he be paid the difference between the United States dollar judgment and the judgment of the French court.[231] In a 5-4 decision, the court recognized the defense of total discharge and full payment of the judgment. It was shown, however, that the creditor, when presenting the judgment for enforcement in France, requested that the exchange date be that of commencement of the suit rather than the date of actual payment.[232]

Default Judgments

Although the question has come before other courts,[233] there is no Florida case specifically addressing the treatment to be accorded to foreign nation default judgments.[234] Generally, the rule applicable to interstate judgments has been extended to international adjudications. In the interstate context, a default judgment rendered by a court of a sister state will be regarded as conclusive on the merits and will be enforced, unless the party opposing its recognition produces substantial evidence showing grounds for nonrecognition, such as lack of jurisdiction or denial of fundamental due process.[235] In the

229. 248 N.Y. 1, 161 N.E. 201 (1928).

230. *Id.* at 2, 161 N.E. at 202.

231. *Id.*

232. *Id.*

233. British Midland Airways, Ltd. v. International Travel, Inc., 497 F.2d 869 (9th Cir. 1974). Action was initiated to enforce a default judgment obtained in England. In recognizing the foreign judgment, the Ninth Circuit stated: "We agree in this case with the Third Circuit's view, stated in a similar British default case, that 'English procedure comports with our standards of due process.' It has long been the law that unless a foreign country's judgments are the result of outrageous departures from our own notions of 'civilized jurisprudence,' comity should not be refused." *Id.* at 871 (citing Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 444 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

234. The Florida supreme court, however, has considered default-type judgments, although that term has not been employed. In Parker v. Parker, 155 Fla. 635, 21 So. 2d 141 (1945), recognition was denied a divorce judgment entered by a Cuban court when the defendant wife did not respond. The court never discussed the default-nature of the judgment. Nevertheless, the court's denial of recognition indicated that default judgments will not be recognized, even defensively, if there was a major defect, such as improper notice or extrinsic fraud. *Id.* at 637, 21 So. 2d at 142. In another status adjudication, on the other hand, the court recognized a judgment notwithstanding its default nature. Pawley v. Pawley, 46 So. 2d 464 (Fla. 1950), *petition denied*, 47 So. 2d 546, *cert. denied*, 340 U.S. 866 (1951).

235. *See* von Mehren & Patterson, *supra* note 12, at 56. *See, e.g.*, Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017

same manner, foreign default judgments will be recognized as long as requirements such as jurisdiction, notice and opportunity to be heard are satisfied.[236]

Government Claims

Judgments which involve the penal and revenue laws of a foreign nation will generally not be enforced by the reviewing court.[237] The identity of the plaintiff as a sovereign, however, is not automatically determinative of whether a judgment entered in favor of the government is enforceable.[238] A judgment is not enforceable if an action was initiated by the foreign government in furtherance of its interest in public justice.[239] Similarly, money judgments for tax claims of the sovereign will not be enforceable.[240]

A penal decree that is not enforceable may be recognizable to the extent that it conclusively determines the violation of the foreign penal law. This "defensive recognition" is significant, for example, when presenting the defense of double jeopardy, or when the question of whether there was a violation of the foreign penal law is material in determining the outcome of a subsequent action.[241] In such situations, Florida courts could recognize a penal decision of a foreign court without imposing the penalty.[242]

FLORIDA JUDGMENTS ABROAD — THE CASE FOR CODIFICATION

While this note has examined the recognition and enforcement of a foreign judgment in Florida, the reverse situation, in which an unsatisfied judgment rendered by a Florida court is taken to a foreign nation's court for recognition and enforcement, must also be considered. The question posed is whether the foreign court will accord the same generally favorable treatment granted to foreign judgments by Florida courts or whether the issues must be relitigated. This section will deal briefly with the enforcement of Florida judgments in other nations and the potential effect of codification of Florida's common

(1972); New Cent. Jute Mills Co. v. City Trade & Indus., Ltd., 65 Misc. 2d 653, 318 N.Y.S.2d 980 (Sup. Ct. 1971). Because of the increased possibility of unfairness in these judgments, courts might be more hesitant to grant the judgments conclusive effect. *See* Lorenzen, *The Enforcement of American Judgments Abroad*, 29 YALE L.J. 268, 281 (1920).

236. In Boivin v. Talcott, 102 F. Supp. 979 (N.D. Ohio 1951), a Canadian default judgment was denied recognition when personal service was had, although only service by publication was required under the foreign law.

237. *See* von Mehren, *supra* note 13, at 403 n.10. *See generally* Stoel, *The Enforcement of Foreign Non-Criminal Penal and Revenue Judgments in England and the United States*, 16 INT'L & COMP. L. Q. 663 (1967).

238. von Mehren & Patterson, *supra* note 12, at 64.

239. *Id.* at 64 n.151. For example, the judgment is not enforceable in a penal action as opposed to an action which was private or commercial in nature.

240. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §120 (1971).

241. *See generally* Frank, *An International Lawyer Looks at the Bartkus Rule*, 34 N.Y.U.L. REV. 1096, 1098 (1959); Pye, *Effects of Foreign Criminal Judgments Within the United States*, 32 U. MO. L. REV. 114 (1964). Exceptions to the general rule of nonrecognition arise in the field of immigration, in which a penal decree may bar an alien from admittance to the United States, United States *ex rel.* Robinson v. Day, 51 F.2d 1022 (2d Cir. 1931), or to impeach the credibility of a witness, 3 WIGMORE EVIDENCE §§980, 987 (3d ed. 1940).

242. Mathor v. Lloyd's Underwriters, 174 So. 2d 71 (Fla. 3d D.C.A. 1965).

law on judgment recognition. Included is a summary of the basic problems which may arise when the Florida practitioner is called upon to seek execution of a Florida judgment in a foreign nation.

The treatment granted to a Florida judgment in a foreign court will generally fall into one of three groups. First, the country may adhere to a policy which totally precludes the enforcement of foreign judgments absent an effective mutual enforcement treaty with the rendering nation.[243] In this situation there is little chance of direct recognition and enforcement of the Florida judgment. The second group consists of countries which do not absolutely forbid recognition and enforcement of foreign adjucations, but will not grant the judgment a conclusive or binding effect. In this situation, the Florida judgment may be wholly or partly reopened and certain issues may be subjected to further findings of fact and law.[244] Finally, there are nations which require, as a prerequisite to recognition of a foreign judgment, a satisfactory showing of the existence of reciprocal recognition by the rendering nation.[245]

Because the United States is not a party to any judgment recognition treaty,[246] a Florida practitioner seeking enforcement of a judgment in one of the countries which expressly forbids enforcement of foreign decrees absent such a treaty must seek the services of an attorney in the foreign country to initiate a new suit on the underlying cause of action.[247] Despite nonenforcement of judgments in such nations, however, foreign adjudications have sometimes been defensively recognized to bar a previously unsuccessful party from initiating an action already fairly and finally adjudicated by the foreign court.[248]

In those countries which do not enforce a foreign judgment although enforcement is not expressly forbidden by their code, judgments rendered abroad are subject to *revision au fond*, a term of French origin similar to the American trial de novo. The extent of and conditions for review vary among countries.[249] In seeking enforcement of a Florida judgment in a country per-

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243. See text accompanying notes 247-248 *infra*. For example, enforcement of foreign judgments in the Netherlands is expressly forbidden unless a treaty has been concluded with the judgment-rendering nation. *See* Nadelmann, *Jurisdictionally Improper Fora in Treaties on the Recognition of Judgments: The Common Market Draft*, 67 COLUM. L. REV. 995, 996 n.8 (1967); von Mehren & Trautman, *supra* note 11, at 1608.

Other nations which do not enforce foreign judgments in the absence of a treaty are Denmark, Finland, Iceland, Norway and Sweden. *See* Nadelmann, *supra* note 71, at 245, 249. In Sweden, however, a judgment which is constitutive in nature, such as a divorce, is enforceable if the adjudicating court had proper jurisdiction pursuant to Swedish law. *See* Note, *Reciprocal Enforcement of U.S. and Foreign Judgments*, 2 TEX. INT'L L.F. 95 n.75 (1966). *See generally* R. KOLLEWIJN, AMERICAN-DUTCH PRIVATE INTERNATIONAL LAW 34-36 (2d ed. 1971); Kulzer, *supra* note 76, at 110; Smit, *International Res Judicata in the Netherlands: A Comparative Analysis*, 16 BUFFALO L. REV. 165 (1966).

244. See text accompanying note 249 *infra*.

245. See text accompanying notes 250-253 *infra*.

246. See text accompanying notes 76-82 *supra*.

247. *See* R. KOLLEWIJN, *supra* note 243, at 79.

248. von Mehren & Trautman, *supra* note 11, at 1602. *See also* R. KOLLEWIJN, *supra* note 243, at 34-38.

249. For a detailed review of the development of the *revision au fond* doctrine in France

mitting either partial or total *revision au fond,* the Florida plaintiff should seek the services of counsel from the foreign nation prior to pursuing the matter.

The requirements of reciprocal recognition as a prerequisite to the granting of conclusive effect to foreign adjudications[250] usually provides that a foreign nation's judgment will be enforced only to the extent that a valid judgment from the reviewing nation would be enforced in the judgment-rendering nation. The reciprocity rule is widespread.[251] It is therefore in-

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and elsewhere in relation to the status of Florida judgments abroad, *see generally* Nadelmann, *French Courts Recognize Foreign Money-Judgments: One Down and More to Go,* 13 AM. J. COMP. L. 72-80 (1964); Nadelmann, *supra* note 70.

250. The reciprocity requirement evolved from a retaliatory policy. *See, e.g.,* Lenhoff, *Reciprocity in Function: A Problem of Conflict of Laws and International Law,* 15 U. PITT. L. REV. 44 (1953). *See generally* Lenhoff, *supra* note 69.

251. The requirement has been incorporated into the codes of Argentina, Austria, Chile, Columbia, Denmark, Germany, Japan, Lebanon, Mexico, Monaco, Spain, Switzerland, Uruguay and Venezuela. *See* Clare, *Enforcement of Foreign Judgments in Spain,* 9 INT'L LAW. 509, 510 nn.4 & 5 (1975).

To illustrate, Spain previously recognized judgments from some countries and rejected others based solely on lack of reciprocity. The controlling provisions are found under article II of the Codigo Civil and declare that "prohibitive laws concerning persons, their acts, or property,' and those laws which have as their object the preservation of 'good morals' and 'public order' can in no wise be 'affected by . . . judgments . . . of a foreign country.'" Clare, *supra,* at 511. LEY DE ENJUICIAMIENTO CIVIL arts. 952-954 (cited in Clare, *supra,* at 510, nn.4 & 5) correspond to the Code provisions; article 953 states: "If the final judgment comes from a nation whose jurisprudence does not give effect to Spanish judgments, it will not be recognized in Spain." Article 954 determines: "If none of the cases referred to in the preceding articles are applicable, final judgments will be enforceable in Spain if they meet the following requirements: (1) that the final judgment would have been entered as a result of a personal action; (2) that it would not have been entered by default; (3) that the obligation it creates is legal in Spain; (4) that the official certification of the record of the case meets the requirements of the nation wherein it was entered, in addition to those requirements of Spanish law necessary for its recognition."

Several examples demonstrate how the Spanish courts have applied their reciprocity provision. In one case, a French judgment against a Spanish corporation was presented for enforcement to a Spanish court by a French plaintiff. Decree of March 24, 1935, Vide Aranzadi, "Reportorio de Jurisprudencia," No. 621, p. 268 (1935) (cited in Clare, *supra,* at 512 n.9). Recognition was denied because France did not give conclusive treatment to final decrees of Spanish courts. However, in another case the Spanish court found an Argentinian judgment conclusive even though it was not shown that the foreign nation would similarly recognize Spanish judgments. *See* Decree of Oct. 28, 1935. Vide Aranzadi "Reportorio de Jurisprudencia," No. 2041, p. 895 (1935) (cited in Clare, *supra,* at 512 n.10). The court applied article 954. On occasion, Spanish courts have denied recognition to judgments from Belgium, England, Portugal, and Uruguay based solely on the reciprocity element, although judgments rendered in Mexican courts have been enforced in Spanish territory. *See* Clare, *supra,* at 512-13 nn.11-16. For further discussion of Spain's substantive and procedural laws governing foreign judgments, *see generally,* Clare, *supra,* at 509-15; Schwartz, *Enforcement of Judgments Obtained Under Statute Typified by the "Long-Arm" and "Single-Act" Statutes In Spain,* 1964 A.B.A. PROCEEDINGS 235-36 (as cited in Homburger, *supra* note 28, at 370 n.13).

For examples of reciprocity provisions in other nations, *see* MENDOZA CODE CIV. AND COM. P., art. 500 (Argentina); CODE OF CIV. P. art. 243 (1903) (Chile); Judicial Code arts. 555-556 (1931) (Columbia); CODE OF CIV. P. arts. 512-13 (1879) (Uruguay); CODE CIV. P. art. 747 (1916) (Venezuela). *See also* Baech, *Enforcement of Judgments Obtained Under Statutes Typified by "Long-Arm" and "Single Act" Statutes in Austria,* 1964 A.B.A. PROCEEDINGS 210-11

evitable that Florida practitioners will frequently be asked to prove the existence of reciprocal recognition in Florida to the satisfaction of a foreign court. Where the reciprocity requirement exists, the Florida practitioner should inquire as to the methods available for its satisfaction. Some nations acknowledge the existence of reciprocity only upon certification by the foreign government, while others permit the reviewing court to make the final determination.[252] Because neither federal law nor multiple international treaties are likely to soon come into existence, resolution of the problem of judgment recognition[253] will be left to the individual states.

It is difficult to determine with any degree of accuracy the precise requirements for recognizing and enforcing a foreign judgment in Florida because of the scarce and disjointed Florida case law dealing with judgment recognition practices. Furthermore, assuming that the sparse judge-made law of Florida could be compiled to demonstrate the common law requirements for conclusive treatment and the frequency of enforcement of foreign judgments in the state, the problem of comprehension of the common law by foreigners would persist. Nations with the reciprocity requirement are generally those in which the legal system is founded on the supremacy of code law rather than on the

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(cited in Homburger, *supra* note 28, at 370 n.11); Law on Judicial Administration, Oct. 1, 1936, No. 212, §§223(a), 479 (Denmark) (cited in Nadelmann, *supra* note 70, at 249 n.104); ZPO art. 328 (Germany) (cited in Note, *supra* note 243, at 94 n.70). It has been suggested that the German requirement of reciprocity may affect the ruling of the French Cour de cassation regarding giving effect to a foreign judgment. *See* Kulzer, *supra* note 76, at 113-14. It has also been suggested recently that the reciprocity requirement has been so weakened by the German high courts as to permit them to disregard the requirement in most cases. In addition, common law judgments are now recognized in Germany if the defendant under the foreign law is "precluded from attacking a German judgment on the basis of supervening fact." *See* Carl, *supra* note 68, at 687 n.54 (citing 2 A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW 53 (1973)). *But see* Kulzer, *supra* note 76, at 113.

Although individual Mexican state codes regulate the treatment accorded foreign judgments, the reciprocity requirement is evident in all. *See* MEXICO FED. DIST. CODE CIV. P., art. 604 (6th ed. 1973). *See also* MINJI SOSHŌ HŌ, 1926 (CODE CIV. P. OF JAPAN §200) (translated in DEBECKER, CODE OF CIV. P. OF JAPAN (1928) and cited in Nadelmann, *supra* note 70, at 249 n.106); CODE CIV. P., art. 473 (1896) (Monaco) (cited in Nadelmann, *supra* note 70, at 249 n.108.

Numerous Swiss cantons have included the reciprocity requirement. For example, Basel-City and Zurich require reciprocity. ZPO art. 258 (Feb. 8, 1975); Gesamtausgabe de Basler Gesetzsammlung bis 1929 (1939); Zivilprozessordnung art. 377, (Apr. 13, 1913). *See* Note, *supra* note 243, at 96 n.79. Geneva and Bern, on the other hand, no longer have the requirement. *Id.* at 96.

252. Germany, for example, permits the reviewing court to determine the existence or nonexistence of reciprocity. Nadelmann, *supra* note 70, at 252-53. In an early German case, *Rhein and Mosel Feuerversicherungsaktiengesellschaft*, Mar. 26, 1909, 70 RGZ 434 (cited in Note, *supra* note 243, at 82 n.26), a German fire insurance company was sued in California for failure to pay claims resulting from the San Francisco fire. The German court refused to accord recognition because of its finding that reciprocal recognition was not accorded to German judgments in California. *See* Nadelmann, *supra* note 70, at 253.

253. A ground suggested for the present nonexistence of treaties dealing with foreign judgment recognition is this nation's federal system. Only the federal government is permitted to negotiate treaties and enforcement and recognition of foreign judgments is regulated by state law. *See* Ginsburg, *supra* note 17, at 733. See text accompanying notes 40-59 *supra*.

doctrine of judicial precedent or stare decisis.[254] These civil law nations, unaccustomed to the value placed by this nation's courts on judge-made law, might refuse to accept case law proof of existing reciprocal recognition.[255] Thus, the foreign court would not determine nor would the foreign government certify that this state conclusively recognizes and enforces its judgments. Consequently, the Florida judgment would not be enforced.

Civil law nations which require reciprocity will accept a statute from the judgment-rendering state as proof of this element.[256] This form of proof is unavailable to the Florida practitioner seeking to enforce his client's claim in the nations requiring reciprocity because of the nonexistence of an express Florida statute on judgment recognition. The practitioner also has the difficult burden of proving to the satisfaction of foreign courts that Florida's uncertain common law accords conclusive effect to foreign judgments. A viable solution to promote recognition of Florida judgments abroad must be formulated to ease the Florida practitioner's burden.

CONCLUSION

This note has presented a discussion of the elements to consider when confronted with questions pertaining to the recognition and enforcement of foreign judgments in Florida and Florida judgments abroad. At present, the substantive law governing recognition and enforcement of foreign judgments in Florida is found in Florida case law, rather than in any federal common law, statute or treaty. Nevertheless, because of the nexus with foreign affairs and the trend of the federal judiciary to assume power to adjudicate such matters, the question of which law governs, if again confronted by the United States Supreme Court, could be decided in favor of a federal law mandating national uniformity.[257] If the Court does not choose to establish substantive rules under a federal common law, a national solution to the recognition and enforcement problem could take the form of additional bilateral or multilateral treaties,[258] nationwide adoption of uniform laws,[259] or enactment of preemptive legislation by the federal government.[260] However, until further

254. Nadelmann, *supra* note 70, at 252. *See also* R. SCHLESINGER, COMPARATIVE LAW 177 (2d ed. 1959): "The court in . . . civil law jurisdictions will carefully examine the pertinent [Florida] 'Code' and will infer from its silence that in [Florida] there exists no provision whatsoever for the enforcement of foreign judgments."

255. For example, a 1953 German Commentary on the Code of Civil Procedure contained a list of 53 nations fulfilling its reciprocity requirement. The United States was not among them because: "Foreign judgments are to a large degree recognized by the decisions of the courts—which, in the main, constitute the sole source of law—but a possibility for reexamining the substance remains to a certain extent. Reciprocity, therefore, cannot be considered as guaranteed." 1 STEIN & JONAS, KOMMENTAR ZUR ZIVILPROZESSORDNUNG, Comment VIII E. to §32B (18th ed. 1953) (cited in Nadelmann, *supra* note 70, at 253 nn.132-33). *See also* Carl, *supra* note 68, at 687 n.55.

256. Carl, *supra* note 68, at 687.

257. See text accompanying notes 40-59 *supra*.

258. See text accompanying notes 76-82 *supra*.

259. See text accompanying notes 66-75 *supra*.

action is taken, state law will continue to govern. Consequently, the problem of showing reciprocal recognition of foreign judgments will persist.[261]

The problem of reciprocity is particularly acute in relation to Florida judgments because of the uncertain status of the rule of reciprocity in Florida. For example, if a foreign court seeking to satisfy its reciprocity element looked to Florida's case law, it could conclude that Florida's rule is to recognize foreign judgments only to the extent that Florida judgments are recognized in the rendering nation.[262] This could result in nonrecognition of the Florida judgment if Florida has not yet recognized any judgment of the foreign nation. The resulting deadlock on the recognition issue would further neither the goal of uniform and stable international recognition nor the goal of enforcement of judgments.

The requirement of reciprocity is undesirable and has been criticized frequently by legal scholars.[263] It is unfair to impose a penalty on private litigants for the position taken by their government.[264] In practice, the requirement does not further its assumed purpose of assuring that foreign governments will grant conclusive treatment to the nation's adjudications.[265] Instead, the

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260. See text accompanying notes 26-27 *supra.*

261. See text accompanying notes 250-256 *supra.*

Another relevant illustration of the requirement of reciprocal recognition is found in Mexican law. In Mexico, money judgments from a foreign court will be recognized and enforced if foreign nation court would accord reciprocal enforcement to similar judgments rendered by Mexican courts or if there is an effective treaty requiring that judgments from the foreign nation courts be recognized and enforced. Procedurally, a United States judgment is enforceable if the following formalities are met: "1. — That the judgment is rendered as a consequence of a personal claim against the defendant. 2. — That the obligation of the defendant for which he has been found liable is a lawful obligation in the Republic of Mexico. 3. — That the defendant has been personally notified to appear before the Court to defend himself. 4. — That the judgment is final in accordance with the United States law; that is to say that either no further remedy is available or the time for asking for such remedy has expired. 5. — That the judgment fulfills all the necessary requirements to be considered as authentic. 6. — That the judge would be competent to entertain the case if it were brought originally before the Mexican court. 7. — That the judgment be translated to Spanish." Letter from Alejandro Ogarrio R.E., Ogarrio, Gaxiola y Diaz, Abogados, Mexico City, Mexico; to Professor Roy Hunt, Associate Dean at the University of Florida Apr. 26, 1979). If the above-stated formalities are complied with, the Mexican judge is not permitted to review the merits of the case or to review the reasoning used by the United States court in reaching its decision. However, in addition to examining the foreign judgment to determine its authenticity, the Mexican judge may review the judgment to determine whether Mexican law requires enforcement of that judgment. *Id.*

262. See note 144 *supra* and accompanying text.

263. See text accompanying notes 133-137 *supra.* Some commentators contend, however, that the requirement of reciprocal recognition pressures other nations to grant conclusive effect to judgments of the nations requiring reciprocity. von Mehren & Trautman, *supra* note 11, at 1661-62. *But see* Nicol v. Tanner, 310 Minn. 68, 78, 256 N.W.2d 796, 801 (1976): "It is not the business of the courts, whose province is the decision of individual cases, to impose rules designed to coerce other nations in giving effect to our judgments."

264. *See* Golomb, *supra* note 27, at 615; Reese, *supra* note 28, at 793. *See also* R. LEFLAR, AMERICAN CONFLICTS LAW §74 (1968).

265. Nicol v. Tanner, 310 Minn. 68, 78, 256 N.W.2d 796, 801 (1976); Carl, *supra* note 68, at 685; Golomb, *supra* note 27, at 616; von Mehren & Trautman, *supra* note 11, at 1661-62.

requirement triggers a domino effect, because an increasing number of nations respond by enacting similar retaliatory requirements. The result is instability, lack of uniformity, sacrifice of the interests and rights of private litigants and a general breakdown of recognition practices.[266]

Codification which clearly delineates the reciprocity doctrine in Florida would inevitably enhance comprehension of the generally favorable treatment accorded by Florida courts to foreign adjudications.[267] This codification of prevailing common law principles of recognition would facilitate proof of reciprocity abroad by notifying civil law countries that their judgments are recognizable and enforceable in Florida and by clarifying the prevailing law.[268] Because interpretations of the statutory provisions would ultimately govern the recognition of a particular judgment, the flexibility of the common law approach would not be impaired.

At present, American judgments brought for recognition abroad, particularly in civil law countries, do not fare well.[269] As Florida's role in the international community intensifies and as this area of private international law becomes a matter of practical knowledge for the Florida practitioner,[270] it is imperative that action be taken to facilitate the process of enforcing foreign judgments in Florida and Florida judgments abroad. Although codification of Florida case law would not directly increase the effect given to this state's judgments in nations with a treaty requirement or in those countries which provide for partial or entire *revision au fond,* it would nevertheless be a significant step toward obtaining recognition of Florida judgments in the substantial number of countries with reciprocity requirements,[271] while re-

266. Carl, *supra* note 68, at 685.

267. Willson v. Willson, 55 So. 2d 905, 906 (Fla. 1951), noted that a valid foreign nation decree will be recognized in Florida (citing Pawley v. Pawley, 46 So. 2d 464 (Fla.), *cert. denied,* 340 U.S. 866 (1950)).

In its Prefatory Note to the Uniform Recognition Act the National Conference of Commissioners summarized the purpose of the Act as follows: "Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad." Uniform Recognition Act, Prefatory Note, 13 U.L.A. 269, 269 (1975). Aside from enactment of the Uniform Recognition Act, another possible solution is negotiation of a multilateral treaty effective only in those states accepting the obligations of the treaty. *See* Ginsburg, *supra* note 17, at 733. This alternative, however, might have serious constitutional implications with respect to the power of the federal government to enter into a treaty on judgment recognition which is binding on all states, whether or not the state chooses to be bound. *See generally* Nadelmann, *supra* note 76.

268. Homburger, *supra* note 28, at 370; Kulzer, *supra* note 76, at 99-100. See note 255 *supra.*

269. This is true despite general agreement among commentators that most states in the United States will give conclusive effect to foreign judgments. *See* Golomb, *supra* note 27, at 607; Homburger, *supra* note 28, at 368; Kulzer, *supra* note 76, at 85, 99; Nadelmann, *supra* note 249, at 78; Nadelmann, *supra* note 71, at 240-41, 256; von Mehren & Trautman, *supra* note 11, at 1602; von Mehren, *supra* note 13, at 405. *See generally* H. SMIT & A. MILLER, *supra* note 62; Nadelmann, *Reprisals Against American Judgments,* 65 HARV. L. REV. 1184 (1952).

270. See notes 1-9 *supra* and accompanying text.

271. Kulzer, *supra* note 66, at 4; Nadelmann, *supra* note 70, at 259-62.

ducing uncertainty in the existing law governing recognition and enforcement of foreign judgments in Florida.

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