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The Uniform Foreign Money-Judgments Recognition Act

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NOTES

The Uniform Foreign Money-Judgments Recognition Act*

Many nations do not accord conclusive effect to foreign[1] judgments unless their own judicial decrees are reciprocally enforced by the country rendering the judgment.[2] The law in the United States is unsettled, with some states holding that foreign judgments are reviewable on the merits if the judgment forum similarly reviews the merits of American decrees,[3] while others accord conclusive effect to valid foreign money judgments regardless of the effect accorded American decrees in the judgment forum.[4] Judgments in the latter states would seem entitled to conclusive enforcement in countries requiring reciprocity. However, such conclusive recognition has been hindered because many civil-law courts tend to look solely to the legislation of other countries in determining the treatment accorded there to foreign judgments,[5] and few states in the United States have enacted recognition legislation.[6] Some civil-

* 9B UNIFORM LAWS ANN. 27 (Supp. 1964).

1. The adjective "foreign" is used throughout this discussion solely with reference to foreign nations.

2. For a list of countries adhering to this approach, see Nadelmann, *French Courts Recognize Foreign Money-Judgments—One Down and More To Go*, 13 AM. J. COMP. L. 72, 78-80 (1964); Nadelmann, *Non-Recognition of American Money Judgments Abroad and What To Do About It*, 42 IOWA L. REV. 236, 249-57 (1957).

3. Ogden v. Ogden, 159 Fla. 604, 33 So. 2d 870 (1947); Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Northern Aluminum Co. v. Law, 157 Md. 641, 646, 147 Atl. 715, 717 (1929); Traders Trust Co. v. Davidson, 146 Minn. 224, 227, 178 N.W. 735, 736 (1920); In re Vanderborght, 91 N.E.2d 47, 50 (Ohio C.P. 1950) (dictum); Union Sec. Co. v. Adams, 33 Wyo. 45, 236 Pac. 513 (1925) (dictum); *cf.* N.H. REV. STAT. ANN. ch. 524, § 11 (Supp. 1963) (Canadian judgments granted the same effect as New Hampshire judgments are given in Canada). See Smith, *The Enforcement of Foreign Judgments in American Courts*, 19 MILITARY L. REV. 1, 8-10 (1963). See also Tremblay v. Aetna Life Ins. Co., 97 Me. 547, 55 Atl. 509 (1903) (court in which enforcement is sought may always inquire into merits of the original action).

4. *E.g.*, 164 E. 72d St. Corp. v. Ismay, 65 Cal. App. 2d 574, 151 P.2d 29 (1944); Coulborn v. Joseph, 195 Ga. 723, 733, 25 S.E.2d 576, 581 (1943); Truscon Steel Co. of Canada v. Biegler, 306 Ill. App. 180, 28 N.E.2d 623 (1940); Ticonderoga Pulp & Paper Co., 219 App. Div. 120, 219 N.Y.S. 284, *aff'd*, 246 N.Y. 603, 159 N.E. 669 (1927); Christoff Estate, 411 Pa. 419, 192 A.2d 737 (1963); RESTATEMENT, CONFLICT OF LAWS § 434, comment *b* (1934); *cf.* Bonfils v. Gillespie, 25 Colo. App. 496, 139 Pac. 1054 (1914) (dictum recognizing a trend to grant conclusive effect); Bata v. Bata, 163 A.2d 493 (Del. 1960), *cert. denied*, 366 U.S. 964 (1961); Succession of Fitzgerald, 192 La. 726, 731, 189 So. 116, 117 (1939); Grey v. Independent Order of Forresters, 196 S.W. 779 (Mo. App. Ct. 1917) (dictum). See Smith, *supra* note 3, at 11-14. See also MONT. REV. CODE § 93-1001-27 (1964), and ORE. REV. STAT. § 43.190 (1963), which declare that foreign judgments are only prima facie evidence of the existence of a right between the litigants. This presumption, however, is rebuttable by only a limited number of generally accepted defenses, which do not include the defense that the judgment forum denies reciprocal recognition of American judgments.

5. *Cf.* Nadelmann, *Non-Recognition of American Money Judgments Abroad and What To Do About It*, 42 IOWA L. REV. 236, 252 (1957).

6. Prior to the promulgation of the Uniform Act, recognition statutes had been

law courts are therefore inclined to conclude, often erroneously, that a state does not enforce foreign judgments, and thus does not meet the reciprocity requirement, if there is no recognition legislation in that state.[7]

Even those foreign courts that do look to the case law on the recognition of foreign judgments sometimes ignore state court decisions granting reciprocity, and refer instead to the United States Supreme Court's decision in *Hilton v. Guyot*[8] that the failure of the courts of a foreign nation to grant conclusive effect to the judgments of an American court precludes conclusive enforcement in the United States of a money judgment rendered in that nation against an American defendant.[9] Reliance upon *Hilton* often leads those foreign courts which themselves demand reciprocity to conclude that the "law of the United States" denies conclusive effect to foreign judgments.[10] The error in this conclusion lies in the foreign courts' failure to recognize that *Hilton* has not been considered binding on state courts because it was decided on appeal from a lower federal court and the decision was based on non-constitutional grounds.[11] In 1962, the National Conference of Commissioners on Uniform State Laws sought to remedy this confusion and encourage foreign recognition of American judgments by promulgating the Uniform Foreign Money-Judgments Recognition Act,[12] which, with certain exceptions, requires the conclusive enforcement of foreign money judgments which are final and enforceable where rendered.[13] The Uniform Act was enacted by Illinois and Maryland in 1963.[14]

Among the Uniform Act's exceptions to conclusive enforcement is the traditional protective measure of refusal to enforce a judgment rendered by a judicial system which does not afford impartial

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enacted only in California (CAL. CODE CIV. PROC. § 1915), Maryland (MD. CODE ANN. art. 35, § 39 (1957)), Montana (MONT. REV. CODE § 93-1001-27 (1964)), New Hampshire (N.H. REV. STAT. ANN. ch. 524, § 11 (Supp. 1963)), and Oregon (ORE. REV. STAT. § 43.190 (1963)).

7. See SCHLESINGER, COMPARATIVE LAW 177 (2d ed. 1959).

8. 159 U.S. 113 (1895).

9. The Court held that the foreign judgment was to be treated as prima facie evidence of the plaintiff's claim. *Id.* at 227.

10. *Cf.* Nadelmann, *supra* note 5, at 255-56; Smith, *supra* note 3, at 26-27.

11. *Cf.* RESTATEMENT (SECOND), CONFLICT OF LAWS § 430e, comment *e*, at 3 (Tent. Draft No. 11, 1965); Lenhoff, *Reciprocity and the Law of Foreign Judgments: A Historical-Critical Analysis*, 16 LA. L. REV. 465, 472 (1956).

12. 9B UNIFORM LAWS ANN. 27 (Supp. 1964) (hereinafter cited as UNIFORM ACT).

13. UNIFORM ACT §§ 2, 3. The requirement that the judgment be conclusive and enforceable where rendered is well established at common law. See cases cited in Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L.J. 291, 309 n.88, 313 n.110 (1963).

14. ILL. STAT. ANN. ch. 77, §§ 121-29 (Supp. 1964); MD. CODE ANN. art. 35, §§ 53A-I (Supp. 1965).

tribunals or procedures compatible with due process of law.[15] Lack of jurisdiction over either the person of the defendant[16] or the subject matter of the litigation[17] is specified as a situation in which due process is conclusively considered denied. To ensure that American courts will be relatively uniform in their application of standards of personal jurisdiction when examining the proceedings in the judgment forum, the Uniform Act prescribes certain instances in which the judgment forum shall be deemed validly to have exercised jurisdiction.[18] Although the specified standards tend to reflect old notions of constitutional limitations on jurisdiction over nonresidents in domestic litigation,[19] the Commissioners have provided for the recognition of the modern, continuing expansion of jurisdictional powers by adding a provision that courts may recognize other bases of jurisdiction which are constitutionally acceptable in the United States.[20]

The court in which enforcement of the judgment is sought is

15. UNIFORM ACT § 4(a)(1). *Cf.* Banco Minero v. Ross, 106 Tex. 522, 172 S.W. 711 (1915) (refusal to enforce a Mexican judgment rendered without a fair hearing). It is not required, however, that the foreign procedures duplicate those utilized in the United States. 9B UNIFORM LAWS ANN. 30 (Supp. 1964) (Commissioners' Note); *cf.* Hilton v. Guyot, 159 U.S. 113 (1895).

16. UNIFORM ACT § 4(a)(2). *Cf.* Boivin v. Talcott, 102 F. Supp. 979 (N.D. Ohio 1951); Bethune v. Bethune, 192 Ark. 811, 94 S.W.2d 1043 (1936); Rhodesian Gen. Fin. & Trading Trust, Ltd. v. MacQuisten, 170 Misc. 996, 11 N.Y.S.2d 476 (Sup. Ct. 1939); cases cited in Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A.L. REV. 44, 50 n.46 (1962).

17. UNIFORM ACT § 4(a)(3). *Cf.* In the Matter of the Estate of Gillies, 8 N.J. 88, 83 A.2d 889 (1951); Romanchick v. Howard Sav. Institution, 118 N.J.L. 606, 194 Atl. 185 (E. & A. 1937); Matter of Will of Lockwood, 147 N.Y.S.2d 106 (Surr. Ct. 1955); San Lorenzo Title & Improvement Co. v. City Mortgage Co., 124 Tex. 25, 73 S.W.2d 513 (1934).

18. UNIFORM ACT § 5(a) provides:

> The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
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> (1) the defendant was served personally in the foreign state;
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> (2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
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> (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
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> (4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
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> (5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or
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> (6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

19. The currently expanded bases of jurisdiction are discussed in Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533; Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569 (1958); Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959); Comment, 63 MICH. L. REV. 1028 (1965).

20. UNIFORM ACT § 5(b).

given discretion by the Uniform Act to refuse to enforce the judgment if the defendant did not receive notice of the foreign proceedings in time to defend,[21] or if the judgment was obtained by fraud.[22] The act is somewhat ambiguous, however, as to what situations are encompassed by these provisions. If no notice whatever was given, or if the notice given was inadequate to meet due process objections, it would seem that the act's provisions for compulsory refusal to enforce a judgment rendered without jurisdiction[23] would take precedence over the discretionary provision, because failure to give adequate notice is a jurisdictional defect.[24] Since discretion to refuse enforcement of a judgment when the defendant did not actually receive notice in time to defend implies that the court also has the authority to enforce the judgment, the best interpretation of this discretionary power seems to be that the Commissioners intended it to operate only in instances where the plaintiff had *given* notice sufficient to satisfy due process requirements, but notice was not actually *received* by the defendant in time to defend. With regard to the defense of fraud, it is presumed that the Commissioners intended to codify the accepted common-law view that a foreign judgment should be refused enforcement only on the grounds of extrinsic, rather than intrinsic, fraud.[25] If this assumption is accurate, the implied discretion to enforce a judgment obtained through extrinsic fraud on the foreign court seems inconsistent with the traditional view that extrinsic fraud completely vitiates the judgment by preventing the unsuccessful party from presenting his case.[26] The Maryland legislature has reflected this theory by altering its version of the Uniform Act to provide for compulsory refusal to enforce a judgment obtained by fraud.[27]

21. UNIFORM ACT § 4(b)(1). *Cf.* Parker v. Parker, 155 Fla. 635, 21 So. 2d 141, *cert. denied*, 326 U.S. 718 (1945); In the Matter of the Estate of Paramythiotis, 15 Misc. 2d 133, 181 N.Y.S.2d 590 (Surr. Ct. 1958); *In re* Deckert's Will, 141 N.Y.S.2d 855 (Surr. Ct. 1955).

22. UNIFORM ACT § 4(b)(2). *Cf.* The W. Talbot Dodge, 15 F.2d 459 (S.D.N.Y. 1926); Perdikouris v. The Olympos, 185 F. Supp. 140 (E.D. Va. 1960); Title Ins. & Trust Co. v. California Dev. Co., 171 Cal. 173, 152 Pac. 542 (1915); In the Matter of the Estate of Gillies, 8 N.J. 88, 83 A.2d 889 (1951); cases cited in Peterson, *supra* note 13, at 317-18; RESTATEMENT, CONFLICT OF LAWS § 440 (1934).

23. UNIFORM ACT § 4(a)(2).

24. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Milliken v. Meyer, 311 U.S. 457 (1940); Wuchter v. Pizzutti, 276 U.S. 13 (1928). See also *In re* Deckert's Will, 141 N.Y.S.2d 855 (Surr. Ct. 1955). It has been indicated that due process requires state courts not to enforce a foreign judgment rendered without jurisdiction. See Griffin v. Griffin, 327 U.S. 220, 229 (1946) (dictum); Cherun v. Frishman, 236 F. Supp. 292, 296, 298 (D.D.C. 1964); *cf.* McDonald v. Mabee, 243 U.S. 90 (1917).

25. See cases cited *supra* note 22; Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 794 (1950). Extrinsic fraud is a fraud on the judgment court which deprives the aggrieved party of an adequate opportunity to present his case, whereas intrinsic fraud involves matters actually passed upon by the court rendering the judgment. *Ibid.*

26. See cases cited *supra* note 22.

27. MD. CODE ANN. art. 35, § 53D(a)(4) (Supp. 1965). It is not clear, however, whether this provision is limited to extrinsic fraud.

The Uniform Act extends further discretionary authority to stay the enforcement proceedings if the defendant intends to appeal in the judgment forum.[28] Discretion is also given to refuse recognition of the judgment if the decree is repugnant to the policy of the state in which enforcement is sought,[29] the proceedings in the foreign state were contrary to an agreement between the parties,[30] the judgment conflicts with a prior judicial decree binding upon the parties,[31] or jurisdiction was based solely on personal service and the court feels that the action should have been dismissed on the ground of forum non conveniens.[32] It was necessary to leave the recognition of these defenses in the discretion of the state courts because of the need to accommodate the discord existing among the states as to the propriety of the defenses. While a majority of state courts will refuse to enforce a foreign judgment which is repugnant to state policy,[33] at least one court has refused to entertain this defense, on the theory that the original cause of action merges with the judgment so that the action to collect the judgment is entirely distinct from the original action.[34] Discretion in relation to the power to refuse enforcement of a judgment when the foreign proceedings were contrary to an agreement between the parties is similarly appropriate because of the multitude of possible types of agreements and the attending variances in courts' reactions to them. For example, in domestic litigation agreements by the parties purporting to deprive themselves of recourse to the courts have traditionally been held void as contrary to public policy.[35] In more recent years, however, courts in which the original suits are brought have tended to decline jurisdiction in deference to reasonable agreements to

28. UNIFORM ACT § 6.

29. UNIFORM ACT § 4(b)(3).

30. UNIFORM ACT § 4(b)(5).

31. UNIFORM ACT § 4(b)(4).

32. UNIFORM ACT § 4(b)(6).

33. See, *e.g.*, Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944); In the Matter of the Estate of Gillies, 8 N.J. 88, 83 A.2d 889 (1951); In the Matter of the Will of Topcuoglu, 11 Misc. 2d 859, 174 N.Y.S.2d 260 (Surr. Ct. 1958); Smith v. Smith, 72 Ohio App. 203, 50 N.E.2d 889 (1943); Smit, *supra* note 16, at 52. Compare Zanzonico v. Neeld, 17 N.J. 490, 111 A.2d 772 (1955) (Italian adoption decree enforced where child resided with her adoptive parents in the United States after adoption despite the nonfulfillment of a statutory requirement that the child reside with the adoptive parents for one year preceding the adoption).

34. Neporany v. Kir, 5 App. Div. 2d 438, 173 N.Y.S.2d 146 (1958) (Canadian money judgment for seduction and criminal conversation enforced although the cause of action was expressly proscribed in New York by statute). *But cf.* cases cited in Peterson, *supra* note 13, at 316 n.120; Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129, 1139-40 (1935), stating that the doctrine of merger is inapplicable to foreign judgments.

35. See, *e.g.*, Carbon Black Export, Inc. v. The S.S. Monrosa, 254 F.2d 297 (5th Cir. 1958), *cert. dismissed*, 359 U.S. 180, *rehearing denied*, 359 U.S. 999 (1959); Sebree v. Rosen, 374 S.W.2d 132, 140 (Mo. 1964); Arsenis v. Atlantic Tankers, Ltd., 39 Misc. 2d 124, 240 N.Y.S.2d 69 (N.Y. City Ct. 1963); Beneficial Standard Life Ins. Co. v. Pennsylvania Plan, Inc., 27 Pa. D. & C.2d 554 (Philadelphia County 1962).

oust those courts of jurisdiction.[36] It should be noted, however, that it is generally accepted that a court's refusal to decline jurisdiction does not render that court's judgment assailable.[37] The Uniform Act's proviso allowing a court to refuse to enforce a judgment rendered in a foreign court which refused to defer to an agreement by the parties purporting to oust that court of jurisdiction seems to be supported by no great amount of authority. Again, because of the varying circumstances under which the problem arises, the courts of even a single state have accorded divergent treatment to judgments conflicting with prior judicial decrees.[38] The necessity of leaving recognition of a defense in the courts' discretion was most compelling, however, with regard to the novel authority to refuse enforcement of a judgment rendered in an inconvenient forum. No cases have been discovered in which this power was exercised at common law. Indeed, some courts feel that the plaintiff should not be deprived of a forum where a court has the power to exercise jurisdiction, and therefore do not recognize the power to dismiss even the original proceedings on the ground of forum non conveniens.[39] It thus appears that the Commissioners intended this power to alter the existing law. While the power given by the act allows a state to protect its citizens from seriously inconvenient litigation, its wisdom may be challenged on the ground that forum non conveniens is a theory whereby the court in which the suit is *originally* brought may, in its discretion, dismiss a suit over which it could properly exercise jurisdiction.[40] It would seem that another court should not be permitted to intrude upon this discretion,[41]

36. See, *e.g.*, Wm. H. Muller & Co. v. Swedish Am. Line, Ltd., 224 F.2d 806 (2d Cir. 1955) (deference to an agreement in the litigants' contract that all disputes arising out of the contract would be tried in Swedish courts); Pakhuismeesteren, S.A. v. The S.S. Goettingen, 225 F. Supp. 888 (S.D.N.Y. 1963) (deference to agreement to try disputes in a German court); E. H. Marhoefer, Jr., Co. v. Mount Sinai, Inc., 190 F. Supp. 355 (D. Wis. 1961) (arbitration agreement). See also Berry v. Struble, 20 Cal. App. 2d 299, 66 P.2d 746 (1937) (agreement not to sue).

37. *Cf.* Wm. H. Muller & Co. v. Swedish Am. Line Ltd., *supra* note 36, at 808: "[T]he parties by agreement cannot oust a court of jurisdiction otherwise obtaining. . . ."

38. *Compare* Perkins v. De Witt, 197 Misc. 369, 94 N.Y.S.2d 177 (1950), *order aff'd in part, reversed in part*, 279 App. Div. 903, 111 N.Y.S.2d 752 (1952) (reversal of an order refusing to enforce a Philippine money judgment which conflicted with a prior New York judgment), *with* Ambatielos v. Foundation Co., 203 Misc. 470, 116 N.Y.S.2d 641 (1952) (enforcement of a British judgment on an oral employment contract which had been held unenforceable by a Greek court in a second proceeding as a contravention of Greek public policy).

39. Alabama, Missouri, Nebraska, Ohio, Texas, Washington, and Wisconsin are listed in Comment, 29 U. CHI. L. REV. 740, 741 n.8, 753 n.45 (1962), as having rejected the doctrine of forum non conveniens.

40. *Cf.* People *ex rel.* Atchison, T. & S.F. Ry. v. Clark, 12 Ill. 2d 515, 147 N.E.2d 89 (1957); Blaustein v. Pan American Petroleum & Transp. Co., 174 Misc. 601, 658, 21 N.Y.S.2d 651, 706 (1940).

41. See People *ex rel.* Atchison, T. & S.F. Ry. v. Clark, *supra* note 40 (refusal to dismiss action on grounds of forum non conveniens cannot be corrected by man-

especially if the foreign tribunal does not even recognize the defense.[42]

An interesting problem is presented as to whether state involvement in the enforcement of foreign judgments is unconstitutional as an infringement on the exclusive federal power over foreign affairs. In *Banco Nacional de Cuba v. Sabbatino*,[43] the Supreme Court declared that a federal common law controls any litigation concerning the public acts of foreign sovereigns. The Court supported the view expressed in an article by Professor Jessup[44] that *Erie R.R. v. Tompkins*[45] was not intended to preclude the existence of a federal common law governing legal problems affecting international relations. However, *Sabbatino* dealt with a problem having strong diplomatic overtones,[46] and the treatment to be accorded foreign money judgments would seem to create no significant diplomatic complications.[47] A more analogous situation was presented in *Ioannou v. New York*,[48] in which state legislation regulating the inheritance of property by aliens was alleged to intrude upon the exclusive federal power in foreign affairs. The appeal to the Supreme Court from a decision adverse to this contention was dismissed for lack of a substantial federal question; Justices Black and Douglas, however, felt that if the purpose of the legislation was to preclude unfriendly governments from obtaining funds, it would be an unlawful attempt to regulate foreign affairs.[49] Since both the inheritance of property in *Ioannou* and the recognition of money judgments involve only private rights and apparently have only an indirect effect on the affairs of foreign nations, it would seem that the Uniform Act is within the constitutionally permissible powers of the states.[50]

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damus); RESTATEMENT (SECOND), CONFLICT OF LAWS § 117e, comment *g* (Tent. Draft No. 4, 1957) (full faith and credit requirements preclude refusal to recognize a sister state judgment rendered in an inconvenient forum).

42. Apparently, no European country recognizes any defense similar to forum non conveniens. See VON MEHREN & TRAUTMAN, MULTISTATE PROBLEMS 765 n.271 (1965).

43. 376 U.S. 398 (1964). For analyses of *Sabbatino*, see Henkin, *The Foreign Affairs Power of the Federal Courts—Sabbatino*, 64 COLUM. L. REV. 805 (1964); Comment, 63 MICH. L. REV. 528 (1965).

44. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964), referring to Jessup, *The Doctrine of Erie Railroad v. Tompkins Applied to International Law*, 33 AM. J. INT'L L. 740 (1939).

45. 304 U.S. 64 (1938).

46. The question in *Sabbatino* concerned the effect to be accorded a decree by the government of Cuba expropriating the sugar of a corporation of which ninety per cent of the stockholders were United States citizens.

47. The recognition of foreign money judgments has been described as a question of private rights rather than public relations. Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 386-87, 152 N.E. 121, 123 (1926).

48. 371 U.S. 30, *dismissing an appeal for want of a substantial federal question* from In the Matter of the Estate of Marek, 11 N.Y.2d 740, 181 N.E.2d 456 (1962).

49. 371 U.S. at 34.

50. See also Lenhoff, *Reciprocity—The Legal Aspect of a Perennial Idea*, 49 NW. U.L. REV. 619, 762 (1954), suggesting that "there is no more reason for forcing the

The question remains whether in diversity cases the *Erie* doctrine compels federal courts to adhere to state law where the state omits the reciprocity requirement. There are no federal cases disposing of the issue.[51] While one commentator has suggested an argument in favor of retaining the requirement of reciprocity in federal courts if it is a rule of evidence,[52] it would seem erroneous to characterize the rule of reciprocity as evidentiary. The doctrine of reciprocity does not deal with the form of proof required to establish a right to conclusive recognition. A judgment is admissible evidence in all actions to collect on the judgment, regardless of whether a given court adheres to the doctrine of reciprocity. The question is the effect to be accorded the evidence, and there appears to be general agreement, at least as regards domestic judgments, that with the exception of the federal question of "full faith and credit," which has no application to foreign judgments,[53] state law controls the effect to be accorded a prior judgment between the parties.[54]

The traditional "outcome test" for determining whether a federal court must apply state law in a diversity case dictates that state law must be applied if the application of a federal rule could reasonably be expected to alter the result of the litigation.[55] The doctrine of reciprocity specifies that the merits of a case must be re-tried when the country issuing the judgment does not conclusively enforce American decrees; since the outcome of a new trial could differ significantly from the result achieved in the foreign proceedings, it seems clear that the outcome test requires federal courts to follow state law as to reciprocity. This test has been somewhat weakened, however, where federal involvement is significant.[56] An example of

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states to follow the United States Supreme Court in the question of recognition of judgments of foreign countries than there would be for making them follow federal law in other matters of conflict-of-law, such as choice of law problems. There is no question that the latter [falls] within the power of the states . . . ."

51. In Gull v. Constam, 105 F. Supp. 107 (D. Colo. 1952), the court circumvented the issue of lack of reciprocity because of the defendant's failure to plead it as a defense.

52. Smith, *supra* note 3, at 15-16. Smith cited no authority for this proposition, but he probably based it upon such cases as Hope v. Hearst Consol. Publications, Inc., 294 F.2d 681 (2d Cir. 1961), in which it was held that hearsay evidence was admissible in a diversity action brought in a federal court although the evidence would not have been admissible in a state court and its admission by the federal court affected the outcome of the case.

53. Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912).

54. *Cf.* Ayers v. Kidney, 333 F.2d 812, 814 (6th Cir. 1964) (action to collect on a judgment); Pallen v. Allied Van Lines, Inc., 223 F. Supp. 394 (S.D.N.Y. 1963) (collateral estoppel); Makariw v. Rinard, 222 F. Supp. 336, 338 (E.D. Pa. 1963) (res judicata). See also Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), holding that federal courts must apply state conflict-of-laws rules in diversity cases.

55. See Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

56. See, *e.g.*, Byrd v. Blue Ridge Rural Elec. Co-op., Inc., 356 U.S. 525 (1958) (federal rules apply where related to function of federal jury as established by the consti-

this trend of allowing federal law to prevail is *Hanna v. Plumer*,[57] in which the Supreme Court held that a difference in outcome did not preclude the application of the federal rules for service of process set forth in Rule 4(d)(1) of the Federal Rules of Civil Procedure. However, the Court expressed in dictum that the policy of *Erie* was to discourage forum-shopping[58] and that a state rule is to be followed when "application of the rule would have so important an effect upon the fortunes of one or both of the litigants that failure to enforce it would be likely to cause a plaintiff to choose the federal court."[59] This statement clearly indicates that federal courts should adhere to the omission of the reciprocity requirement in a state where the Uniform Act is in force. Otherwise, foreign judgment creditors would avoid seeking enforcement of their judgment rights in federal courts if it were possible to seek enforcement by a state court under the Uniform Act.

Except for its omission of the defense of lack of reciprocity, the Uniform Act does not compel the enforcement of foreign money judgments in situations other than those in which courts have been accustomed to enforcement under the common-law principle of comity. Indeed, the act's discretionary defenses could provide a lower court with greater possibilities for avoiding enforcement, although the practical impact of these defenses may prove insignificant if the courts exercise their newly acquired discretion in a manner consistent with prior decisions. The major contributions of the Uniform Act, therefore, rest in compelling enforcement of qualifying foreign money judgments rather than basing their enforcement on the elastic principle of comity, and in omitting the defense of reciprocity.

It remains to be seen whether the act will accomplish its goal of aiding American judgment creditors in obtaining enforcement of their American judgment rights in countries requiring reciprocity. The codification has the advantage of assuring civil-law courts that in certain instances their judgments will be enforced in state courts. The Uniform Act is also a more comprehensive statement of the law of recognition than has been achieved in most states by judicial fiat. However, the many defenses to conclusive enforcement may lead some foreign courts to declare that the Uniform Act does not provide sufficient assurance that a state will conclusively enforce foreign judgments.[60] Nevertheless, the general purpose of the act in seeking

tution); Hope v. Hearst Consol. Publications, Inc., 294 F.2d 681 (2d Cir. 1961) (hearsay evidence); 15 VAND. L. REV. 1330 (1962).

57. 380 U.S. 460 (1965).
58. *Id.* at 467-68.
59. *Id.* at 468 n.9.
60. See, *e.g.*, Rh. & M., Reichsgericht (VII. Zivilsenat), March 26, 1909, 70 ENTSCHEIDUNGEN DES REICHSGERICHTS IN ZIVILSACHEN 434, where the German Supreme Court refused conclusive enforcement of decrees of state and federal courts in California

to influence enforcement of American judgments abroad is the same as that attributed to the Supreme Court in *Hilton*.[61] The Court attempted to achieve this goal by refusing to recognize a foreign money judgment until the foreign court consented to recognize American judgments. In seventy years, this highly criticized approach has achieved little but stalemate.[62] The drafters of the Uniform Act have recognized not only the futility of waiting for foreign nations to take the initiative by recognizing American money judgments regardless of the effect given judgments of the foreign courts in the United States, but also the injustice which this stalemate has caused American judgment creditors.

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on the grounds that California law did not meet reciprocity requirements. The German court felt that the California provisions for evaluating the jurisdiction of German courts allowed re-examination of German judgments on the merits, that the defense of fraud under California law went farther than was permitted under German law, and that California afforded equitable remedies against final judgments which were unavailable under German law. A discussion of this case is found in Nadelmann, *supra* note 5, at 252-53.

61. See Peterson, *supra* note 13, at 305-06.

62. See, *e.g.*, 2 BEALE, CONFLICT OF LAWS § 434.3 (1935); GOODRICH, CONFLICT OF LAWS § 208, at 605-08 (3d ed. 1949); Nadelmann, *supra* note 5, at 249-54; Peterson, *supra* note 13, at 305-06; Reese, *supra* note 25, at 793; Smith, *supra* note 3, at 26-27; Comment, 37 NOTRE DAME LAW. 88, 96 (1962). A uniform act was suggested in Nadelmann, *Reprisals Against American Judgments?*, 65 HARV. L. REV. 1184, 1191 (1952), as a possible means of obtaining conclusive recognition of American judgments abroad.