Introduction

As world trade steadily increases, transnational corporations proliferate and individuals transact business and personal affairs across borders with increasing frequency. Today’s practitioners representing domestic civil litigants face the prospect of guarding against or satisfying judgments rendered by foreign courts. Similarly, these practitioners may seek to obtain and enforce judgments in foreign courts against their clients’ foreign adversaries. Practitioners who are in specialties such as bankruptcy, family law, estate planning and probate, personal injury, products liability, intellectual property, and real estate, among others, are likely to encounter the challenge of international recognition and enforcement of judgments. As an aspect of transnational legal practice, international litigation and arbitration have become more complex since the 1960s, when the United States began to emerge from a conflicting and unpredictable common law past to embrace sophisticated uniform statutory approaches to recognition and enforcement of foreign judgments.1

Despite these domestic law developments, the United States is one of the few major industrial nations that has not acceded to any international agreements for the recognition

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2 To be enforceable, a foreign judgment must first be recognized. CENTER FOR INTERNATIONAL LEGAL STUDIES, INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS INT-12 (Dennis Campbell & SuzanneRodriguez eds. 2004) [hereinafter Campbell]. “Recognition” (used here interchangeably with “conversion”) refers to the process whereby the petitioner brings an action, files briefs, and presents argument to persuade a court to give collateral estoppel effect to a foreign country judgment creditor’s claim. “Enforcement” (used here also as a synonym for “execution”) refers to the process whereby a foreign judgment creditor seeks satisfaction for the judgment debt in a foreign country, leading to satisfaction of the judgment creditor’s claim by an asset transfer from the judgment debtor to the judgment creditor. The process follows the following steps: recognition/conversion; enforcement/execution; collection. For further discussion of the distinction among these terms, see Ronald A. Brand, Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance, 67 NOTRE DAME L. REV. 253, 278–80 (1991).
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and enforcement of civil judgments. Laws of the several states govern recognition and enforcement of civil judgments rendered abroad. However, unlike sister-state judgments rendered in courts in another state jurisdiction, judgments rendered abroad do not enjoy the protection of the U.S. Constitution’s Full Faith and Credit Clause. Conversely, absent federal statute, there is no federal preemption.

This text assists the practitioner seeking to enforce a foreign judgment in the United States or a U.S.-rendered judgment abroad in navigating this lack of uniformity. Providing step-by-step instructions would be foolish and perhaps impossible, since procedures vary from state to state and country to country. Instead, this book describes the general sequence of events, some form of which will take place in a given enforcement scenario. As a “handbook,” the text also provides the practitioner with a framework with which to approach and further research the laws of the relevant state or country.

Part One of this guide takes the practitioner chronologically through the process of obtaining a U.S. court’s recognition and enforcement of judgments rendered abroad. Although these procedures may vary from state to state, this part of the book includes examples of the procedures common to most states. Strategic considerations are highlighted at each stage of preparation and litigation. These considerations should alert the practitioner to areas in which further state-specific research is necessary. A bibliography of statutes, cases, and commentary, and texts of relevant documents and sample forms follow the text.

Part Two takes the practitioner through the process of obtaining an overseas jurisdiction’s recognition and enforcement of judgments rendered in the United States. This section of the book describes and analyzes general approaches and strategies that the practitioner might employ abroad. Although further country-specific research will be necessary, these general approaches are meant to guide the practitioner to identify key issues and potential areas of conflict. A bibliography of country laws, conventions, and commentary, and texts of relevant documents follow the text.

Part Three assesses the current trends in the United States and in the international trade environment regarding enforcement of judgments that may be made by foreign courts. A bibliography of conventions, statutes, and cases follows.

2 See Jaffe v. Accredited Surety and Casualty, 294 F.3d 584 (2002) (neither the Full Faith and Credit Clause nor the full faith and credit statute apply to judgments issued by a foreign country).
3 Brand, supra note 2, at 278–80. However, once recognition of the foreign judgment has been obtained, the foreign judgment becomes subject to the Full Faith and Credit Clause and is enforced as a sister-state judgment. The manner of enforcement is not provided in this act. Id. at 278.
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I. Overview

1. Choosing a jurisdiction

- Have the parties expressly agreed to a choice of forum?
- Does jurisdiction exist based on other theories, such as minimum contacts, stream of commerce, in rem or quasi-in rem jurisdiction, or harmful effects?
- Are there assets of the defendant that can be located and seized?
- Should suit be brought in federal or state court?

1 For the important distinction between the uniform acts and between recognition and enforcement, see generally Part One, Introduction, notes 1 and 2.
2 The Recognition Act was recently revised by the National Conference of Commissioners on Uniform State Laws. See infra Part Three, IV.
Consider:

- Diversity
- **Amount** in controversy
- Docket backlog
- **Procedural** differences
- Court’s sophistication
- Convenience to the parties
- Inconvenient forum as a possible defense

**Strategy:** If the amount in controversy and diversity apply under 28 U.S.C. §1332(a)(2)–(3), yet you bring the action in state court, the defendant may remove the action to U.S. District Court, pursuant to 28 U.S.C. § 1441(a). Note also that it might be quite common for a foreign citizen to sue a compatriot (who happens to reside in the United States), for enforcement of a foreign judgment. In such a case, only state court will have subject matter jurisdiction to entertain the suit. If you can choose among different forum states, check the statute of limitations in each state for the more liberal statute. You may decide to bring suit in the more liberal state and then enforce the judgment as a sister-state judgment elsewhere.

**Exception:** New York, California, and Illinois do not apply the Enforcement Act to recognition of foreign judgments. In these states, you must bring an action to obtain a domestic judgment.

2. Authenticating the judgment

- Has the **judgment** been translated and authenticated by the **foreign court**?
- Has the judgment been authenticated by **other necessary parties**?
  - The foreign country’s **embassy or consulate in the United States**, or
  - A U.S. diplomatic or consular official posted to the **American Embassy or Consulate in that country**, or
  - By filing an **apostille** if the jurisdiction where the judgment was rendered is a party to the Hague Convention on Legalization for Foreign Public Documents[4]

**Reminder:** Be sure to check the applicable evidence code and local court rules for specific authentication requirements, and be sure that different people attest to authentication and issue the authenticating document, whether under chain of authentication or by apostille.

3. Determining Whether the uniform acts apply

- Has the state where you seek recognition and enforcement adopted both:
  - The Recognition Act, and
  - The Enforcement Act, and
  - Is not New York?

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1. Overview

- If so, GO TO STEP 6.
- Otherwise (most states), CONTINUE TO STEP 4.6

4. Preparing and filing the complaint (most states)

- Has the complaint been prepared and filed under the jurisdiction’s statutory or common law framework for recognition?
- Have you included a prayer for damages plus interest?

  Consider: If the jurisdiction has adopted the Claims Act, a foreign-money claim may be permitted; for example, in California.7

5. Anticipating defenses (most states)

- Is your judgment a non-conclusive, unenforceable judgment due to any of the following?
  - No personal jurisdiction
  - No subject matter jurisdiction
  - Court rendering judgment was not impartial or due process violated.

- Could the judge choose not to recognize the judgment on a discretionary basis?
  - Insufficient notice by foreign court.
  - Judgment obtained by fraud.
  - Cause of action violates your state’s public policy.
  - Judgment conflicts with another final and conclusive judgment.
  - Foreign proceeding contrary to express agreement between the parties.
  - Seriously inconvenient forum if jurisdiction based only upon personal service.
  - No final judgment rendered.
  - Parallel proceedings in other U.S. courts consolidation/transfer/removal.

6. Moving for summary judgment (most states)

- Can you show that a final judgment has been obtained in a foreign court8 and move for summary judgment?
  - If yes, GO TO STEP 8.
  - If no, CONTINUE TO STEP 7.

  Strategy: Courts may deny enforcement of a foreign judgment to protect the state’s interest, represented by a domestic defendant’s property within the court’s

6 In California, the Recognition Act, Cal. Code Civ. Proc. § 1713.3 (West 1987 & Supp. 2005), explicitly prohibits use of the Sister-State Money Judgments Act for registration of foreign country judgments. Instead, you must obtain recognition of the foreign judgment as a domestic judgment. For the importance of the distinction between the uniform acts and between recognition and enforcement generally, see supra Part One, Introduction, notes 1 and 2.


8 The summary judgment motion rests on two theories: vested rights and its derivative theory creating a legal obligation of the court of the plaintiff’s forum. Concisely, the two theories seek to achieve stability and continuity by recognizing that a right declared by a foreign court should be binding in the forum court’s jurisdiction. Campbell, supra Introduction, note 2. These theories have today generally replaced the theory of comity of nations, expressed in Hilton v. Guyot, 159 U.S. 113 (1895).
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jurisdiction. Therefore, to persuade the court to weigh the competing domestic and foreign interests in the foreign plaintiff’s favor, show any or all of the following:

• Defendant had at least minimum contact with the jurisdiction.
• Defendant had other, substantial links to the jurisdiction.
• The subject matter of the litigation centers in the jurisdiction.

7. Litigating

■ Have you properly filed an action for conversion (recognition)?

■ Are you prepared to plead the claim ab initio, including anticipating defenses, such as claim or issue preclusion?

   Warning: If the statute of limitations is about to run, you should plead the underlying cause of action alternatively to the action for conversion of the judgment.

■ Have you brought a complaint for recognition of the judgment debt under the jurisdiction’s statutory or common law framework, including a prayer for damages?

   Note: Generally such damages would be in U.S. currency, but the Claims Act may permit prayer for damages in a foreign currency.

   Reminder: Be sure to include interest and reasonable attorney’s fees, if appropriate.

8. Filing and executing the judgment

■ Have you filed the judgment with the court clerk and paid the statutory filing fee?

■ Have you waited the statutory period before proceeding to execution?

■ Have you filed the necessary motions to prevent removal of assets and to seize defendant’s assets?

   Exception: If defendant shows that an appeal from the foreign judgment is pending or will be taken, enforcement may be stayed until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

9. Registering the judgment

■ Have you filed with the court clerk under Enforcement Act §§ 2–3?

   Note: Confirm that § 3 of the Recognition Act and common law precedent in your jurisdiction do not exclude use of the Enforcement Act as the enforcement method.

■ If satisfaction is not forthcoming, have you obtained a writ of execution and conducted discovery, if necessary?

■ Have you filed a lien on the judgment debtor’s assets?

■ Once satisfied, have you filed a satisfaction of judgment?

II. Phase One: Before Recognition

II. PHASE ONE: BEFORE RECOGNITION

A. CHOOSING A JURISDICTION/LOCATING ASSETS

1. Jurisdiction and Venue

First decide in which state and where in the state to bring the action. Choosing a state in which to enforce your judgment is fairly simple if both the judgment debtor and his assets are in the same state. Even if the judgment creditor does not reside in that state, an enforcement judgment from the debtor’s home state will be enforceable in the creditor’s home state via Full Faith and Credit. The standard governing all questions of personal jurisdiction is minimum contacts with the forum state, fair play, and substantial justice (the “minimum contacts test”). Although this standard is easily met in the above situation, issues of personal jurisdiction may complicate matters if out-of-state assets are involved.

Since Shaffer v. Heitner, 433 U.S. 186 (1977), the minimum contacts standard applies even in in rem and quasi-in-rem actions. Most in rem cases will meet this threshold, and an in rem judgment by a court with jurisdiction is valid in all jurisdictions, as the Supreme Court recognized in Hilton v. Guyot. Thus, if the judgment will likely be satisfied by the seizure of real property, choose a court in the jurisdiction where the res is located. Quasi-in-rem bases of jurisdiction – for example, out of state bank accounts, real estate or pension plans – are more problematic. In order to establish personal jurisdiction in a state where such assets are located, it is necessary to establish some other ties between the debtor and the forum state. The court’s inquiry into these ties will be the modern, multifactor minimum contacts test, but it will pragmatically be focused on issues of fairness. If assets are scattered among various jurisdictions, you may now want to skip to Section IV. Phase Three: Executing a Converted Judgment in U.S. Courts and consider what assets are preferable for collection.

2. Choice of Forum: Federal or State Court

a. Generally: Under the Erie doctrine, state common law or the Recognition Act as enacted by the state legislature applies in federal court actions for the enforcement of foreign country judgments. You may decide to bring the case for enforcement in federal court after considering the following factors:

- Diversity
- Amount in controversy
- Docket backlog
- Procedural differences
- Court’s sophistication
- Convenience to the parties
- Inconvenient forum as a possible defense

1 159 U.S. 113, 167 (1895).
2 For guidance as to the law of jurisdiction in various states and in federal courts, see Part One, Bibliography.
3 See Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938).
To do so, you must show diversity of citizenship and amount in controversy exceeding $75,000.

b. Federal or state court? The Erie doctrine reflects federal policy discouraging forum shopping between federal and state courts, thereby minimizing the differences between the two forums. However, differences between the courts may still influence your forum selection. Selecting federal court might favor the plaintiff’s case for enforcement for two reasons: (1) federal courts have had more experience in enforcing foreign judgments; and (2) these courts benefit from informed support from research staff. Before you choose federal court, however, research case law interpretations of your state’s recognition law to determine if federal or state courts more consistently favor recognition. California state courts are widely familiar with the adjudication of foreign judgments, but they tend to be more stringent in recognizing and effectuating such claims. Furthermore, in dealing with the Recognition Act, the California state courts account for reciprocity as a factor more so than the federal courts. New York state courts, by contrast, take a more restrictive view of reciprocity as grounds for non-recognition.

c. Burden of proof: Regardless of which forum you select, the judgment creditor has the burden of proving that the court should recognize the foreign judgment. Show that the authenticated foreign judgment confirms that a foreign court had proper jurisdiction; that the judgment debtor received notice; that a final judgment issued; and that there is no public policy conflict. Also argue that reciprocity weighs in favor of recognition. For example, the defendant in Banque Libanaise Pour Le Commerce v. Khreich argued as an affirmative defense that the recognition of foreign judgments in Abu Dhabi was done at the discretion of the trial judge, and that this was in practice quite rare. Although the court explicitly rejected any notion that reciprocity was a requirement for recognition, it did consider it in addition to the defendant’s due process defense.

d. Defenses: If defendant can show that the foreign court had no proper jurisdiction, that the defendant did not receive notice, that no final judgment was issued or that an appeal is pending or anticipated, or that enforcement of the judgment violates public policy,