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## Enforcing Judgments Across State and National Boundaries: Inbound Foreign Judgments and Outbound Texas Judgments

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### Recommended Citation

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# ENFORCING JUDGMENTS ACROSS STATE AND NATIONAL BOUNDARIES: INBOUND FOREIGN JUDGMENTS AND OUTBOUND TEXAS JUDGMENTS

JAMES P. GEORGE\*

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Litigation between parties in different states has been common since the success of the railroads and telegraph in the late nineteenth century. International litigation—suits involving parties from different countries—is now routine. In spite of that routine, lawyers continue to face enforcement obstacles when suing a defendant from another state or country. Similarly, defendants perceive unfairness from judgments rendered far away. Those enforcement obstacles and instances of unfairness have been lessened by uniform enforcement statutes and a few treaties, but the rules remain elusive.

This Article provides a cursory outline for most foreign-judgment enforcement issues that Texas attorneys will face. It focuses primarily on the collection of money damages from judgments in civil cases between private litigants, and briefly addresses the extraterritorial enforcement of divorce, custody, other status decrees, child support awards, injunctions, and in rem claims. The Article is divided into two larger sections for interstate and international enforcement, and each of those in turn is divided into incoming foreign judgments and outgoing Texas judgments. Texas law predominates the state-law discussion, but other states' case law and secondary sources provide additional authority on points not yet litigated in Texas. For interstate judgment enforcement, these other sources should be highly persuasive because of their reference to the Full Faith and Credit Clause and the uniform enforcement statutes. For international judgment enforcement, there is somewhat less state-to-state similarity. Legal discussions spanning states and nations must deal with a number of components, and the four most common are reduced to acronyms:

*F-1* refers to the court, state or nation rendering the initial decision to be enforced.

*F-2* refers to the court, state or nation in which enforcement is sought.

*UEFJA* refers to the Uniform Enforcement of Foreign Judgments Act either in the model form<sup>1</sup> or the Texas version,<sup>2</sup> as indicated.

*UFCMJRA* refers to the Uniform Foreign-Country Money Judgments Recognition Act either in the model form<sup>3</sup> or the Texas version,<sup>4</sup> as indicated.

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1. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (amended 1964), 13 pt. I U.L.A. 160 (2002); UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (1948), 13 pt. I U.L.A. 248 (2002).

2. TEX. CIV. PRAC. & REM. CODE ANN. §§ 35.001–.008 (Vernon 2008).

3. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (amended

## I. INTERSTATE JUDGMENT ENFORCEMENT

This first Part on interstate enforcement deals broadly with judgments from jurisdictions within the United States—states, territories, and its federal system. This Part addresses enforcement between all those jurisdictions in the United States, including state-to-state, state-to-federal, federal-to-state, intrafederal, and includes United States territories and possessions. Legal sources include constitutional law, uniform statutes and common law.

Judgment enforcement within the United States requires a coordination of two competing constitutional doctrines—full faith and credit, sometimes opposed by due process—with the substantive and procedural law from two states. These multiple legal sources result in sometimes confounding choice-of-law problems regarding which rule applies in which setting. This Article attempts to clear that up.

Texas has two enforcement procedures—statutory and common law. Neither of them can be understood without first understanding full faith and credit. Texas law merely provides a procedure for filing, objecting, and collecting, but does not provide the requirements for judgment recognition and, perhaps more importantly, the defenses. The enforcing state's law governs filing the foreign judgment, but if there is any contest, the principles in this Part will determine the outcome.

### A. *The Constitutional Template—Full Faith and Credit Tempered by Due Process*

Two constitutional principles provide the starting point for judgment enforcement within the United States. The first is the Full Faith and Credit Clause, which requires all courts in the United States to honor valid and final judgments from all other domestic courts.<sup>5</sup> This is offset by the Due Process Clause, which protects defendants from judgments lacking primary safeguards.<sup>6</sup> Full faith and credit is

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2005), 13 pt II U.L.A. 5–20 (Supp. 2008); UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (1962) 13 pt. II U.L.A. 39–80 (2002).

4. TEX. CIV. PRAC. & REM. CODE ANN. §§ 36.001–008.

5. U.S. CONST. art. IV, § 1; *see generally* EUGENE F. SCOLES ET AL., CONFLICT OF LAWS ch. 24 (4th ed. 2004) (discussing interstate recognition of judgments); RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS ch. 11 (5th ed. 2006) (discussing full faith and credit of judgments).

6. U.S. CONST. amends. V & XIV. Due process also plays a role as the basis for objections to F-1 amenability and notice. *See infra* note 34. Further, due process provides a fair trial objection to certain foreign-country judgments. *See infra* notes 182–84.

the enforcement mandate; due process provides the basis for most of the defenses.

### 1. *The Full-Faith-and-Credit Enforcement Mandate*

The English and European concepts of claim preclusion and conflict of laws promoted the idea that once parties had litigated a claim in a proper court with basic procedural fairness, the resulting judgment should be final and not subject to relitigation. Those concepts alone would have been enough to encourage judgment recognition between the states. But the Constitution's drafters wanted more assurance that interstate judgment recognition would not be left to the whims of state courts applying common law claim preclusion, so they created a constitutional doctrine underscoring that obligation.<sup>7</sup> Among the other constitutional doctrines defining federalism, it stands alone as the only one not supporting an independent claim of federal question jurisdiction.<sup>8</sup>

#### a. The Constitutional Mandate and Its Scope

The Full Faith and Credit Clause is short and direct but has required a fair bit of judicial interpretation as explained below. It requires that:

Full Faith and Credit shall be given in each State to the public Acts, Records, and *judicial Proceedings* of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.<sup>9</sup>

The Full Faith and Credit Clause refers only to judicial proceedings and does not have an express finality requirement. That is, states must give full faith and credit to all judicial proceedings, including interlocutory holdings. This phrasing is repeated in the primary full faith and credit statute—28 U.S.C. § 1738. Case law has nonetheless read in a finality requirement.<sup>10</sup>

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7. See CONG. RESEARCH SERV., LIBRARY OF CONG., THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, S. DOC. NO. 108-17, at 873-74 (2d Sess. 2004).

8. See *Minnesota v. N. Sec. Co.*, 194 U.S. 48, 72 (1904); JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE 19 (4th ed. 2005).

9. U.S. CONST. art. IV, § 1 (emphasis added).

10. See, e.g., *Maner v. Maner*, 412 F.2d 449, 451 (5th Cir. 1969); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 107 (1971); SCOLES ET AL., *supra* note 5, § 24.8 & n.4.

Full faith and credit applies to valid and final in personam judgments rendered in American courts. It applies to both legal and equitable decisions<sup>11</sup> but generally does not apply to in rem judgments for real property, which are not mentioned in the Uniform Act.<sup>12</sup> Personal property judgments and status determinations are generally entitled to full faith and credit.<sup>13</sup> Full faith and credit also governs interstate preclusion, which is the basis for judgment enforcement (even under the Uniform Acts) and for the defenses. In turn, state and federal case law applying full faith and credit in preclusion matters are authority for judgment enforcement as well. Full faith and credit also requires interstate preclusion, discussed further in the common law enforcement section.<sup>14</sup>

#### b. Statutory Full Faith and Credit

The Full Faith and Credit Clause required statutory implementation which promptly occurred in 1790.<sup>15</sup> Congress has added several corollary statutes since that time to address specific points,<sup>16</sup> but the basic interstate judgment-enforcement function flows

11. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 234 (1998).

12. Judgments regarding title to real property have no interstate effect, for two reasons—if the land is located in F-1, there will be no need to enforce it elsewhere, and F-1 lacks jurisdiction to adjudicate claims to land elsewhere. See, e.g., *Fall v. Eastin*, 215 U.S. 1 (1909) (holding that Nebraska is not required to recognize Washington state divorce court's determination of land title in Nebraska); *McElreath v. McElreath*, 345 S.W.2d 722 (Tex. 1961); cf. *Durfee v. Duke*, 375 U.S. 106 (1963). This is further explained by the exception to full faith and credit, which does not require recognition of an F-1 judgment adjudicating something over which F-2 had exclusive control. See *Baker*, 522 U.S. at 235; *Robbins v. Reliance Ins. Co.*, 102 S.W.3d 739, 743–45 (Tex. App.—Corpus Christi 2001, no pet.); see also RESTATEMENT (SECOND) OF JUDGMENTS § 30 (1982).

13. See, e.g., *Belcher Co. of Ala. v. M/V Maratha Mariner*, 724 F.2d 1161 (5th Cir. 1984) (enforcing quasi in rem judgment); *In re Chase*, 141 S.E. 471 (N.C. 1928) (enforcing Florida incompetence determination); *Knowles v. Grimes*, 437 S.W.2d 816 (Tex. 1969) (child custody); see *infra* note 16. For further discussion of in rem claims, see RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 56–65 (1971 & Supp. 1989), and RESTATEMENT (SECOND) OF JUDGMENTS § 30 (1982). For status adjudications, see RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 69–79 (1971 & Supp. 1989), and RESTATEMENT (SECOND) OF JUDGMENTS § 31 (1982). See also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 97 (1971) (invoking *res judicata* as to jurisdiction over in rem and status adjudications).

14. See *infra* notes 125–27 and accompanying text.

15. Act of May 26, 1790, ch. 11, 1 Stat. 122 (1790) (codified at 28 U.S.C. § 1738 (2006)).

16. Other full-faith-and-credit statutes include: 28 U.S.C. § 1738A (2006) (child custody determinations); *id.* § 1738B (child support orders); *id.* § 1738C (exempting same-sex marriages from full faith and credit); *id.* § 1739 (nonjudicial records).

from the primary statute—28 U.S.C. § 1738—the successor to the original 1790 act.

Section 1738 serves two functions—the authentication of sister-state statutes, and the authentication of records and judicial proceedings from sister-state courts. Both are given full faith and credit, but that given to statutes has merely an evidentiary effect while that given to judgments has a preclusive and pre-emptive effect. The statute's literal language imposes a judgment enforcement mandate on "every court within the United States and its Territories and Possessions,"<sup>17</sup> necessarily including enforcements performed state-to-state, between states and United States territories, state-to-federal,<sup>18</sup> and federal-to-state.<sup>19</sup> Section 1738's inclusion of federal and territorial courts exceeds the Constitution's language but has been held constitutional.<sup>20</sup> Decades of statutory interpretation of section 1738 has clarified three requirements:

(1) *Authentication*: Section 1738 provides for proof from the F-1 court, with originals or copies; the F-1 clerk's attestation and court seal, if a seal exists; and the F-1 judge's certificate that the attestation is in proper form.<sup>21</sup> Many courts go further and provide an exemplification procedure involving triple certification, with the clerk attesting to the judgment's authenticity, the judge affirming the clerk's status and authority, and the clerk affirming the judge's status and authority.<sup>22</sup>

(2) *Reduction to local judgment*: In spite of the intended ease of interstate judgment enforcement under full faith and credit, federal law since 1839 has required the judgment creditor to reduce the F-1 judgment to a local judgment in F-2 in order to enforce it,<sup>23</sup> as further reflected in the Uniform Enforcement of Foreign Judgments Act.<sup>24</sup>

(3) *Reception by the receiving court*: Once a final and properly authenticated F-1 judgment has been filed in the F-2 court, it is entitled to full faith and credit in every state and territory in the

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17. *Id.* § 1738.

18. *See Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 468, 471 (1982).

19. *See Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938).

20. *See Embry v. Palmer*, 107 U.S. 3, 9–10 (1883).

21. *See* 28 U.S.C. § 1738 (2006).

22. *See, e.g., Harbison-Fischer Mfg. Co. v. Mohawk Data Scis. Corp.*, 823 S.W.2d 679, 684–85 (Tex. App.—Fort Worth 1991), *writ granted w.r.m.*, 840 S.W.2d 383 (Tex. 1992) (illustrating New York's use of the same procedure).

23. *See M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 329–30 (1839).

24. *See* UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 2 (amended 1964), 13 pt. I U.L.A. 163 (2002); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 35.003 (Vernon 2008).



United States, with the same effect in F-2 states as the judgment would have under F-1 law or usage.<sup>25</sup>

## 2. *Due Process—Defenses to the Full-Faith-and-Credit Mandate*

The full-faith-and-credit enforcement mandate has due process limitations. Most defenses must be raised in F-1 prior to final judgment, or on appeal, or as a later collateral attack in F-1.<sup>26</sup> But a few defenses may be raised in F-2, some based on due process and some based on failing to qualify for full faith and credit.

### a. Successful Defenses

(1) *Nonfinal judgment*: Only final judgments are entitled to recognition and enforcement under the Full Faith and Credit Clause.<sup>27</sup> The F-2 court may only enforce the amount that was reduced to judgment by the F-1 court.<sup>28</sup> Finality is controlled by F-1 law.<sup>29</sup> The most recent final judgment is the one entitled to recognition and enforcement.<sup>30</sup>

(2) *Judgment not on the merits*: A final F-1 judgment rendered on some grounds other than the merits is not entitled to full faith and credit.<sup>31</sup> This should never be an issue in judgment enforcement, which presumably rests on a final judgment on the merits awarding money or other relief to the F-1 plaintiff. It could, however, raise defensive issues in F-2 where prior litigation may bar enforcement.<sup>32</sup>

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25. See 28 U.S.C. § 1738 (2006).

26. For examples of F-1 defenses, see *infra* notes 55–61 and accompanying text.

27. See *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992); *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.—Houston [14th Dist.] 2004, pet. denied); *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.); *Myers v. Ribble*, 796 S.W.2d 222, 223–25 (Tex. App.—Dallas 1990, no writ) (holding Florida divorce decree not final and not enforceable); *cf.* *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439–40 (Tex. App.—Austin 1998, pet. denied) (ruling California default judgment using the singular term “defendant” when there were two defendants did not defeat finality for full faith and credit purposes).

28. See *Lynde v. Lynde*, 181 U.S. 183, 186–87 (1901) (holding F-1’s award of future alimony unenforceable in F-2); see also *Barber v. Barber*, 323 U.S. 77, 86 (1944).

29. See *Barber*, 323 U.S. at 79–83; *Yarborough v. Yarborough*, 290 U.S. 202, 209 (1933).

30. *Treines v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 107, 108, 109, 111 (1971) (non-finality generally, indeterminate monetary award in F-1, modifiable judgment, and conditional judgment; respectively).

31. See *Thomas v. Wash. Gas Light Co.*, 448 U.S. 261, 282 (1980) (plurality opinion); *Angel v. Bullington*, 330 U.S. 183, 186 (1947).

32. See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 111; SCOLES ET AL., *supra* note 5, § 24.4 (discussing foreign judgments not on the merits).

(3) *Invalid F-1 judgment*: The F-2 court may reject the F-1 judgment for lack of subject matter jurisdiction,<sup>33</sup> lack of personal jurisdiction (either amenability or notice)<sup>34</sup> or other invalidating grounds such as fraud,<sup>35</sup> as long as those issues were not litigated in F-1.<sup>36</sup> Defendants who neither argued nor waived their jurisdictional objections in F-1 (as in a default judgment) may object in F-2 and, on the issue of personal jurisdiction, may object in F-2 to both amenability and service of process in F-1.<sup>37</sup>

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33. See *Adam v. Saenger*, 303 U.S. 59, 62 (1938); *Kenney v. Supreme Lodge*, 252 U.S. 411, 414 (1920); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 105.

34. See *Karstetter v. Voss*, 184 S.W.3d 396, 401 (Tex. App.—Dallas 2006, no pet.) (denying enforcement of Kansas default judgment against Texas defendants). The bulk of jurisdictional precedents make the point of review for personal jurisdiction in F-1, nonetheless finding jurisdiction and upholding the F-1 judgment. See *H. Heller & Co. v. La.-Pac. Corp.*, 209 S.W.3d 844, 849 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (holding that Alabama had personal jurisdiction over judgment debtor); *Boyes v. Morris Polich & Purdy, LLP*, 169 S.W.3d 448, 454 (Tex. App.—El Paso 2005, no pet.); *Maxfield v. Terry*, 885 S.W.2d 216, 220 (Tex. App.—Dallas 1994, writ denied) (upholding Florida appointment of administrator in probate case); *Minuteman Press Int'l, Inc. v. Sparks*, 782 S.W.2d 339, 340 (Tex. App.—Fort Worth 1989, no writ) (stating New York had personal jurisdiction over Texas defendant); *First Nat'l Bank v. Rector*, 710 S.W.2d 100, 104 (Tex. App.—Austin 1986, writ ref'd n.r.e.) (holding Texas residents subject to Montana's long-arm statute for a bank loan in Montana used for land purchased in Montana).

35. Fraud can invalidate a sister-state judgment, but case law distinguishes between extrinsic fraud (bribery and other matters going to basic fairness in the case) and intrinsic fraud (ordinary fraud such as perjury or forged documents offered as evidence in the case). Extrinsic fraud is grounds for nonrecognition, as is intrinsic fraud that prevented a fair trial (for example, where plaintiff had no chance to object in the F-1 trial). Intrinsic fraud to which plaintiff objected, or could have objected, or which did not otherwise prevent a fair trial, may not be grounds for nonrecognition. See *Sherrer v. Sherrer*, 334 U.S. 343, 348–52 (1948); *Treinius*, 308 U.S. at 77; see generally SCOLES ET AL., *supra* note 5, § 24.17. Texas subscribes to this distinction. *E.g.*, *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484–85 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (finding faulty certificate of service of process did not amount to extrinsic fraud where defendant could have raised the issue in the F-1 trial); see also RESTATEMENT (SECOND) OF JUDGMENTS § 70 (1982).

36. See *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 524–25 (1931) (stating personal jurisdiction challenge to F-1 forum, once litigated and lost in F-1, may not be relitigated in F-2).

37. See *Saenger*, 303 U.S. at 61–62, 67–68; see also *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet. denied); *Mayfield v. Dean Witter Fin. Servs., Inc.*, 894 S.W.2d 502, 504 (Tex. App.—Austin 1995, writ denied); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 104. In *Saenger*, the Court explained that jurisdiction was not litigated in F-1 and the Texas court rejected the F-1 judgment for improper service of process on a corporate defendant, improper under both F-1 law and the U.S. Constitution; the Court reversed on both grounds because the Texas court incorrectly interpreted F-1 law and federal law. *Saenger*, 303 U.S. at 61–62, 67–68.

(4) *Nature of the F-1 claim*: Courts in the United States are not required to enforce penal judgments from sister states and may also reject certain procedural matters.

(a) *Penal judgments*: Full faith and credit does not require F-2 to enforce penal laws of F-1, but the Supreme Court may review whether the F-1 judgment was penal. In *Huntington v. Attrill*, a Maryland court erred in characterizing as penal a New York law which made corporate officers liable for signing and recording a false certificate of the amount of its capital stock. Its intent was civil and not criminal. Full faith and credit therefore required the recognition of the resulting New York judgment in Maryland.<sup>38</sup>

(b) *Inter-jurisdictional injunctions*: A Missouri federal court was not required to enforce a Michigan state court injunction regarding a former employee not testifying against General Motors in a Missouri action brought by a person who was not a party in the Michigan case.<sup>39</sup> But, note that injunctions against the F-2 enforcement of an inconsistent judgment may be entitled to recognition under full faith and credit.<sup>40</sup>

(c) *In rem judgments*: Full faith and credit does not apply to F-1's adjudication of title to real property in F-2<sup>41</sup> which is closely related to, or a subset of the following category.

(d) *Judgments interfering with F-2's exclusive interests (in rem and other matters)*: In *Baker v. General Motors*, the Supreme Court denied enforcement of a Michigan injunction attempting to stop defendant's employee from testifying in a Missouri lawsuit. The rejection was based not only on full faith and credit's inapplicability to interstate injunctions but also on the impropriety of interfering with ongoing adjudication in F-2. Note that this is not a public policy exception, but the inapplicability of full faith and credit to an F-1 judgment regulating something within F-2's exclusive control.<sup>42</sup> These

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38. *Huntington v. Attrill*, 146 U.S. 657, 686 (1892); cf. *EnviroPower, L.L.C. v. Bear, Stearns & Co.*, 265 S.W.3d 16, 21 (Tex. App.—Houston [1st Dist.] 2008, no pet. h.) (holding New York judgment based on death penalty sanction was not a penal judgment and was entitled to enforcement).

39. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 240–41 (1998); *Robbins v. Reliance Ins. Co.*, 102 S.W.3d 739, 743–45 (Tex. App.—Corpus Christi 2001, no pet.); see also WEINTRAUB, *supra* note 5, § 11.1.

40. See, e.g., *First Tenn. Bank N.A. Memphis v. Smith*, 766 F.2d 255, 260 (6th Cir. 1985); see also RESTATEMENT (SECOND) OF JUDGMENTS § 15 (1982); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 113–14; SCOLES ET AL., *supra* note 5, § 24.29.

41. See *McElreath v. McElreath*, 345 S.W.2d 722, 733 (Tex. 1961) (explaining that full faith and credit does not apply to sister state's adjudication of title to real property in Texas).

42. See *Baker*, 522 U.S. at 240–41 (denying enforcement of Michigan injunction

defenses fall into two categories—interference with matters over which F-2 has exclusive control<sup>43</sup> and interference with important F-2 interests.<sup>44</sup> These two defenses are exceptions to the general rule that F-2's public policy cannot block enforcement of the F-1 judgment.<sup>45</sup>

(e) *Stale judgments* (on which the enforcement time has lapsed) may or may not be enforceable under the following criteria. Under Texas law, a judgment that is stale under F-1 law is not enforceable in Texas,<sup>46</sup> even though the Constitution permits F-2 to apply its own law and extend the enforcement period.<sup>47</sup> Texas law further bars enforcement of a sister-state judgment more than ten years old against a person who has resided in Texas for more than ten years.<sup>48</sup> In addition, a judgment stale in F-2 may be denied enforcement in F-2 if the F-2 limitation period applies equally to domestic and foreign judgments.<sup>49</sup>

(5) *Matters subsequent to the original F-1 judgment* can provide defenses to F-2 enforcement. These include satisfaction,<sup>50</sup> subsequent

attempting to stop defendant's employee from testifying in a Missouri lawsuit); *Pac. Employers Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493, 501–02 (1939); *Robbins*, 102 S.W.3d at 743–45.

43. See *Baker*, 522 U.S. at 240–41 (denying enforcement of Michigan injunction attempting to stop defendant's employee from testifying in a Missouri lawsuit); *Williams v. North Carolina*, 325 U.S. 226, 238 (1945) (denying recognition of Nevada divorce decree in prosecution for bigamy); *Robbins*, 102 S.W.3d at 743–45; see also *Williams v. Gen. Motors Corp.*, 147 F.R.D. 270, 272 (S.D. Ga. 1993); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 117. A more recent example is Congress's 1996 law exempting same-sex marriages from the full faith and credit mandate. See *Defense of Marriage Act*, Pub. L. No. 104–99, 110 Stat. 2419 (1996).

44. See *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 715 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (holding Texas not required to enforce a Louisiana judgment which itself was merely a recognition of a Canadian judgment, which should have been brought under the Texas UFCMJRA); see also *Williams*, 325 U.S. at 238 (denying recognition of Nevada divorce decree in prosecution for bigamy).

45. See *infra* notes 58–60 and accompanying text.

46. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.066(a) (Vernon 2008).

47. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 118(2); see also *Watkins v. Conway*, 385 U.S. 188, 189–90 (1966) (per curiam). This rule goes so far as to require that judgments gone stale in F-1, then revived under F-2's longer judgment enforcement period, must be honored if brought back to F-1 for enforcement there. *Watkins*, 385 U.S. at 189–90; see also *Roche v. McDonald*, 275 U.S. 449, 455 (1928).

48. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.066(b).

49. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 118 cmt. c. See generally *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203 (Tex. App.—Amarillo 1994, writ denied) (barring enforcement of judgment as either a domestic or foreign judgment).

50. Satisfaction includes payment, discharge, or other performance of the obligation or judgment. See *Ankrom v. Ankrom*, 531 A.2d 509, 510 (Pa. Super. Ct. 1987); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 116. F-1 law governs satisfaction, and if full satisfaction is required to discharge joint tortfeasors, then partial payment will not be

judgments,<sup>51</sup> reversal or other contrary action as to prior judgment,<sup>52</sup> set-offs,<sup>53</sup> and equitable relief or collateral attack if available in F-1, usually based on fraud.<sup>54</sup>

## b. Unsuccessful Defenses

(1) *Erroneous judgment*: Judicial errors in F-1 are not objectionable in F-2, whether the errors were raised in F-1 or not. Once the judgment there is final, full faith and credit requires F-2 to enforce it as rendered in F-1.<sup>55</sup> Similarly, judgment irregularities which could have been raised in F-1 are not defenses in F-2.<sup>56</sup>

(2) *Original action not litigable in F-2*: In *Kenney v. Supreme Lodge*, Illinois law did not permit litigation of wrongful death actions arising outside of Illinois and relied on that law to refuse enforcement of an Alabama judgment for wrongful death. The Supreme Court reversed and held that Illinois must enforce a valid and final sister

sufficient (that is, F-1 law controls the effect of satisfaction and discharge in F-2). See *Signal Data Processing, Inc. v. Rex Humbard Found.*, 651 N.E.2d 498, 500-01 (Ohio Ct. App. 1994); *Burkett v. McCaw*, 515 P.2d 988, 990-91 (Wash. Ct. App. 1973). *Contra Meyer v. First Am. Title Ins. Agency of Mohave, Inc.*, 674 N.E.2d 496, 500 (Ill. App. Ct. 1996).

51. Subsequent-judgment defenses are based on the effect under F-1 law, although the last-in-time rule can twist this result for conflicting interstate judgments. The last-in-time rule holds that under full faith and credit, the enforcing court must give effect to the last judgment rendered. See *Treinius v. Sunshine Mining Co.*, 308 U.S. 66, 74-75 (1939). In *Treinius*, the party should have appealed F-2 court's failure to recognize F-1 judgment; once the F-2 judgment was final, it trumped the F-1 judgment and became the operative judgment for the F-3 court. See also *Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co.*, 121 F.3d 1332, 1335 (9th Cir. 1997); *First Tenn. Bank N.A. Memphis v. Smith*, 766 F.2d 255, 259 (6th Cir. 1985); RESTATEMENT (SECOND) OF JUDGMENTS § 15 (1982); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 114.

52. See *Reed v. Allen*, 286 U.S. 191, 198-99 (1932); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 112, 113, 121 (vacated judgment, permanently enjoined enforcement, and reversal; respectively); see also RESTATEMENT (SECOND) OF JUDGMENTS § 16. Note that these defenses are based on the effect under F-1 law.

53. Set-offs may be assertable in F-2 to the extent they are permitted under F-2 law and not barred for failure to assert in the F-1 action (as compulsory counterclaims would be). There is no case law on this point, although several cases bar counterclaims for various reasons. *E.g.*, *Hammette v. Eickemeyer*, 416 S.E.2d 824, 825 (Ga. Ct. App. 1992); *Pavey Envelope & Tag Corp. v. Diamond Envelope Corp.*, 648 N.E.2d 1115, 1120 (Ill. App. Ct. 1995); *Landon v. Artz*, 631 P.2d 1237, 1240 (Kan. Ct. App. 1981); *Concannon v. Hampton*, 584 P.2d 218, 222 (Okla. 1978).

54. *E.g.*, *Browning v. Navarro*, 826 F.2d 335, 342 (5th Cir. 1987). For fraud grounds, see *supra* note 35. See also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 115.

55. See *In re Brady, Tex., Mun. Gas Corp.*, 936 F.2d 212, 221 (5th Cir. 1991); *Russo v. Dear*, 105 S.W.3d 43, 46-47 (Tex. App.—Dallas 2003, pet. denied).

56. See *Marworth, Inc. v. McGuire*, 810 P.2d 653, 658 (Colo. 1991) (en banc); *Cantwell Mach. Co. v. Ballard Agency, Inc.*, 583 So. 2d 73, 78 (La. Ct. App. 1991) (upholding 1989 F-1 judgment erroneously dated 1981); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 106.

state judgment, even though that action could not have been brought in an Illinois court.<sup>57</sup> Thus, F-2's failure to recognize the original claim, or F-2's lack of a court capable of hearing the claim, is not grounds to refuse full faith and credit.

(3) *Illegality in F-2*: A sister-state judgment on a matter illegal in F-2 may nonetheless be entitled to enforcement under full faith and credit. *Fauntleroy v. Lum* involved a Missouri judgment on a contract for speculation in cotton futures in Mississippi. The contract was illegal in Mississippi but had been arbitrated and reduced to judgment in Missouri. Plaintiff's attempt to enforce the Missouri judgment in Mississippi was initially denied because the Mississippi statute was deemed to deny jurisdiction for any action on a futures contract. The Supreme Court reversed under full faith and credit and required the Mississippi court to provide a forum to enforce the Missouri judgment.<sup>58</sup>

(4) *Public policy in F-2*: An F-1 judgment contrary to F-2's public policy is generally not a defense to full faith and credit,<sup>59</sup> subject to two related exceptions where the F-1 judgment interferes with F-2's important interests or matters within F-2's exclusive control.<sup>60</sup>

(5) *Equitable decision from F-1*: Equity decrees are entitled to full faith and credit unless circumstances dictate otherwise.<sup>61</sup>

### 3. *More Due Process—Supreme Court Review*

The receiving state does not have the final say. Full faith and credit creates a federal question of interstate enforcement, and every aspect of F-2's treatment of the F-1 judgment is reviewable by the Supreme Court. The leading case—*Adam v. Saenger*<sup>62</sup>—is a Texas court's rejection of a California judgment on jurisdictional grounds. The Supreme Court's ruling clarified both the breadth and depth of full faith and credit.

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57. *Kenney v. Supreme Lodge*, 252 U.S. 411, 415–16 (1920); *see also Fauntleroy v. Lum*, 210 U.S. 230, 234–37 (1908).

58. *Fauntleroy*, 210 U.S. at 238; *see also GNLV Corp. v. Jackson*, 736 S.W.2d 893, 894 (Tex. App.—Waco 1987, writ denied) (enforcing Nevada gambling debts judgment pursuant to full faith and credit).

59. *See Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 797 (Tex. 1992); *Knighton v. Int'l Bus. Machs. Corp.*, 856 S.W.2d 206, 209 (Tex. App.—Houston [1st Dist.] 1993, writ denied).

60. *See supra* notes 42–44 and accompanying text.

61. *See Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235–36 (1998).

62. 303 U.S. 59 (1938).

Texas-based Beaumont Export & Import Company initially filed an action in California Superior Court against Montes and others as trustees of a dissolved California corporation. Saenger counterclaimed in the California court for chattel conversion and served notice on Beaumont E & I's attorney there, consistent with California practice. Beaumont E & I failed to prosecute its original claim and lost by default on the counterclaim, resulting in a dismissal of the primary claim and judgment on the counterclaim.<sup>63</sup>

Saenger, as Montes's successor in interest, brought the California judgment to Texas for enforcement. The Texas trial court dismissed the California judgment for lack of jurisdiction, based in part on the Texas court's construction of California law for service of the counterclaim. The Texas Court of Appeals affirmed and the Texas Supreme Court denied review. The Texas decisions posed yet another jurisdictional question for the United States Supreme Court—could it review the Texas determination of California law, which at that time was considered a question of fact. The Court first noted that Texas (or F-2) courts had every right to review a question of California (or F-1) jurisdiction as long as that issue had not been raised in California. But the F-2 decision was reviewable by the Supreme Court without regard to Texas law characterizing its actions as questions of fact, based on the obvious constitutional implications.<sup>64</sup> The Court went on to conclude that the Texas courts had erred in construing California law regarding service of the counterclaim on Beaumont E & I's attorney and remanded with orders to honor the California judgment.<sup>65</sup>

### B. *Texas Enforcement of Sister-State Judgments*

As explained in the preceding subpart, full faith and credit compels states to enforce final judgments from other United States jurisdictions. From the Supreme Court's first interstate judgment enforcement in 1794<sup>66</sup> until the mid-twentieth century, the procedure was for the judgment creditor to file a new lawsuit in F-2, using the F-1 judgment as grounds for summary judgment based on claim preclusion. The result is a new F-2 judgment with the same status as the judgment would have in F-1. This result necessarily flows from the language of the full-faith-and-credit statute.<sup>67</sup> Beyond the

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63. *Id.* at 60–61.

64. *Id.* at 64.

65. *Id.* at 64–68.

66. *See* *Armstrong v. Carson's Ex'rs*, 2 U.S. (2 Dall.) 302 (1794).

67. "Such . . . judicial proceedings . . . shall have the same full faith and credit in every

fundamentals of full-faith-and-credit enforcement, each state had its own procedures for F-2 enforcement, necessarily consistent with full faith and credit but varying according to local discretion on execution and other matters as explained below.

In spite of procedural variations, the common law method was no doubt similar among the states. The proceeding was largely a formality, except in those cases where the judgment debtor raised fact-intensive objections to enforcement. The pro forma nature of F-2 enforcement led to the 1948 creation of the Uniform Enforcement of Foreign Judgments Act.<sup>68</sup> As with other uniform acts, states will vary on provisions.<sup>69</sup> Texas adopted the UEFJA in 1985<sup>70</sup> and retains common law enforcement,<sup>71</sup> and each is explained below.

### 1. *Texas Enforcement Under the Uniform Enforcement of Foreign Judgments Act*

The Texas UEFJA requires the judgment creditor to file a copy of the judgment authenticated under federal or Texas law<sup>72</sup> and that notice be given to the judgment debtor by the clerk<sup>73</sup> or by the judgment creditor.<sup>74</sup> The judgment debtor may move to stay enforcement under either the law of Texas or the rendering state;<sup>75</sup> although, state law cannot supersede full faith and credit. The judgment-debtor may also challenge enforcement under traditional full faith and credit grounds such as the rendering state's lack of personal or subject matter jurisdiction.<sup>76</sup>

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court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738 (2006).

68. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (amended 1964), 13 pt. I U.L.A. 155-245 (2002).

69. For state variations as to each section of the UEFJA, see the statutory notes found in UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT §§ 1-10 (amended 1964), 13 pt. I U.L.A. 155-245 (2002 & Supp. 2008).

70. Act of Sept. 1, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3274-75 (current version at TEX. CIV. PRAC. & REM. CODE §§ 35.001-008 (Vernon 2008)).

71. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.008 (Vernon 2008); see also *Brown's Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.—Corpus Christi 2001, no pet.).

72. TEX. CIV. PRAC. & REM. CODE ANN. § 35.003.

73. *Id.* § 35.004.

74. *Id.* § 35.005.

75. *Id.* § 35.006.

76. *Id.* § 35.003.



### a. Governing Law

In filing the foreign judgment, it is important to distinguish between the issues governed by Texas law and those governed by the F-1 state. The rendering state's law governs judgment finality,<sup>77</sup> judgment validity (that is, the F-1 court's subject matter jurisdiction),<sup>78</sup> personal jurisdiction for the original judgment (subject to constitutional limits),<sup>79</sup> the availability of post-judgment collateral attacks,<sup>80</sup> and the effect of reversal, vacating, or collateral attacks.<sup>81</sup> It is axiomatic that the F-1 final judgment, if otherwise valid, is the last word on the merits.<sup>82</sup>

Texas (or F-2) law governs filing procedures, authentication (along with federal law), notice of the enforcement action (subject to constitutional requirements), methods of enforcement (including the availability of injunctions), local fees, stays of the F-2 enforcement action, venue of the enforcement action, and other miscellaneous enforcement procedures.<sup>83</sup> Federal law governs authentication (along with Texas or F-2 law),<sup>84</sup> defenses under full faith and credit (along with F-1 law's determination of finality, etc.), and limits on full faith and credit.<sup>85</sup>

77. See *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 487–88 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (holding that Georgia law governed finality); *Dear v. Russo*, 973 S.W.2d 445, 447 (Tex. App.—Dallas 1998, no pet.) (holding that the finality of Ohio judgment was governed by that state's law and not Texas law).

78. See *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 795 (Tex. 1992); *Gen. Exploration Co. v. David*, 596 S.W.2d 145, 146 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ dismissed).

79. “A defendant may challenge the jurisdiction of a sister state by demonstrating that (1) service of process was inadequate under the rules of the sister state or (2) the sister state's exercise of in personam jurisdiction offends the due process of law.” *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet. denied); see also *First Nat'l Bank v. Rector*, 710 S.W.2d 100, 104 (Tex. App.—Austin 1986, writ refused n.r.e.); *supra* note 34.

80. See *Markham*, 973 S.W.2d at 439 (holding a bill of review attacking the merits of California judgment unavailable in Texas enforcement action).

81. See *Moody v. State*, 547 S.W.2d 958, 959 (Tex. 1977) (per curiam).

82. See *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 326–27 (Tex. App.—El Paso 1993, no writ) (holding that a motion for new trial merely permits objections under the UEFJA and does not re-open the case on the merits).

83. See *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 485 (Tex. App.—Houston [14th Dist.] 2004, pet. denied); *Urso v. Lyon Fin. Servs., Inc.*, 93 S.W.3d 276, 278–80 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (explaining Texas appellate timetables applied to appeals from foreign judgment enforcement); *Gen. Exploration*, 596 S.W.2d at 146.

84. See 28 U.S.C. § 1738 (2006), discussed *infra* at notes 88–91 and accompanying text.

85. See *supra* Part I.A.2.

Ordinarily F-1 law will not be an issue unless the judgment debtor challenges the filing. If F-1 law becomes an issue, the party raising the issue (likely the judgment debtor) has the burden of pleading and proving the content of the pertinent F-1 law. Under Texas law, judicial notice governs the pleading and proof of the F-1 law, requiring “sufficient information.”<sup>86</sup> In spite of the seemingly easy judicial notice rule, the proffering party should plead the content of F-1 law in the objection, provide clear photocopies to the court and all parties, and allow ample time for response. If the proffering party fails to prove F-1 law, then F-1 law is presumed to be identical to F-2’s law, and that presumption has applied Texas law to determine legal results from other states.<sup>87</sup> Presumptions aside, to the extent that F-1 law favors the opposing party (likely the judgment creditor), that party may want to prove its content as well.

#### b. Specific Filing Requirements

(1) *Authentication*: Texas requires authentication under either an act of Congress or a Texas statute.<sup>88</sup> Federal law establishes the maximum standard which states may not exceed, spelled out in the full faith and credit statute:

[B]y the attestation of the [F-1 court] clerk and seal of the [F-1] court annexed, if a seal exists, together with a certificate of a judge of the [F-1] court that the said attestation is in proper form.<sup>89</sup>

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86.

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. Judicial notice of such matters may be taken at any stage of the proceeding. The court’s determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 202.

87. See *Charles Brown, L.L.P. v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 894 n.20 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

88. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.003 (Vernon 2008).

89. 28 U.S.C. § 1738 (2006).

Texas law has similar requirements governing self-authentication of documents from jurisdictions within the United States.<sup>90</sup> The document filed must be a properly-authenticated copy of the foreign judgment and not merely the F-1 state's abstract of judgment or some other evidence of the judgment.<sup>91</sup>

In spite of the minor variation in these federal and state authentication requirements, the widely-accepted form is commonly known as exemplification, or colloquially as "triple-certification." Although there is apparently no rule defining it, exemplification is the court clerk's certification of the judgment's authenticity, in addition to the judge's statement that the person signing as clerk has authority to do so, and the clerk's statement that the person signing as judge has authority to do so. It is also apparent, again without guiding authority, that deputy clerks may sign for the district clerk and the judge may be the judge who rendered the decision, the presiding administrative judge in that district, or perhaps any judge in that district.<sup>92</sup>

Exemplification's three-way attestation may exceed federal authentication requirements under § 1738, but its wide acceptance is a good reason to obtain it whenever possible. Judgment creditors should bear in mind that the authentication will occur in F-1 but must be accepted in F-2. Although appeal is proper when the F-2 court rejects an F-1 judgment that meets minimal authentication standards, it is better to avoid appeal by obtaining a triple-certified judgment from the F-1 clerk.

(2) *Filing*: With the F-1 judgment properly-authenticated, the judgment creditor then files it in an F-2 court, in this case, a Texas court. Once filed, the Texas court clerk must treat it as judgment of that local court, subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a local judgment.<sup>93</sup>

(3) *Jurisdiction and venue*: The UEFJA does not address personal jurisdiction and has no provisions for subject matter

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90. See TEX. R. EVID. 902(1), (2), (4).

91. See *Wolfram v. Wolfram*, 165 S.W.3d 755, 759–60 & n.5 (Tex. App.—San Antonio 2005, no pet.) (finding California abstract of judgment insufficient proof of judgment).

92. Minor variations in exemplification forms, both in various Texas counties and from other states, suggest that the language and procedure are largely determined on a district-by-district basis.

93. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.003 (echoing 28 U.S.C. § 1738); see also *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 483 (Tex. App.—Houston [14th Dist.] 2004, pet. denied); *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

jurisdiction and venue, other than allowing an authenticated sister-state judgment to be filed in “any court of competent jurisdiction of this state.”<sup>94</sup> Subject matter jurisdiction is satisfied in any court competent to enforce judgments, although judgment creditors will want to be careful to file in a court whose amount-in-controversy limits cover the judgment.

Personal jurisdiction in F-2 (Texas in this case) should not be an issue, other than compliance with *Shaffer v. Heitner*'s mandate that abolished pure quasi in rem jurisdiction and requires all assertions of personal jurisdiction to satisfy minimum contacts.<sup>95</sup> *Shaffer* should not be a problem in judgment enforcement because the issue is not the merits of the claim now reduced to judgment but the susceptibility of assets to execution—debtors should be amenable anywhere those assets are located.

Venue, however, produces disagreement. The statutory authorization to file the foreign judgment “in any court of competent jurisdiction of this State” would seem to permit filing in any judicial district. In *Cantu v. Grossman*, a Texas court of appeals found the UEFJA to be subject to the Texas general venue statute and thus reversed the trial court's rejection of the judgment debtor's venue challenge, disagreeing with both a dissenting justice in that case and a prior Texas appellate case.<sup>96</sup>

As to all these points—subject matter jurisdiction, personal jurisdiction, and venue—this section addresses them only in F-2, which is Texas in this case. As discussed elsewhere, problems with jurisdiction and venue in F-1 are grounds for challenges in F-2 if the issue was not litigated or waived in F-1.<sup>97</sup>

(4) *Notice to the judgment debtor*: Notice to the judgment debtor is required but may be done by the court clerk or the judgment creditor. Notice through the clerk is done by the judgment creditor's filing an affidavit showing the judgment debtor's name and last known post office address, and the judgment creditor's name and address, and if represented by an attorney, that name and address. Notice through the judgment creditor by mail to the judgment debtor is accomplished with proof of mailing filed with the clerk. Although

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94. TEX. CIV. PRAC. & REM. CODE ANN. § 35.003(a).

95. *Shaffer v. Heitner*, 433 U.S. 186, 203–12 (1977).

96. *Compare Cantu v. Grossman*, 251 S.W.3d 731, 740–42 (Tex. App.—Houston [14th Dist.] 2008, no pet. h.), with *Moncrief v. Harvey*, No. 05-90-01116-CV, 1991 WL 258684, at \*1–2 (Tex. App.—Dallas Nov. 26, 1991, no writ). The *Cantu* majority opinion cites supporting opinions from three states. *Cantu*, 251 S.W.3d. at 738–39.

97. See *supra* notes 34 & 79 and accompanying text.

either method will accomplish notice, prudent creditors will do both to ensure enforcement.<sup>98</sup>

(5) *Fees*: Under the UEFJA, the foreign-judgment filing fee is the same as that for local lawsuits, and other enforcement fees are the same as for Texas judgments.<sup>99</sup> Fees, of course, will vary from district to district.

### c. Defenses

The UEFJA does not address defenses but merely states that “[a] filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.”<sup>100</sup> The emphasized language is misleading because full faith and credit requires that F-1 law control the effect of the judgment in F-2.<sup>101</sup> Thus, although F-2 law will govern the form for raising defenses, the F-1 law and the Constitution govern the substance of those defenses. In spite of the UEFJA’s non-mention of specific defenses, it is clear that full faith and credit defenses are implied.<sup>102</sup>

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98. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 35.004–.005.

99. See *id.* § 35.007.

100. *Id.* § 35.003(c) (emphasis added).

101. F-2 law governs the procedural mechanism for raising objections. See *id.*; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 99 & cmt. a (1971). But any real attacks on the judgment must come from full-faith-and-credit case law, in combination with F-1 law. For example, if the judgment debtor wishes to defeat the judgment by challenging his personal jurisdiction in F-1, that objection will be determined by F-1 service of process law and long arm statutes, along with the due process standards of minimum contacts; this was true for common law enforcement, see *Adam v. Saenger*, 303 U.S. 59, 62 (1938) (reversing a Texas judgment), and remains true under the UEFJA. See *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439–40 (Tex. App.—Austin 1998, pet. denied); *Mayfield v. Dean Witter Fin. Servs., Inc.*, 894 S.W.2d 502, 504 (Tex. App.—Austin 1995, writ denied); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 96–97 (personal jurisdiction and subject matter jurisdiction; respectively). Objections that were litigated or waived in F-1 ordinarily may not be raised again in F-2. See, e.g., *Firststar Bank Milwaukee, NA v. Cole*, 678 N.E.2d 668, 670–71 (Ill. App. Ct. 1997); *Merritt v. Harless*, 685 S.W.2d 708, 710–11 (Tex. App.—Dallas 1984, no writ). On the other hand, a debtor challenging a default judgment may object to F-1 jurisdiction but not to the F-1 judgment’s merits. The debtor may also object to the F-2 court’s venue or jurisdiction and that will be resolved under F-2 law. It is unlikely, however, that jurisdiction will be an issue—the court will have sufficient personal jurisdiction if the debtors have executable assets in the forum, and subject matter will not be a problem if the enforcement action is filed in a court of general jurisdiction or in a county court at law with adequate amount-in-controversy coverage for the judgment.

102. See *Schwartz v. F.M.I. Props. Corp.*, 714 S.W.2d 97, 99–100 (Tex. App.—Houston [14th Dist.] 1986, writ ref’d n.r.e.). For a listing of the full-faith-and-credit defenses, see *supra* Part I.A.2.

Upon filing in Texas, the F-1 judgment becomes a Texas judgment,<sup>103</sup> immediately enforceable but subject to post-judgment motions based on the full faith and credit objections listed above.<sup>104</sup> A motion for new trial is the appropriate remedy,<sup>105</sup> and once made, the trial judge is required to stay enforcement for an “appropriate period.”<sup>106</sup> Failure to make timely objections results in an immediately enforceable judgment.<sup>107</sup> Stays are the only express means under the UEFJA for raising objections in the trial court, although the statute retains other F-2 judgment objections.<sup>108</sup>

(1) *Stays*: The UEFJA provides three grounds for stay of judgment enforcement in F-2. The first is an F-1 appeal, that is, the judgment creditor may show that an appeal is pending or will be taken, or that the time for perfecting appeal has not expired.<sup>109</sup> The second is an F-1 supersedeas bond—the judgment creditor may show that a stay of execution has been granted, has been requested, or will be requested and that security under F-1 law has been furnished or will be furnished.<sup>110</sup> The third is any grounds for stay under F-2 law, which in Texas would include a supersedeas bond.<sup>111</sup> The UEFJA statutory language does not impose a time limit on the availability of stays, although waiting longer than thirty days risks execution.

(2) *Other trial court objections*: As noted above, the UEFJA retains the judgment debtor’s right to make objections to judgment enforcement in F-2 that do not otherwise violate the Full Faith and Credit Clause.<sup>112</sup> The availability of these motions can be misleading—

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103. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.003(c) (echoing 28 U.S.C. § 1738 (2006)); see also *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (stating that Texas is required, under the Full Faith and Credit Clause, to enforce a valid judgment from another state); *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

104. See *supra* Part.I.A.2.a.

105. See *Mindis Metals*, 132 S.W.3d at 483.

106. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.006(b).

107. See *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 714–15 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

108. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.003(c).

109. *Id.* § 35.006(a).

110. *Id.*

111. *Id.* § 35.006(b). For Texas supersedeas requirements, see TEX. CIV. PRAC. & REM. CODE ANN. § 52.006. See also *EnviroPower, L.L.C. v. Bear, Stearns & Co.*, 265 S.W.3d 1, 5 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (en banc) (vacating trial court’s order on supersedeas bond and remanding for recalculation).

112. *E.g.*, *Walnut Equip. Leasing Co., v. Wen Lung Wu*, 920 S.W.2d 285–86 (Tex. 1996) (per curiam); *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 326 (Tex. App.—El Paso 1993, no writ) (motion for new trial).

unlike original Texas judgments, challenges to sister-state judgments are limited to questions of proper filing and entitlement to full faith and credit, with the result being enforcement or denial of enforcement. New trials and other inquiries into the dispute's merits are unavailable.<sup>113</sup> Any such motions, including motions for stay, filed within thirty days are treated as motions for new trial.<sup>114</sup>

(3) *Appeal*: An appeal is routinely available for parties who raised timely objections in the Texas trial court (that is, after the UEFJA filing). Restricted appeal may be available under Rule 30 of the Texas Rules of Appellate Procedure for parties failing to raise timely trial court objections, if filed within six months of the initial Texas UEFJA filing.<sup>115</sup> A bill of review may also be available, again limited to the issues of proper UEFJA filing and full faith and credit.<sup>116</sup>

#### d. Burdens and Presumptions

The initial burden is on the judgment creditor to present a facially valid, authentic, and final judgment.<sup>117</sup> Once that facially appropriate document has been filed, notice given, and other UEFJA procedures complied with, the judgment is presumed enforceable unless the judgment debtor establishes a defense.<sup>118</sup> Specific presumptions include authenticity,<sup>119</sup> validity,<sup>120</sup> finality,<sup>121</sup> and that F-1

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113. See *Russo v. Dear*, 105 S.W.3d 43, 46 (Tex. App.—Dallas 2003, pet. denied); *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet. denied); *Trinity Capital*, 847 S.W.2d at 326–27.

114. See *Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.—Dallas 1991, no writ).

115. See *Mayfield v. Dean Witter Fin. Servs.*, 894 S.W.2d 502, 504 (Tex. App.—Austin 1995, writ denied).

116. E.g., *Markham*, 973 S.W.2d at 439.

117. See *H. Heller & Co. v. La.-Pac. Corp.*, 209 S.W.3d 844, 849 (Tex. App.—Houston [14th Dist.] 2006, pet. denied); *Russo*, 105 S.W.3d at 46.

118. See *H. Heller & Co.*, 209 S.W.3d at 849; *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *Fuhrer v. Rinyu*, 647 S.W.2d 315, 317 (Tex. App.—Corpus Christi 1982, no writ).

119. See *Minuteman Press Int'l, Inc. v. Sparks*, 782 S.W.2d 339, 342–43 (Tex. App.—Fort Worth 1989, no writ) (stating that the lack of an F-1 judge's signature does not otherwise defeat a properly authenticated copy of New York judgment and its presentation in Texas shifts the burden to the judgment debtor to disprove its authenticity).

120. See *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 326 (Tex. App.—El Paso 1993, no writ) (stating the judgment debtor has the burden of proving the invalidity of a sister-state judgment after the judgment creditor presents properly authenticated judgment). This presumption applies even to F-1 default judgments, see *First Nat'l Bank v. Rector*, 710 S.W.2d 100, 103 (Tex. App.—Austin 1986, writ ref'd n.r.e.); to F-1 default judgments signed only by the court clerk and not a judge, see *Minuteman*, 782 S.W.2d at 342–43. See also *Markham*, 973 S.W.2d at 439 (explaining that in a sister-state's default

law is identical to Texas law.<sup>122</sup> Note that Texas courts must take evidence of foreign law on judicial notice with the offering of photocopies.<sup>123</sup>

## 2. Common Law Enforcement

The Texas UEFJA specifically preserves the common law enforcement method.<sup>124</sup> The judgment creditor must file a new action in Texas and then may move for summary judgment using the sister-state judgment for claim or issue preclusion. In spite of the extra procedural steps, this method nonetheless benefits from the Full Faith and Credit Clause and its statutory counterpart.<sup>125</sup> The sister-state judgment may be authenticated under the simplified federal procedure provided in the statute.<sup>126</sup> The resulting judgment is enforceable to the extent of any other Texas judgment, just as with the UEFJA procedure.

The defenses to common law enforcement are based both on full faith and credit and on claim preclusion (on which common law judgment enforcement depends). In using the common law method

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judgment, recitals of facts establishing defendant's personal jurisdiction in F-1 are presumed valid and burden is on defendant to disprove them).

121. See *Myers v. Ribble*, 796 S.W.2d 222, 224 (Tex. App.—Dallas 1990, no writ) (stating the F-1 judgment's finality is presumed unless the judgment is facially contradictory in which case burden is on judgment creditor to prove finality).

122. See *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 487 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (presuming Georgia law to be the same as Texas law so that an interlocutory Georgia judgment could not be enforced there); *Stine v. Koga*, 790 S.W.2d 412, 414 (Tex. App.—Beaumont 1990, writ dismissed) (stating the judgment creditor bears the burden of proving sister-state law, which is presumed to be the same as that of Texas); see also *Joannou v. Corsini*, 543 So. 2d 308, 310 (Fla. Dist. Ct. App. 1989) (concluding that because the judgment creditor failed to introduce evidence of F-1 law regarding finality, it was presumed identical to F-2 law).

123. See TEX. R. EVID. 202, quoted *supra* note 86. Texas law requires neither the pleading of another state's law, see *Wickware v. Session*, 538 S.W.2d 466, 469 (Tex. Civ. App.—Tyler 1976, writ refused n.r.e.); nor the production of certified originals or photocopies, see *Cal Growers, Inc. v. Palmer Warehouse & Transfer Co.*, 687 S.W.2d 384, 386 (Tex. App.—Houston [14th Dist.] 1985, no writ). It does require that the party point out with particularity, in a pleading or motion, the specifics of the other state's law. See *State Nat'l Bank v. Academia, Inc.*, 802 S.W.2d 282, 290 (Tex. App.—Corpus Christi 1990, writ denied); *Cal Growers*, 687 S.W.2d at 386. For specifics on pleading and moving for judicial notice, see Olin Guy Wellborn III, *Judicial Notice Under Article II of the Texas Rules of Evidence*, 19 ST. MARY'S L.J. 1, 26–27 (1987).

124. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.008 (Vernon 2008); see, e.g., *Brown's Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.—Corpus Christi 2001, no pet.); *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App.—Amarillo 1994, writ denied); *First Nat'l Bank*, 710 S.W.2d at 103.

125. See 28 U.S.C. § 1738 (2006).

126. See *id.*



for sister-state judgment enforcement, the actions need not be identical or against the same parties. Full faith and credit and the resulting preclusion will apply only to parties and claims in the prior action.<sup>127</sup> In spite of the UEFJA's efficiency, common law enforcement remains important. One example is a Texas lawsuit based on, or following up, a sister-state action, where additional parties are needed in the Texas suit.

*C. Outbound Texas Judgments—Enforcing Texas Judgments in Sister States*

For the Texas attorney seeking to enforce a Texas judgment in another jurisdiction in the United States, there are two possibilities—the F-2 state will either be a UEFJA jurisdiction or it will not. In either case, the full-faith-and-credit standards are the same. The only difference will be the local procedures, and those differences should be minor.

*1. Enforcement in States Following the UEFJA*

Many states have adopted the UEFJA and follow a similar or identical procedure to that in Texas. In spite of this uniformity, take care to check for minor statutory modifications before assessing enforceability, and of course, seek local advice from local counsel in F-1.<sup>128</sup>

*2. Enforcement in Non-UEFJA States*

In other States where the UEFJA procedure is not available, Texas judgments are nonetheless enforceable under the common law and the full faith and credit mandate, as explained above.<sup>129</sup> The procedure is to file a new lawsuit in F-2 and then move for summary judgment based on preclusive effect of the Texas judgment and the resulting full faith and credit mandate. Either in the initial filing or with the summary judgment motion, the creditor must file an authenticated copy of the Texas judgment. The authentication requirements are stated in § 1738, but creditors should also verify

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127. See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 103–21 (1971 & Supp. 1989) (describing various defenses to the recognition and enforcement of foreign judgments).

128. See UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT (amended 1964), 13 pt. I U.L.A. 155–56 (2002).

129. See *supra* Part I.B.2.

compliance with F-2 law. Although enforcing jurisdictions must heed the authentication provisions of § 1738 (pursuant to the Supremacy Clause), compliance with both will facilitate enforcement.

#### D. Federal Courts

The United States has not only collateral (sister-state and territorial) jurisdictions but a hierarchical federal-state system as well. This raises potentially difficult questions in a number of areas including inter-jurisdictional judgment enforcement. Fortunately the answers are straightforward and consistent as highlighted in three broad categories.

Intra-federal enforcement, where F-1 and F-2 are both federal courts, presents no cross-jurisdictional issues. Federal law provides for registration of a final federal judgment in any district and entitles it to the same status as in the adjudicating district.<sup>130</sup> Time limits are established by the state law of the F-2 district.<sup>131</sup>

State and federal court mixes are treated as collateral jurisdictions, with the federal court having no greater or lesser priority to impose its rules. That is, where F-1 is a state court and F-2 is a federal court, federal courts must give full faith and credit to state court judgments.<sup>132</sup> Where F-1 is a federal court and F-2 is a state court, the state court must give full faith and credit to the federal court judgment.<sup>133</sup> Because federal law has no judgment-enforcement statute, federal courts may use the common law method or the local state's uniform act.<sup>134</sup>

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130. See 28 U.S.C. § 1963 (2006).

131. See *Home Port Rentals, Inc. v. Int'l Yachting Group, Inc.*, 252 F.3d 399, 406 (5th Cir. 2001).

132. See *San Remo Hotel, L.P. v. City & County of San Francisco, Cal.*, 545 U.S. 323, 338, 347–48 (2005) (holding Fifth Amendment takings claims are not an exception to full faith and credit for state actions in federal courts); *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380–81 (1985); *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 465–66, 476, 485 (1982) (applying § 1738 preclusion to Equal Employment Opportunity Commission claim, barring relitigation in federal court); *Allen v. McCurry*, 449 U.S. 90, 96 (1980).

133. See *Stoll v. Gottlieb*, 305 U.S. 165, 170–71 (1938); *Thompson v. E. Tex. Ref. Co.*, 97 S.W.2d 528, 530 (Tex. Civ. App.—Austin 1936, no writ).

134. See TEX. CIV. PRAC. & REM. CODE ANN. § 35.001 (Vernon 2008) (applying the Act to any court in the United States or any court whose judgments are entitled to full faith and credit); see, e.g., *Tenn. ex rel. Sizemore v. Sur. Bank*, 200 F.3d 373, 377 (5th Cir. 2000).

## II. INTERNATIONAL JUDGMENT ENFORCEMENT

This Part discusses international judgment enforcement, with a brief general overview of the international rules (or lack of them), a quick summary of various national laws, and then a detailed focus on Texas practice for both inbound foreign-country judgments and outbound Texas judgments. The discussion focuses on civil judgments, particularly those involving monetary awards, with some discussion of non-monetary judgments.

### A. *The International Mosaic*

The global picture for international judgment enforcement can be summarized in three basic points, discussed further below. First, there is no international law mandate although there are several treaties. Second, although the United States is not a signatory to any judgment enforcement treaties for general civil judgments, it has signed treaties covering arbitration and family matters, as well as a treaty governing the authentication of foreign judgments. Third, in the absence of international rules, the law of the country where enforcement is sought (F-2) controls and those laws vary widely.

#### 1. *Treaties*

Beginning in 1993, the Hague Conference on Private International Law undertook a Hague Convention on Jurisdiction and the Recognition of Judgments, but that project faltered for the participants' inability to agree on key issues regarding jurisdiction.<sup>135</sup> In the wake of the Hague Judgments Convention failure, in 2005 the Hague Conference produced the Hague Convention on Choice of Court Agreements which applies to litigation resulting from consenting parties' choice of forum agreements and enforces the resulting judgments, subject to exceptions.<sup>136</sup> With an eye toward the two Hague Judgments conventions, the American Law Institute proposed a federal statute for foreign judgment enforcement.

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135. See ANDREAS F. LOWENFELD, INTERNATIONAL LITIGATION AND ARBITRATION 580–82 (3d ed. 2006); WEINTRAUB, *supra* note 5, § 11.8; Ved P. Nanda, *The Landmark 2005 Hague Convention on Choice of Court Agreements*, 42 TEX. INT'L L.J. 773, 775–76 (2007).

136. Hague Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294, available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=98](http://www.hcch.net/index_en.php?act=conventions.text&cid=98); see also Nanda, *supra* note 135. As of this writing, Mexico and the United States are the only signatories. See Status Table, Convention of 30 June 2005 on Choice of Court Agreements, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=98](http://www.hcch.net/index_en.php?act=conventions.status&cid=98) (last visited Feb. 18, 2009).

The United States recently became a signatory to the Hague Convention on Choice of Court Agreements, but the United States has not acted on the ALI proposal<sup>137</sup> and is not a party to any other treaty governing the enforcement of foreign-country judgments in general civil matters. The United States is, however, a party to two arbitration treaties,<sup>138</sup> to the Hague Convention on International Child Abduction,<sup>139</sup> to the Hague Convention on Child Support,<sup>140</sup> and to the Apostille Convention governing the authentication of foreign-country judgments.<sup>141</sup> The argument has been made that the United States' many treaties of friendship, commerce, and navigation provide some enforcement basis beyond comity, although no cases were found supporting this. For court judgments in civil litigation other than child custody, the enforcing country's (F-2's) law is the primary and likely exclusive means of enforcement, discussed below in terms of both inbound and outbound judgments.

As for other nations, although there is no widely subscribed treaty between other nations, several judgment enforcement treaties do exist between blocks of countries such as the European Union.<sup>142</sup>

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137. See FOREIGN JUDGMENTS RECOGNITION AND ENFORCEMENT ACT (2006), reprinted in AM. LAW INST., RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (2006); Status Table, *supra* note 136.

138. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 4 (codified at 9 U.S.C. §§ 201-08 (2006)); see also Inter-American Convention on International Commercial Arbitration, opened for signature Jan. 30, 1975, O.A.S.T.S. No. 42, 14 I.L.M. 336 (codified at 9 U.S.C. §§ 301-07 (2006)).

139. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. 11670, 1343 U.N.T.S. 89 (entered into force Dec. 1, 1983).

140. Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Nov. 23, 2007, available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=131](http://www.hcch.net/index_en.php?act=conventions.text&cid=131). As of this writing, the United States and Burkina Faso are the only signatories. See Status Table, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=131](http://www.hcch.net/index_en.php?act=conventions.status&cid=131) (last visited Feb. 19, 2009).

141. See *infra* note 162.

142. In 1971, the Hague Conference on Private International Law drafted its Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Feb. 1, 1971, 1144 U.N.T.S. 249, 5 I.L.M. 636, available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=78](http://www.hcch.net/index_en.php?act=conventions.text&cid=78), but the only signatories were Cyprus, the Netherlands, and Portugal. See Status Table, Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=78](http://www.hcch.net/index_en.php?act=conventions.status&cid=78) (last visited Feb. 19, 2009). The European Union has two multilateral treaties for judgment enforcement: the first is the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968, 1990 O.J. (C 189) 2, available

## 2. *The United States View of Foreign-Country Judgments*

In the absence of controlling international law and treaties, the law of the enforcing jurisdiction (F-2) controls the enforcement of foreign-country judgments. In countries with a bifurcated legal system, logic suggests that national law—as opposed to state or provincial law—controls the country's recognition and enforcement of judgments from other countries. This is not true in the United States.

When the Supreme Court clarified United States law on this issue in 1915, its decision was “overruled” by a series of state court cases rejecting its premise that federal law governed foreign country judgment enforcement. Specifically, *Hilton v. Guyot* held that a French judgment was unenforceable under United States federal common law because of a lack of reciprocity from French courts.<sup>143</sup> In spite of Hilton's ruling that federal law controlled the issue, state courts quickly broke away, and today, the standard is to apply state law—even in federal courts—to foreign country judgments. Hilton nonetheless was important for endorsing reciprocity, citing comity as the standard, and providing a federal common law basis for foreign judgment enforcement.<sup>144</sup>

The irony is that in the United States, interstate judgments are controlled by a unified national law—the Full Faith and Credit

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at <http://archiv.jura.uni-saarland.de/convention-bruxelles/en/c-textes/brux-idx.htm>, (among European Union member states); the second is the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 16, 1988, 1988 O.J. (L 319) 9, available at <http://curia.europa.eu/common/reccdoc/convention/en/c-textes/lug-idx.htm>, (among European Union, Poland, and EFTA members Iceland, Lichtenstein, Norway, and Switzerland). This is now covered by a European Union regulation. See Council Regulation 44/2001, 2001 O.J. (L 12) 1 (EC).

143. *Hilton v. Guyot*, 159 U.S. 113, 210 (1895). Assessing the acceptability of foreign country judgments, Hilton pointed out three possibilities: (1) a F-2 plaintiff sues an F-1 defendant in F-1—the judgment should be enforced universally no matter who wins because the plaintiff chose the forum; (2) an F-1 plaintiff sues an F-2 defendant and the F-2 defendant wins—the judgment should also be enforced universally because the defendant foreign to that forum won; and (3) an F-1 plaintiff sues an F-2 defendant and the F-1 plaintiff wins, raising a possibility of fraud or unfairness and calling for review prior to enforcement. *Id.* at 170–71.

144. New York courts were the first to reject *Hilton*, heeding the *Hilton* four-justice dissent and opting for *res judicata* as the basis of enforcement rather than comity and making a clear statement for state law controlling foreign country judgments between private parties. See *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005 (5th Cir. 1990); *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971); *Johnston v. Compagnie Générale Transatlantique*, 152 N.E. 121, 123 (N.Y. 1926); *Cowans v. Ticonderoga Pulp & Paper Co.*, 219 N.Y.S. 284, 287 (N.Y. App. Div.), *aff'd*, 159 N.E. 669 (N.Y. 1927); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 cmt. a (1987).

Clause—while international judgments are controlled by local law which varies from state to state. Some uniformity is achieved in the twenty-nine states and two territories currently using some version of the Uniform Foreign Money-Judgments Recognition Act,<sup>145</sup> and other states find similar uniformity in the rules of claim preclusion, but it remains true that international enforcement is far less uniform than interstate enforcement.

With state law controlling foreign country judgments in the United States, there is nonetheless one overarching federal point—the absence of full faith and credit. That is, even if federal law controlled, the Full Faith and Credit Clause does not apply to foreign country judgments.<sup>146</sup> In spite of that, the uniform act adopted in Texas and several other states provides that a qualified foreign-country money judgment “is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.”<sup>147</sup>

A summary of United States law on enforcing foreign country judgments entails seemingly contradictory statements. State law controls and there is no federal standard, but there is nonetheless a somewhat uniform standard in the twenty-nine states and the District of Columbia, all following the Uniform Foreign Money-Judgments Recognition Act.<sup>148</sup> Full faith and credit does not apply to foreign judgments, but it is analogized into the UFCMJRA’s standards, and even in states not following the UFCMJRA, foreign judgments enjoy a presumption favoring enforcement under comity and claim preclusion.

### 3. *Foreign Judgment Enforcement in Other Countries*

The limits of journal publishing do not allow for any detailed analysis or summary of the wide variety of foreign-judgment practice around the world. Moreover, any detailed discussion that seemed to answer case-specific questions would be inappropriate for

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145. See UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (1962), 13 pt. II U.L.A. 39–80 (2002). A newer uniform act is available for foreign country money judgments. See UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (amended 2005), 13 pt. II U.L.A. 5–20 (Supp. 2008). Texas has not adopted it.

146. Full Faith and Credit’s limited application to jurisdictions within the United States is obvious from the Clause’s wording. See *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 714 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *SCOLES ET AL.*, *supra* note 5, § 24.3.

147. TEX. CIV. PRAC. & REM. CODE ANN. § 36.004 (Vernon 2008).

148. See UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (1962), 13 pt. II U.L.A. 39–80 (2002).

practitioners. Enforcing Texas judgments in foreign countries requires advice from local F-2 counsel, and there is no substitute for that. Nonetheless, some observations are appropriate about foreign practice, along with sources.

The classic English conflicts treatise, *Cheshire and North*, provides the most complete of the readily available summaries of English and European practice with foreign judgment enforcement, with detail on English practice within the European Union and for judgments from countries outside the Union, like the United States.<sup>149</sup> American treatises also give valuable overviews and some detail. Notably, Professor Weintraub's most recent conflict of laws treatise has a thorough summary of foreign judgment enforcement practices in common law jurisdictions, European countries, and China.<sup>150</sup> Andreas Lowenfeld, co-reporter on the American Law Institute's foreign-judgments project, states that there is only one universal principle—that no country will enforce a judgment from a forum that lacked personal jurisdiction over the debtor, though standards of assessing jurisdiction differ.<sup>151</sup> Other than that, requirements vary sufficiently for Lowenfeld to label them collectively as “Obstacles to Recognition: 57 Varieties” including differing views on reciprocity, default judgments, and refusing to enforce judgments against F-2 nationals or domiciliaries.<sup>152</sup>

As noted above, treaties among groups of countries—notably economic unions—provide an exception to these varied practices and create an enforcement standard somewhat akin to full faith and credit in the United States.<sup>153</sup> Apart from the treaty practice and a few common enforcement threads, there are too many differences among countries to detail here. As discussed below, these numerous

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149. See PETER NORTH & J.J. FAWCETT, *CHESHIRE AND NORTH'S PRIVATE INTERNATIONAL LAW* chs. 10 & 11 (13th ed. 1999).

150. See WEINTRAUB, *supra* note 5, § 11.8; see also RUSSELL J. WEINTRAUB, *INTERNATIONAL LITIGATION AND ARBITRATION: PRACTICE AND PLANNING* 254–74 (4th ed. 2003) (discussing various aspects of enforcing United States judgments in other countries).

151. See LOWENFELD, *supra* note 135, at 531. The Scoles treatise compares the English and Canadian practice to the American common law model of requiring a new lawsuit using the foreign judgment as a basis for summary resolution, contrasted with the civil law model of giving the foreign judgment exequatur, or executory force, somewhat like the Uniform Act approach in the United States. See SCOLES ET AL., *supra* note 5, § 24.38, at 1315–18. As to the exequatur procedure, see also WEINTRAUB, *supra* note 5, at 758 n.129.

152. See generally LOWENFELD, *supra* note 135, at 530–49.

153. See *supra* Part II.A.1; see also SCOLES ET AL., *supra* note 5, § 24.38, at 1319–20; LOWENFELD, *supra* note 135, at 550–80.

differences in other countries' foreign-judgment practice require an awareness at the outset of F-1 litigation regarding the likely place of enforcement.<sup>154</sup>

### B. *Inbound Foreign-Country Judgments in Texas Courts*

As with interstate judgment enforcement, Texas permits two methods of international judgment enforcement—common law and a uniform statute.

#### 1. *The Texas Uniform Foreign Country Money-Judgment Recognition Act*

The Texas UFCMJRA applies to judgments from foreign countries granting or denying a sum of money, and does not apply to judgments for taxes, fines, penalties, alimony, or child support.<sup>155</sup> A foreign country is a governmental unit other than the United States, its states and other possessions, the Panama Canal Zone, or the Pacific Islands Trust Territory.<sup>156</sup>

The judgment must be final, conclusive, and enforceable in the rendering country, even though it may be on appeal. It may be in favor of either plaintiff or defendant, who would presumably raise it in defense of an action here.<sup>157</sup> If the F-1 judgment has “facial finality,” it is presumed final and the burden is on the F-2 judgment creditor to produce evidence defeating finality. If the judgment lacks facial finality, the burden remains with the F-2 judgment creditor to prove finality.<sup>158</sup> The F-1 country's law controls finality.<sup>159</sup>

The Texas UFCMJRA resembles the UEFJA in several respects noted below. Both are simplified filing procedures that avoid a second lawsuit, although the UFCMJRA could lead to protracted litigation under its greater number of defenses.

#### a. Enforcement Mandate

The UFCMJRA lacks the Constitution's full-faith-and-credit mandate but imposes a statutory one, which provides that a properly

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154. See *infra* Part II.B.

155. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(2) (Vernon 2008).

156. *Id.* § 36.001(1).

157. See *id.* § 36.002; *Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 336 (Tex. App.—San Antonio 2001, no pet.).

158. *Hernandez*, 54 S.W.3d at 337 (citing *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.)).

159. *Id.*



authenticated and filed judgment, with notice and other UFCMJRA requirements fulfilled, and recognition not refused under section 36.005, is entitled to enforcement “in the same manner as a judgment of a sister state that is entitled to full faith and credit.”<sup>160</sup> Note that this does not apply full faith and credit to foreign country judgments but merely equates them once they have cleared the greater hurdles under UFCMJRA section 36.005.

#### b. Authentication

The UFCMJRA requires that the foreign country judgment be authenticated “in accordance with an act of congress, a statute of this state, or a treaty or other international convention.”<sup>161</sup> This language would seem to give three alternatives, but a United States treaty—the Apostille Convention<sup>162</sup>—creates the maximum requirement, although parties may use federal or Texas law if the authentication requirement is less stringent than the Convention’s.<sup>163</sup>

The Apostille Convention provides for proof of official public documents (such as court judgments) by a certification provision known as an apostille.<sup>164</sup> If the F-2 jurisdiction is a party to the

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160. TEX. CIV. PRAC. & REM. CODE ANN. § 36.004.

161. *Id.* § 36.0041.

162. Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents, Oct. 5, 1961, 33 U.S.T. 883, 527 U.N.T.S. 189 [hereinafter Apostille Convention]; *see also* Hague Conference on Private International Law, <http://www.hcch.net/> (last visited Feb. 19, 2009). Hague Conference signatories to this convention include Albania, Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, China (Hong Kong special administrative region), China (Macao special administrative region), Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, the former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, and Venezuela. Status Table, Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, [http://www.hcch.net/index\\_en.php?act=conventions.statusprint&cid=41](http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=41) (last visited Feb. 19, 2009). Non-members of the Hague Conference who are signatories include Andorra, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Belize, Botswana, Brunei Darussalam, Colombia, Cook Islands, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Honduras, Kazakhstan, Lesotho, Liberia, Liechtenstein, Malawi, Marshall Islands, Mauritius, the Republic of Moldova, Namibia, Niue, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Seychelles, Swaziland, Tonga, Trinidad and Tobago, and Vanuatu. *Id.*

163. *See* Apostille Convention, *supra* note 162, at arts. 2–3.

164. The Convention creates a presumption of authenticity by limiting authentication requirements (as to signature, capacity, and the identity of the seal or stamp which it bears) to a seal issued by a competent authority from the F-1 country, placed on the

Apostille Convention, this means must be used, although other means of authentication may be added to encourage acceptance in courts unfamiliar with the apostille method. Other than the Apostille Convention, no federal law applies to state court enforcement of foreign country cases.

If enforcement is being done in a Texas state court and from an F-1 country not party to the Apostille Convention, authentication must be done under Texas Rule of Evidence 902(3) governing self-authentication of foreign documents.<sup>165</sup> Federal Rule of Evidence 902(3), identical to the Texas Rule, provides for self-authentication of foreign documents in federal courts.<sup>166</sup>

To the extent Texas or federal law applies (rather than the Apostille Convention), the specifics of authentication may be vague. Judgment creditors can avoid vagueness by using exemplification, a process of triple certification explained in Part I of this Article.<sup>167</sup> In addition—and this is supported not by legal authority but experience—gold seals provide an aura of authenticity. Whether authentication is governed by the Apostille Convention or strictly by

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document itself or on an “allonge,” modeled on the form attached to the Convention, and drawn either in French or the language of the F-1 country. *See id.* at arts. 3–4.

165. TEX. R. EVID. 902(3).

A document purporting to be executed or attested in an official capacity by a person, authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification. The final certification shall be dispensed with whenever both the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces such requirement, in which case the record and the attestation shall be certified by the means provided in the treaty or convention.

*Id.*

166. FED. R. EVID. 902(3). Except for the Federal Rule’s omission of the final sentence, it is identical to TEX. R. EVID. 902(3).

167. *See supra* note 92 and accompanying text (stating that exemplification or “triple-certification” is a widely-accepted form).

F-2 law, it is a good idea to have the judgment both exemplified and embossed.

c. Filing

Like the UEFJA, the UFCMJRA requires the judgment creditor to file a copy of the authenticated foreign country judgment with notice to the debtor provided either by the clerk<sup>168</sup> or the judgment creditor.<sup>169</sup> Appropriate venue is the debtor's county of residence or any other appropriate venue under Texas law.<sup>170</sup>

d. Jurisdiction and Venue

Unlike the UEFJA, the UFCMJRA has a venue rule, requiring filing "in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws."<sup>171</sup> Filing in a county or district other than the judgment debtor's residence (or corporate location) requires another venue basis under Texas law.<sup>172</sup>

Once venue is established, personal jurisdiction should not be an issue other than compliance with *Shaffer v. Heitner's* mandate that abolished pure quasi in rem jurisdiction and requires all assertions of personal jurisdiction to satisfy minimum contacts.<sup>173</sup> *Shaffer* should not be a problem in judgment enforcement because the issue is not the merits of the claim now reduced to judgment but the susceptibility of assets to execution—debtors should be amenable anywhere those assets are located. Subject matter jurisdiction should be satisfied in any court competent to enforce judgments.

e. Stays

The UFCMJRA provides for stays if the debtor shows that an appeal is pending in F-1 or that time remains to perfect an appeal.<sup>174</sup>

f. Defenses

The judgment debtor has thirty days to challenge enforcement or sixty days if domiciled in a foreign country, with extensions up to

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168. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0042 (Vernon 2008).

169. *Id.* § 36.0043.

170. *Id.* § 36.0041.

171. *Id.*

172. *Id.*

173. *See Shaffer v. Heitner*, 433 U.S. 186, 207, 212 (1977).

174. TEX. CIV. PRAC. & REM. CODE ANN. § 36.007.

twenty days or greater for good cause shown.<sup>175</sup> The proper form is a Motion for Nonrecognition with all supporting affidavits, briefs, and other documentation.<sup>176</sup> The party opposing the motion, normally the judgment creditor, has twenty days to respond after receipt of the motion,<sup>177</sup> with a twenty-day or greater extension for good cause.<sup>178</sup>

The frontline defenses go to the Texas filing, which requires a foreign-country judgment that is adequately authenticated, final, and enforceable in the F-1 country.<sup>179</sup> In addition to the threshold filing requirement, the UFCMJRA (unlike the UEFJA) states ten explicit grounds for non-recognition—three mandatory<sup>180</sup> and seven discretionary.<sup>181</sup> Mandatory nonrecognition grounds are directed to the F-1 judgment's validity and include lack of a fair and impartial tribunal (including lack of basic procedures or a biased tribunal);<sup>182</sup> lack of personal jurisdiction in F-1;<sup>183</sup> and lack of subject matter jurisdiction in the F-1 court.<sup>184</sup> The seven discretionary grounds for

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175. *Id.* § 36.0044(a), (d).

176. *Id.* § 36.0044(a)–(b).

177. *Id.* § 36.0044(c).

178. *Id.* § 36.0044(d).

179. *Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 337 (Tex. App.—San Antonio 2001, no pet.); *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.). Requirements are discussed *supra* Part II.B.1.a–c of this Article.

180. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(a).

181. *See id.* § 36.005(b).

182. *Id.* § 36.005(a)(1); *see also* *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1413 (9th Cir. 1995) (failing to recognize Iranian default judgment on promissory notes because defendant, who was Shah of Iran's sister, could not have appeared to defend herself after the fundamentalist revolution); *Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 287 (S.D.N.Y. 1999), *aff'd*, 201 F.3d 134 (2d Cir. 2000). But the foreign procedures need not be identical to those of the United States or Texas. *Soc'y of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002) (accepting English procedures); *Soc'y of Lloyd's v. Ashenden*, 233 F.3d 473, 476 (7th Cir. 2000) (accepting English procedures); *Cooley v. Weinberger*, 518 F.2d 1151, 1155 (10th Cir. 1975) (holding that Iranian court conviction for murdering her husband sufficient to deny Social Security survivor's benefits, despite due process problems); *Dart v. Balaam*, 953 S.W.2d 478, 480 (Tex. App.—Fort Worth 1997, no writ).

183. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(a)(2); *see also* *Ma v. Cont'l Bank N.A.*, 905 F.2d 1073, 1075 (7th Cir. 1990). *But see* TEX. CIV. PRAC. & REM. CODE ANN. § 36.006; *Nippon Emo-Trans Co. v. Emo-Trans, Inc.*, 744 F. Supp. 1215, 1221 (E.D.N.Y. 1990) (finding F-1 personal jurisdiction valid if justified under F-1 or F-2 law, even if not litigated on that basis in F-1). Although there is no case law illustrating this point, it should be clear that a challenge in F-2 to the F-1 court's personal jurisdiction is limited to default judgments and other instances where the F-2 judgment debtor neither litigated nor waived objections on that issue.

184. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(a)(3). As with the challenge to personal jurisdiction, *see supra* note 183, a challenge in F-2 to the F-1 court's subject matter jurisdiction is limited to default judgments and other instances where the F-2 judgment debtor neither litigated nor waived objections on that issue.

nonrecognition are inadequate notice in F-1;<sup>185</sup> fraud that was not and could not have been litigated in F-1;<sup>186</sup> enforcing F-2's public policy;<sup>187</sup> contrary to another final judgment;<sup>188</sup> contrary to the parties' agreement (e.g., a contrary forum selection clause or arbitration agreement);<sup>189</sup> inconvenient forum in F-1;<sup>190</sup> and lack of reciprocity.<sup>191</sup> The Restatement (Third) of Foreign Relations repeats these defenses in order, except that lack of subject matter jurisdiction is a

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185. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(1); see also *Gondre v. Silberstein*, 744 F. Supp. 429, 431 (E.D.N.Y. 1990).

186. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(2); see also *Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co.*, 470 F. Supp. 610, 616 (S.D.N.Y. 1979) (disallowing defense because issues could have been litigated in prior English action). The fraud defense is difficult to satisfy—not one of the case annotations in the model UFCMJRA allowed the defense. E.g., *Fairchild*, 470 F. Supp. at 615; *Fiske, Emery & Assocs. v. Ajello*, 577 A.2d 1139, 1143 (Conn. Super. Ct. 1989); *Kam-Tech Sys. Ltd. v. Yardeni*, 774 A.2d 644, 654 (N.J. Super. Ct. App. Div. 2001); *Tonga Air Servs., Ltd. v. Fowler*, 826 P.2d 204, 210–11 (Wash. 1992) (en banc); *Bank of N.S. v. Tschabold Equip. Ltd.*, 754 P.2d 1290, 1295 (Wash. Ct. App. 1988).

187. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(3). As one court has stated, “the level of contravention of Texas law has ‘to be high before recognition can be denied on public policy grounds.’” *Sw. Livestock & Trucking Co. v. Ramón*, 169 F.3d 317, 321, 323 (5th Cir. 1999) (quoting *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 900 (N.D. Tex. 1980) (mem.) (rejecting the judgment debtor’s usury claim)); see also *Soc’y of Lloyd’s v. Turner*, 303 F.3d 325, 329–30 (5th Cir. 2002) (rejecting judgment-debtors’ argument that English judgments enforcing underwriters’ obligations were contrary to Texas public policy); *Bachchan v. India Abroad Publ’ns Inc.*, 585 N.Y.S.2d 661, 665 (N.Y. Gen. Term 1992) (rejecting English libel judgment because enforcement would impose an unconstitutional prior restraint on free speech). For a case relying on Texas public policy to reject foreign judgments, see *Soc’y of Lloyds v. Webb*, 156 F. Supp. 2d 632, 643 (N.D. Tex. 2001), *aff’d sub nom. Soc’y of Lloyd’s v. Turner*, 303 F.3d 325 (5th Cir. 2002) (judgment obtained through cognovits violated public policy).

188. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(4).

189. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(5); see also *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 334–35 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (holding foreign judgment unenforceable because of breach of parties’ agreement to arbitrate). *But see Hunt v. BP Exploration Co. (Libya) Ltd.*, 580 F. Supp. 304, 310 (N.D. Tex. 1984) (mem.) (holding arbitration agreement not a defense where parties waited too long and participated in other settlement negotiations over a seven-year period).

190. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(6); see also *Dart v. Balaam*, 953 S.W.2d 478, 482 (Tex. App.—Fort Worth 1997, no writ) (observing defense but found it inapplicable and honored Australian judgment).

191. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(7); see also *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005 (5th Cir. 1990); *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 515, 518 (5th Cir. 1981). Note that reciprocity is a discretionary ground for non-enforcement, and at least three Texas courts have rejected it in specific cases. See *Norkan Lodge Co. v. Gillum*, 587 F. Supp. 1457, 1461 (N.D. Tex. 1984) (Canadian judgment); *Hunt*, 580 F. Supp. at 306 (English judgment); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (Canadian judgment).

discretionary grounds for nonrecognition rather than mandatory, and reciprocity is not a defense.<sup>192</sup>

g. Full Faith and Credit for Foreign Country Judgment Denials

If a court in the United States denies enforcement under one of the grounds above, that denial is entitled to full faith and credit in other United States courts.<sup>193</sup> The declined foreign judgment may be admissible as evidence for other purposes if the refusal was based on conflict with public policy, conflict with another judgment, contrary to the parties' forum clause, or for lack of reciprocity. If, however, the foreign judgment was denied enforcement on grounds of jurisdiction, fraud, or unfair judicial system, it may not be admitted for any purpose.<sup>194</sup>

h. Burdens and Presumptions

Like the UEFJA, the initial burden is on the judgment creditor to file a properly authenticated copy of the foreign judgment and otherwise comply with the Act and Texas procedure; failure to comply means no enforcement.<sup>195</sup> And like the UEFJA, once the foreign country money judgment has been properly filed, it is presumptively enforceable and the burden rests with the judgment debtor to show grounds for non-recognition and non-enforcement.<sup>196</sup>

i. Proof of Foreign Law

Texas law provides for proof of foreign country law that: (1) the party relying on the law of a foreign country shall give notice by pleading or other reasonable written notice at least thirty days prior to trial; (2) notice must include all written materials or sources to be offered as proof of the foreign law; (3) if the foreign law's original text

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192. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 482(2) (1987).

193. See *id.* § 482 Reporters' Note 4.

194. See *id.* § 482 cmt. i.

195. See *Hennessy v. Marshall*, 682 S.W.2d 340, 344–45 (Tex. App.—Dallas 1984, no writ); *Allen v. Tennant*, 678 S.W.2d 743, 745 (Tex. App.—Houston [14th Dist.] 1984, no writ).

196. “[A] judgment ‘that is not refused recognition is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.’” *Sw. Livestock & Trucking Co. v. Ramón*, 169 F.3d 317, 319 (5th Cir. 1999) (quoting the United States Magistrate Judge from the lower court and citing TEX. CIV. PRAC. & REM. CODE ANN. § 36.004 (West 1998)); see also *Banque Libanaise*, 915 F.2d at 1004; *Hunt*, 580 F. Supp. at 307; *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 330 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

is not English, the party must provide both the original non-English text and an English translation; (4) evidence of foreign law includes affidavits, testimony, briefs, treatises, and any other material source, whether or not submitted by a party, and whether or not admissible under the Texas Rules of Evidence. If the court considers sources not offered by a party, it must give reasonable notice, an opportunity to comment on the sources, and an opportunity to submit further materials; (5) the determination of foreign law is a question of law, not fact.<sup>197</sup>

#### j. Appeal

Appeal is routinely available for parties who raised timely objections in the Texas trial court (that is, after the UFCMJRA filing). Restricted appeal may be available for parties failing to raise timely trial court objections if filed within six months of the initial Texas UFCMJRA filing.<sup>198</sup> A bill of review may also be available, again limited to the issues of proper UEFJA filing and full faith and credit. No Texas cases are available illustrating restricted appeal and bill of review, but analogies may be made to Texas cases interpreting the UEFJA.<sup>199</sup>

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197.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that the party intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 203; *see also* Davidson v. Great Nat'l Life Ins. Co., 737 S.W.2d 312, 314 (Tex. 1987).

198. *See* TEX. R. APP. P. 30.

199. *See* Walnut Equip. Leasing Co. v. Wen Lung Wu, 920 S.W.2d 285 (Tex. 1996) (per curiam); Russo v. Dear, 105 S.W.3d 43 (Tex. App.—Dallas 2003, pet. denied); Markham v. Diversified Land & Exploration Co., 973 S.W.2d 437 (Tex. App.—Austin 1998, pet. denied); Trinity Capital Corp. v. Briones, 847 S.W.2d 324 (Tex. App.—El Paso 1993, no writ).

## 2. Common Law Enforcement of Foreign-Country Judgments

The Texas UFCMJRA allows for recognition “in a situation not covered by this chapter” and impliedly reserves the common law enforcement method.<sup>200</sup> The common law procedure is the same as that for sister-state judgments; that is, the judgment creditor files a new lawsuit in Texas alleging the underlying wrong and pleading the foreign judgment and then moves for summary judgment based on preclusion. Without the mandate from full faith and credit, preclusion takes on a somewhat more discretionary role, as illustrated by the UFCMJRA’s discretionary grounds for nonrecognition on points such as lack of notice which are mandatory under full faith and credit and the UEFJA.<sup>201</sup> Comity is also a basis for enforcement, which allows for discretionary enforcement along more vague guidelines than preclusion, although presumably with similar safeguards.<sup>202</sup>

## 3. Treaties

### a. Treaties on Judgment Enforcement

The United States is not a signatory to any treaty governing the enforcement of foreign civil judgments. If the United States were to enter one, it would of course supplant state law. Beginning in 1993, the Hague Conference on Private International Law undertook a Hague Convention on Jurisdiction and the Recognition of Judgments, but that project faltered for the participants inability to agree on key issues regarding jurisdiction.<sup>203</sup> In the wake of the Hague Judgments Convention failure, in 2005 the Hague Conference produced the Hague Convention on Choice of Court Agreements which applies to litigation resulting from consenting parties’ choice of forum agreements and enforces the resulting judgments, subject to exceptions.<sup>204</sup> With an eye toward the two Hague Judgments conventions, the American Law Institute proposed a federal statute for foreign judgment enforcement.<sup>205</sup> As of January 19, 2009, the

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200. TEX. CIV. PRAC. & REM. CODE ANN. § 36.008 (Vernon 2008).

201. See *id.* § 36.005.

202. See *Hilton v. Guyot*, 159 U.S. 113, 212, 227 (1895) (recognizing comity as discretionary ground for recognizing and enforcing foreign country judgments).

203. See LOWENFELD, *supra* note 135, at 580–84; Nanda, *supra* note 135, at 775–76.

204. Hague Convention on Choice of Court Agreements, *supra* note 136; see also Nanda, *supra* note 135. As of this writing, Mexico and the United States are the only signatories. See Status Table, *supra* note 136.

205. FOREIGN JUDGMENTS RECOGNITION AND ENFORCEMENT ACT, *supra* note 137.



United States became a signatory to the Hague Convention on Choice of Courts. Although the United States is not a party to any treaty regarding enforcement of general civil judgments, and although there is no widely subscribed treaty between other nations, several judgment enforcement treaties do exist between blocks of countries such as the European Union.<sup>206</sup>

#### b. Other Treaties Affecting Judgment Enforcement

Other treaties may have a bearing on judgment enforcement, sometimes direct and sometimes indirect. An example of direct application is the Apostille Convention,<sup>207</sup> to which the United States is a party even though it is not codified in the United States Code. The Apostille Convention provides for proof of official public documents (such as court judgments) by a certification provision known as an apostille. In Texas, the certifying authority is the Secretary of State. The United States is also a signatory to the arbitration treaties listed in the subpart immediately below.

### 4. *Foreign Arbitral Awards*

#### a. Against Private Parties

Foreign arbitration awards against private parties may be enforced in Texas under federal and state law. The Federal Arbitration Act<sup>208</sup> incorporates two treaties addressing arbitration award enforcement. The first is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards,<sup>209</sup> providing that foreign arbitration awards must be confirmed unless:

the parties to the agreement were incapacitated, or the agreement to arbitrate is not valid under the law chosen by the parties, or if no choice under the law of the country where the award was made;

the party against whom the award is invoked was not given proper notice of the arbitrator's appointment; or proceedings, or was otherwise unable to present its case;

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206. See *supra* note 142 and accompanying text.

207. Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents, *supra* note 162.

208. 9 U.S.C. §§ 1–16 (2006).

209. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *supra* note 138.

the award deals with a difference [sic] not contemplated by or not falling within the terms of submission to arbitration, or it contains decisions or matters beyond the scope of submission, provided that the matters properly decided, if severable, may be enforced;

the arbitral panel was not composed in accordance with the arbitration agreement, or if none on point, not in accordance with the law of the forum country;

the award is not yet binding, or has been set aside or suspended by a competent authority of the forum country.<sup>210</sup>

The Federal Arbitration Act's second incorporated treaty is the Inter-American Convention on International Commercial Arbitration, in which Article V has nonenforcement grounds similar to those of the U.N. Convention stated immediately above.<sup>211</sup>

For Texas state law enforcement, the Texas International Arbitration Act governs.<sup>212</sup> The Texas UFCMJRA does not mention whether arbitration awards qualify as judgments and does not define the scope of the term *judgments* other than to require a fair and impartial tribunal and "procedures compatible with the requirements of due process of law."<sup>213</sup> On the other hand, the Texas UFCMJRA provides that arbitration agreements which were breached in favor of foreign litigation may be a defense to the enforcement of a foreign country judgment.<sup>214</sup>

#### b. Against Foreign Sovereigns

The Foreign Sovereign Immunities Act subjects foreign sovereigns to the jurisdiction of federal and state courts for the

210. See 9 U.S.C. § 207 (incorporating U.N. Convention art. V); see, e.g., *Bridas S.A.P.I.C. v. Gov't of Turkm.* 345 F.3d 347, 355 (5th Cir. 2003).

211. Inter-American Convention on International Commercial Arbitration, Jan. 1, 1975, O.A.S.T.S. No. 42, 14 I.L.M. 336 (codified at 9 U.S.C. §§ 301–07).

212. TEX. CIV. PRAC. & REM. CODE ANN. §§ 172.001–215 (Vernon 2005); see *Bossley v. Mariner Fin. Group, Inc.*, 11 S.W.3d 349, 351 (Tex. App.—Houston [1st Dist.] 2000), *aff'd*, 79 S.W.3d 30 (Tex. 2002).

213. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(a)(1) (Vernon 2008). The UFCMJRA defines foreign country judgment as a "judgment of a foreign country granting or denying a sum of money other than a judgment for: (A) taxes, a fine, or other penalty; or (B) support in a matrimonial or family matter," which also fails to clarify its application to arbitral awards. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(2).

214. TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(5); see *Hunt v. BP Exploration Co. (Libya) Ltd.*, 580 F. Supp. 304, 310 (N.D. Tex. 1984) (mem.) (finding arbitration agreement not a defense where parties waited too long and participated in other settlement negotiations over a seven year period); *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 332, 336 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (failing to enforce foreign judgment because of breach of parties' agreement to arbitrate).

confirmation of an arbitral award,<sup>215</sup> which is then enforceable under a subsequent FSIA provision.<sup>216</sup>

### 5. Federal Courts

The initial question for enforcing foreign country judgments in federal courts is which law governs—federal or state? The answer is that the local state's law generally governs, and this raises another irony of federalism. The Supreme Court held in 1908 that federal law governed foreign-country judgment enforcement in state courts.<sup>217</sup> Not only have the state courts collectively overruled this, but through the Erie Doctrine, state law also applies in federal courts faced with foreign country judgments. Thus, federal courts enforcing foreign country judgments apply the local state's law,<sup>218</sup> subject to exceptions for (1) foreign arbitral awards against private parties (for which either state or federal law may be applied)<sup>219</sup> and (2) as to foreign sovereigns, both foreign arbitral awards<sup>220</sup> and foreign court judgments.<sup>221</sup>

To the extent that foreign country law is an issue in judgment enforcement, federal law controls, providing for the pleading and

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215. 28 U.S.C.A. § 1605(a)(6) (West 2006 & Supp. 2008).

216. 28 U.S.C. § 1610(a)(6) (2006); *see, e.g.*, *S & Davis Int'l Inc. v. Republic of Yemen*, 218 F.3d 1292, 1295, 1297 (11th Cir. 2000). *But see* *Bridas S.A.P.I.C. v. Gov't of Turkm.*, 345 F.3d 347, 365 (5th Cir. 2003) (adjudicating Argentine corporation's enforcement of arbitration award against foreign government entirely under the Federal Arbitration Act and without reference to subject matter jurisdiction or personal jurisdiction under the Foreign Sovereign Immunities Act).

217. *See* *Hilton v. Guyot*, 159 U.S. 113, 227–28 (1895).

218. *See, e.g.*, *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1006–07 (5th Cir. 1990); *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 515, 516 (5th Cir. 1981); *Soc'y of Lloyds v. Webb*, 156 F. Supp. 2d 632, 638 (N.D. Tex. 2001), *aff'd sub nom. Soc'y of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002); *Norkan Lodge Co. v. Gillum*, 587 F. Supp. 1457, 1459 (N.D. Tex. 1984); *Hunt*, 580 F. Supp. at 306.

219. Foreign arbitration awards may be enforced in Texas under either federal or state law. *See* Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2006); Texas International Arbitration Act, TEX. CIV. PRAC. & REM. CODE ANN. § 172.082(f) (Vernon 2005); *see, e.g.*, *Bridas S.A.P.I.C.*, 345 F.3d at 353–54.

220. The Foreign Sovereign Immunities Act subjects foreign sovereigns to the jurisdiction of federal and state courts for the confirmation of an arbitral award, which is then enforceable under 28 U.S.C. § 1610(a)(6) (2006), and subject to the immunities stated in 28 U.S.C. §§ 1609–11 (2006). *See* 28 U.S.C. § 1605(a)(6) (2006); Glenn W. Rhodes & Lisa S. Buccino, *International Litigation: Enforcement of Foreign Judgments*, 36 INT'L LAW. 449, 450 (2002).

221. The Foreign Sovereign Immunities Act also provides that all property of foreign sovereigns is immune from judgment execution except as modified by treaty or under the exceptions stated in 28 U.S.C. § 1610. Foreign sovereign property otherwise subject to judgment execution may further be designated immune by the President. 28 U.S.C. § 1611. *See* 28 U.S.C. § 1609 (2006).

proof of foreign country law by pleadings or other reasonable written notice. In determining the content, the court may consider testimony or any other relevant material or source, whether or not submitted by a party, and whether or not admissible under the Federal Rules of Evidence.<sup>222</sup>

## 6. *Converting Foreign Monetary Judgments*

Foreign country (F-1) judgments are presumably rendered in F-1 currency. There is no additional enforcement problem if the United States F-2 judgment is rendered in the same currency, as done partly in *Waterside Ocean Navigation Co. v. International Navigation Ltd.*<sup>223</sup> The Restatement (Third) of Foreign Relations approves of United States judgments in foreign currency, but some authorities question an American court's ability to render judgments in foreign currency.<sup>224</sup> If enforcement in the United States requires conversion to U.S. dollars, several problems arise including proof of U.S. equivalent value. Testimony or other evidence supporting the proposed conversion may be sufficient. More problematic is currency fluctuations depending on the time of conversion. Currency fluctuations present problems not only in proof of equivalent value in United States dollars but in who bears the loss for fluctuations since the judgment date. The Restatement (Third) of Foreign Relations treats currency fluctuations as foreseeable consequential damages and proposes that the judgment should be rendered in the foreign currency only when conversion would have been proper at the date of the F-1 judgment.<sup>225</sup> In 1989, the Uniform Law Commissioners drafted the Uniform Foreign-Money Claims Act which attempts both to determine which country's currency applies and to guide the conversion where necessary.<sup>226</sup>

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222. See FED. R. CIV. P. 44.1.

223. 737 F.2d 150, 151-52 (2d Cir. 1984).

224. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 823 & cmt. b (1987); see also PETER HAY ET AL., CONFLICT OF LAWS: CASES AND MATERIALS 224-25 (12th ed. 2004).

225. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 823 cmt b. For additional material, see SCOLES ET AL., *supra* note 5, § 24.40.

226. UNIF. FOREIGN-MONEY CLAIMS ACT (1989), 13 pt. II U.L.A. 13-38 (2002). Twenty-three states, not including Texas, have adopted this Act. See 13 pt. II U.L.A. 2 (Supp. 2008).

## 7. *Non-Monetary Judgments*

The Texas UFCJMRA is limited to money judgments.<sup>227</sup> Foreign country judgments awarding relief other than money may nonetheless be enforceable in Texas courts under the doctrine of claim preclusion. Common law governs, requiring the filing of a new lawsuit in Texas and a motion for summary judgment based on the preclusive effect of the prior claim. Success may also depend on the category of the foreign judgment, as illustrated briefly in the following comments.<sup>228</sup>

### a. *In Rem Judgments*

(1) Real property judgments should never be necessary to enforce. If the property is located in the rendering jurisdiction (F-1), it will be enforced there. Conversely, courts generally lack jurisdiction to adjudicate claims to real property outside the forum. Thus, any real property judgment needing extraterritorial enforcement will be invalid for lack of jurisdiction.<sup>229</sup>

(2) Personal property judgments from foreign courts may be enforceable in Texas under claim preclusion, with special attention paid to the F-1 court's jurisdiction over the property.<sup>230</sup>

### b. *Status Judgments*

Judgments regarding divorce, child custody, and competence may also be enforceable under claim preclusion, although public policy will more often be a factor here. Texas has also enacted the Uniform Child Custody Jurisdiction and Enforcement Act.<sup>231</sup> Foreign child custody decrees may also be entitled to enforcement under federal law, the International Child Abduction Remedies Act,<sup>232</sup> which is the

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227. See TEX. CIV. PRAC. & REM. CODE ANN. § 36.001(2) (Vernon 2008).

228. For other non-money judgments from foreign countries, see RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 Reporters' Note 2 (1987).

229. Citations are unnecessary for this tautology, but an interesting example is *San Lorenzo Title & Improvement Co. v. City Mortgage Co.*, 73 S.W.2d 513, 515-16 (Tex. 1934), holding that a prior Mexican judgment regarding land thought to be in Mexico was invalid because a treaty ceded it to the United States.

230. See, e.g., *United Coops. of Ont. v. M/V Good Trader*, 622 F. Supp. 335, 337 (E.D. La. 1985) (enforcing Canadian in rem judgment in maritime claim attaching boat). *But see* *Fuentes v. Sea-Land Servs. Inc.*, 665 F. Supp. 206, 210 (S.D.N.Y. 1987) (denying enforcement of Guatemalan judgment regarding coffee for lack of jurisdiction over res).

231. TEX. FAM. CODE ANN. §§ 152.101-317 (Vernon 2008) (authorizing the enforcement of both sister-state and foreign country child custody decrees); see, e.g., *In re Calderon-Garza*, 81 S.W.3d 899, 902-03 (Tex. App.—El Paso 2002, no pet.).

232. 42 U.S.C. §§ 11601-10 (2000).

Congressional enactment of the Hague Convention on the Civil Aspects of International Child Abduction.<sup>233</sup>

c. Injunctions

Foreign injunctions are less likely to be enforced, but the doctrine of comity provides discretion to do so.<sup>234</sup>

C. *Enforcing Texas Judgments in Other Countries*

This topic cannot be covered in a long article, let alone a short one. The requirements of foreign countries vary significantly, linked perhaps by a common suspicion of United States judgments which will likely be rejected if the F-2 country's rules differ on jurisdiction, discovery, or damages. This suggests that if the foreign country is the only place where executable assets are located, you should structure the Texas litigation and judgment to fit the foreign law and policy, if possible.<sup>235</sup>

When enforcing Texas judgments abroad, three primary points can be made. First, there is no customary international law that controls the enforcement of judgments or arbitration awards.<sup>236</sup> Second, the applicable treaties are limited. The United States does not participate in any judgment enforcement treaties or conventions relating to commercial and tort judgments, although it does participate in one child custody convention and two arbitration conventions. Third, the enforcing country's law controls. In the absence of a treaty, the enforcing country's (F-2's) law will control; Texas or United States law will apply only to the extent that F-2 law defers to F-1 law. For this reason, the Texas litigation should be pursued with an eye toward F-2 law, if possible. This includes the hiring of local counsel in F-2, preferably at the outset of the initial lawsuit with an eye toward eventual enforcement.

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233. Oct. 24, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89.

234. See, e.g., *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 933-34 & n.84 (D.C. Cir. 1984). Thus, a court may honor a foreign injunction, see *Blanchard v. Commonwealth Oil Co.*, 294 F.2d 834, 839-40 (5th Cir. 1961); but may on the other hand decline, see *Laker*, 731 F.2d at 955; *Doyle v. N. Pac. Ry. Co.*, 55 F.2d 708, 710 (D. Minn. 1932).

235. For summaries of various judgment enforcement rules from other countries, see sources cited *supra* notes 149-54. See especially WEINTRAUB, *supra* note 150, at ch. 3.

236. See *supra* Part II.A.1.

## 1. *Examine Domestic Enforcement Opportunities*

Although plaintiffs should plan for the foreign enforcement from the outset of the litigation,<sup>237</sup> domestic enforcement options within the United States offer a greater likelihood of collection. Once the dispute is reduced to judgment, you may seize related and unrelated assets wherever located within the United States. Specifically, Texas-based assets may be pursued under Texas judgment enforcement remedies, and assets in other states or territories within the United States may be pursued under full faith and credit using the UEFJA or common law.<sup>238</sup> If there are no domestic assets, foreign enforcement may be examined. In approaching this, keep in mind that foreign governments as judgment debtors may have additional immunities and require additional procedures.<sup>239</sup>

## 2. *Enforcing Court Judgments Abroad*

As noted above, customary international law does not address judgment enforcement, and currently, the United States is not a party to any treaty regarding foreign judgments in commercial or tort cases. The United States is a party, however, to two arbitration treaties (discussed below) and to the Hague Convention on International Child Abduction.<sup>240</sup> For judgments in other civil litigation, then, the enforcing country's (F-2's) law is the primary and likely exclusive means of enforcing a Texas state or federal judgment abroad. Although the laws of all possible F-2 jurisdictions cannot be summarized, the following suggestions will enhance enforcement.<sup>241</sup>

### a. Prerequisites—Planning for Enforcement in F-2

Plan for the enforcement at the outset of the Texas litigation. Acquire an understanding of F-2 law with the help of an F-2 attorney. Style the remedies in the Texas case in a way that will perhaps comply with F-2 law and at worst not violate F-2's public policy. In particular, plan your award of damages in accordance with F-2 law, which may mean avoiding punitive damages. On the other hand, because you are

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237. See *infra* Part II.C.2.b.

238. See *supra* Part I *passim*.

239. See *supra* note 152 (noting immunities for F-2 nationals and domiciliaries).

240. See Hague Convention on the Civil Aspects of International Child Abduction, *supra* note 139.

241. See generally RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 Reporters' Note 6 (1987) (providing short summaries of judgment enforcement practices in Great Britain, Canada, France, and Germany).

only entitled to one judgment in the case (unless you commit fraud), you may need to include punitive and other damages if there is any possibility of enforcement in the United States.

b. Requisites—Preparing the Texas Judgment

The Texas (F-1) judgment should establish the same criteria as in the other settings, again with special emphasis on indicia of reliability and avoidance of F-2's public policy objections. This should be done either facially on the judgment or in a supporting affidavit from a lawyer licensed in F-1. The necessary criteria are:

(1) Validity: This includes the F-1 court's subject matter jurisdiction, venue, and personal jurisdiction (always include a recitation of proper service and, if necessary, non-resident amenability).

(2) Finality: The F-1 judgment should (a) be entitled "Final Judgment"; (b) quantify the damages with no equivocal or conditional language regarding finality or damages; and (c) distinguish in separate paragraphs any future or conditional damages. To the extent finality must be proven in F-2, the judgment creditor should be prepared to prove the content of Texas law and its application to the judgment.<sup>242</sup>

(3) Authentication: Once the Texas judgment is in proper form, it must be authenticated by the Texas state or federal court in a manner that will satisfy F-2 law. There are three possibilities—the Apostille Convention if the F-2 country is a signatory;<sup>243</sup> the use of F-2 authentication law where F-2 is not a party to the Apostille Convention;<sup>244</sup> and exemplification under Texas law as a stop-gap, although this may not satisfy F-2 law.<sup>245</sup>

Other important points are the inclusion of a writ of execution and gold seals and ribbons. It is difficult to speculate whether a Texas execution order would be received in F-2 as evidence of the judgment's finality and enforceability in F-1, but it cannot hurt. For facial validity, gold seals and ribbons are still important and are

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242. This is best proved by an expert's affidavit, with the expert being a licensed Texas attorney other than the judgment creditor's attorney.

243. See *supra* note 162.

244. The F-2 jurisdiction will defer to Texas law only if F-2's choice of law rule calls for F-1 law for authentication. Be sure to check with the F-2 local counsel in advance because whatever F-2 requires, it will probably be accomplished in Texas.

245. Texas law calls for proof of official records by exemplification, commonly called "triple certification." Whether authentication is governed by the Apostille Convention or strictly by F-2 law, it is a good idea to have the judgment exemplified for the aura of authenticity.



available through the Texas exemplification process. Although their presence does not assure reliability, their absence raises questions.

c. Filing and Notice

Filing and notice will of course be done under F-2 law, and of course by an F-2 lawyer. In the best of circumstances, the F-2 lawyer will have been consulted before the Texas trial.

d. Miscellaneous Requirements

F-2 law may have other requirements, such as a power of attorney authorizing the F-2 attorney to represent the absent client who will likely not appear in F-2.

e. Defenses

To avoid challenges in F-2, make sure the Texas judgment reflects the Texas court's subject matter jurisdiction. Go even further for personal jurisdiction—although the foreign court may defer to Texas law on subject matter jurisdiction, it may impose its own standards for personal jurisdiction. The Texas judgment should support personal jurisdiction both factually and legally, and both as to notice and amenability. To overcome the foreign country's imposition of its own amenability and notice standards, the Texas judgment should support personal jurisdiction under F-2 standards.

Going to the merits, the Texas judgment should also have language justifying the law applied in the Texas adjudication; avoid having the court simply default into the application of Texas or some other United States law. For default judgments, do a thorough prove-up, which of course is true even for domestic enforcement. To avoid identity defenses in F-2, clearly identify the Texas defendant as the judgment debtor in F-2, avoiding personal or entity ambiguities.

Except for default judgments in F-1 (Texas), most of these defenses will be waived if the judgment debtor did not raise them in Texas. But foreign jurisprudence may be more invasive of F-1 power than enforcement within the United States.

Public policy is also a concern, and those objections may be raised for the first time in the foreign country. Unlike enforcement within the United States, foreign countries may reject judgments from the United States that deviate from their own law. If possible, structure the Texas judgment—both remedy and damages—to coincide with the foreign country's law as far as possible.

Because planning ahead can maximize collection possibilities, it is a good idea at the outset of international litigation to obtain foreign counsel in the country where collection or enforcement is likely. The foreign counsel can assist not only in planning for collection, but in structuring the Texas judgment to comply as far as possible with the F-2 law.

### 3. *Enforcing Arbitration Awards*

The United States is signatory to two arbitration treaties providing for enforcement of American arbitral decisions in other countries.<sup>246</sup> In the absence of a treaty, arbitration awards are of course subject to the F-2 country's local law. Although arbitrations are customarily less formalistic than litigation, enforcement possibilities will be enhanced if the arbitration record establishes the elements listed above for court judgments.

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246. See *supra* note 138.

