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Facilitating Money Judgment Enforcement Between Canada and the United States

JAMES P. GEORGE[†]

The United States has attempted for years to create a more efficient enforcement regime for foreign-country judgments, both by treaty and statute. Long negotiations succeeded in July 2019, when the Hague Conference on Private International Law (with U.S. participants, including the Uniform Law Commission) promulgated the new Hague Judgments Convention which harmonizes judgment recognition standards but leaves the domestication process to the enforcing jurisdiction. In August 2019, the Uniform Law Commission took a significant step to fill that gap, though limited to Canadian judgments. The Uniform Registration of Canadian Money Judgments Act provides a registration process similar to that for sister-state judgments in the United States. The new Act aligns with Canada's Uniform Enforcement of Foreign Judgments Act, retaining due process safeguards while facilitating acceptance of appropriate judgments. In most cases, this will avoid the need for further litigation and lead to more efficient enforcement in adopting jurisdictions. This Article outlines the new Act and then tackles difficult questions that remain subject to local law.

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INTRODUCTION

In July 2019, the Uniform Law Commission approved an act that will streamline the process to enforce a Canadian money judgment in the United States. The Uniform Registration of Canadian Money Judgments Act (“2019 Registration Act”) supplements the Uniform Foreign-Country Money Judgment Recognition Act (“2005 Act”) currently adopted in twenty-six states and territories.¹ Under the 2005 Act, a party must file a lawsuit in order to seek recognition for a foreign judgment, and if granted, it may enforce the foreign judgment in the same manner as a judgment rendered locally. The 2019 Registration Act creates a registration procedure for use with Canadian money judgments which does not require the party seeking recognition to file a lawsuit. This Article explains the 2019 Registration Act and its relation both to its parent Act and to the Canadian counterpart, the Canadian Uniform Enforcement of Foreign Judgments Act.

This Article deals intricately with those three statutes and incidentally with several others, all of which are popularly referred to with acronyms such as UFCMJRA. Because of the acronyms’ similarity and the likelihood of confusion, I will use shortened forms. There are three United States-based acts, all aimed at state adoption:

- “the 1962 Act” is the Uniform Foreign Money-Judgments Recognition Act
- “the 2005 Act” is the Uniform Foreign-Country Money Judgments Recognition Act
- “the 2019 Registration Act” is the Uniform Registration of Canadian Money Judgments Act

There are two Canadian acts, adopted in various Canadian provinces and territories:

- “the REJA-C” is the Reciprocal Enforcement of Judgments Act
- “the UEFJA-C” is the Uniform Enforcement of Foreign Judgments Act

Part I discusses the history of these acts.

In addition, readers must distinguish between a judgment’s *recognition* (the enforcing state’s acceptance of a foreign judgment for preclusion or enforcement purposes) and the judgment’s *enforcement* (execution against local assets). In turn, recognition breaks down into *recognition standards* (such as the judgment debtor’s amenability to the rendering state’s jurisdiction) and the initial *application process* in the enforcing state (litigation versus registration). Part II discusses the application process—registration—offered by the 2019 Registration Act.

Part III discusses the myriad of conflicting issues encountered following judgment registration under the 2019 Registration Act or filing under the 2005 Act. Although judgment execution per se is beyond these Acts’ scope, it is

1. For a list of enacting jurisdictions, see *2005 Foreign-Country Money Judgments Recognition Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=ae280c30-094a-4d8f-b722-8dcd614a8f3e> (last visited Nov. 23, 2020).

important that attorneys and courts understand both the distinction and interplay of the judgment recognition and the ensuing enforcement process. Part IV summarizes the 2019 Registration Act's contribution and speculates as to the viability of registration in other judgment enforcement regimes.

I. FOREIGN-COUNTRY JUDGMENTS IN THE UNITED STATES AND CANADA

A. THE UNITED STATES

1. *The Common Law*

As Joseph Story noted in the early nineteenth century, foreign judgment recognition has been the subject of “no inconsiderable fluctuation” in the common law.² In chronicling this fluctuation, Story first noted a frequent distinction in England between judgments offered for enforcement and those offered in defense. Judgments filed for enforcement were treated as prima facie evidence of the claim subject to attack for various errors—that is, the claim was often relitigated. But judgments offered in defense were analyzed under preclusion principles.³ Using that practice as a starting point, Story offered several pages of variations ranging from moderations to sharp deviations from the English view.⁴ The United States at that point had insufficient legal history to draw conclusions. Story reported only the generality that foreign judgments were prima facie evidence but impeachable, and that “how far and to what extent this doctrine is to be carried, does not seem to be definitely settled.”⁵

The United States Supreme Court took a large step in 1895 to straighten the fluctuation in its review of a French judgment. In *Hilton v. Guyot*,⁶ the Court explained at length that foreign-country judgments are entitled to recognition under twin standards of comity and reciprocity. As to comity, the Court stated

we are satisfied that, where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in

2. JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, FOREIGN AND DOMESTIC, IN REGARD TO CONTRACTS, RIGHTS, AND REMEDIES, AND ESPECIALLY IN REGARD TO MARRIAGES, DIVORCES, WILLS, SUCCESSIONS, AND JUDGMENTS § 603 (Lawbook Exch. 2d ed. 2001) (1841).

3. *See id.* § 598.

4. *See id.* §§ 598–610; *see also* *Hilton v. Guyot*, 159 U.S. 113, 180–95 (1895).

5. STORY, *supra* note 2, § 608; *see also* *Smith v. Lewis*, 3 Johns 157, 169 (N.Y. 1808) and other cases and treatises discussed in PETER HAY, PATRICK J. BORCHERS, SYMEON C. SYMEONIDES, & CHRISTOPHER A. WHYTOCK, CONFLICT OF LAWS 1421–22 (West Acad. Publ'g 6th ed. 2018).

6. *Hilton*, 159 U.S. at 113.

this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.⁷

The Court—and on this second point a bare majority—held further that comity required reciprocity, and because France did not give conclusive effect to United States judgments, the Court would not recognize the French judgment.⁸ A strong four-justice dissent favored the French judgment, arguing that preclusion was the common law mandate here rather than the more politically oriented comity, and that reciprocity had no role in the analysis.⁹ The *Hilton* majority thus held that the question of foreign-country judgment recognition was one of public law, conceivably addressable by a national or international standard. The *Hilton* dissent argued for preclusion, a question of the common law and thus private law. That question—public law or private law—continues to be debated in regard to foreign country judgment recognition.

The next instance of that ongoing debate came from the New York Court of Appeals in 1926. In *Johnston v. Compagnie Generale Transatlantique*, the New York Court of Appeals rejected *Hilton*'s comity and reciprocity standard, and instead followed the *Hilton* dissent by applying New York's common law of preclusion to the French judgment's recognition.¹⁰ *Johnston*'s holding made two important points. First, the recognition of the French judgment was a question of private law based on preclusion, and not public law based on comity. Second, because it was a question of private law, it was a state law question governed by New York law.

The state law view was bolstered in 1938 when the Supreme Court decided *Erie Railroad Co. v. Tompkins*, holding that diversity cases were governed by the law of the state in which the federal court sat.¹¹ Although *Erie* applied only to federal courts (and not, for example, to state court actions on foreign-country judgments), the doctrine came to stand for something much broader than the governing law in diversity cases. For example, in *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*,¹² the Third Circuit Court of Appeals cited *Erie* in holding that Pennsylvania law governed the recognition of an English default judgment.¹³ Interestingly, Pennsylvania's applicable law was comity, based on *Hilton*, but rejected *Hilton*'s reciprocity.¹⁴ In any event, *Erie* clarified the primacy of state common law even outside of federal litigation, including its application to what the *Hilton* majority assumed was a question of public law and national scope. To the extent the *Hilton* majority purported to announce a federal standard for recognizing foreign-country judgments, the combination of

7. *Id.* at 202–03.

8. *Id.* at 210.

9. *Id.* at 233–34.

10. *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 386–88 (1926).

11. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 80 (1938).

12. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

13. *Id.* at 440.

14. *Id.* at 440 & n.8.

Johnston and *Erie* has ended that. Nonetheless, state courts are free to adhere to *Hilton*'s comity and reciprocity standard, and some do.¹⁵ On the other hand, state law's current dominance of foreign-country judgment recognition does not mean that federal law cannot control the question, but only that in the absence of federal law—federal statute or treaty—state law controls.

2. *The Uniform Acts*

In 1948, the Uniform Law Commission approved the Uniform Enforcement of Foreign Judgments Act (US-UEFJA) to provide clearer enforcement of sister-state judgments. Although the US-UEFJA was merely a codification of the common law standard under full faith and credit, it expedited sister-state judgment enforcement by requiring only a registration rather than a new lawsuit. The sister-state Act had sufficient success¹⁶ to encourage the Uniform Law Commission to consider a similar act for foreign-country judgments.

That happened in 1962 with the promulgation of the Uniform Foreign Money Judgment Act ("1962 Act"). As the California Supreme Court noted, "[t]he purpose of the uniform act was to codify the most prevalent common law rules for recognizing foreign money judgments and thereby encourage the reciprocal recognition of United States judgments in other countries."¹⁷ There were, of course, a number of differences from the sister-state Act. Notably, first, the sister-state Act applies to any judgment entitled to full faith and credit¹⁸ but the 1962 Act applies only to money judgments other than those for taxes, fines, other penalties, or family law judgments.¹⁹ Second, the 1962 Act does not allow for mere registration of the foreign-country judgment but instead requires "recognition" accomplished through a new lawsuit,²⁰ although the 1962 Act itself did not make that clear.²¹ Third, the 1962 Act allows for both preclusion

15. See HAY ET AL., *supra* note 5, at 1424–25 & n.305.

16. As of 2019, the Uniform Enforcement of Foreign Judgments Act (U.S.) has been enacted in forty-eight states (all but California and Vermont) plus the District of Columbia and the U.S. Virgin Islands. *1964 Enforcement of Foreign Judgments Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=e70884d0-db03-414d-b19a-f617bf3e25a3> (last visited Nov. 23, 2020).

17. *Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604, 608 (Cal. 2008) (citing 13 pt. II West's U. Laws Ann. (2002) Unif. Foreign Money-Judgments Recognition Act, Prefatory Note, p. 40).

18. See UNIF. ENF'T OF FOREIGN JUDGMENTS ACT § 1 (UNIF. L. COMM'N 1964).

19. See UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 1(2) (UNIF. L. COMM'N 1962).

20. For sister-state judgments, full faith and credit requires recognition when a qualified judgment is registered. Because foreign-country judgments do not qualify for full faith and credit, a summary proceeding is necessary.

21. The drafters apparently believed that the need to file a new action in the enforcing state was obvious since it was required under the common law. That oversight was one of the reasons for the revisions that came in 2005 with the Uniform Foreign Country Money Judgment Recognition Act. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6 cmt. 1 (UNIF. L. COMM'N 2005). In the meantime, states had varying reactions to the 1962 Act's failure to specify a filing requirement. Florida saw it as acceptable to use a registration procedure that the drafters did not intend. See FLA. STAT. ANN. § 55.604 (2019). No other state drafted a registration procedure as such, but some courts interpreted it that way. See, e.g., *Vrozos v. Sarantopoulos*, 552 N.E.2d 1093, 1099–1101 (Ill. App. Ct. 1990); *Maxwell Shuman & Co. v. Edwards*, 663 S.E.2d 329, 331–32 (N.C. Ct. App. 2008). A Texas court, on the other hand, held the 1962 Act unconstitutional for its failure to

and enforcement.²² Finally, the 1962 Act provides additional defenses and protections for the judgment debtor.²³ The 1962 Act was eventually adopted by thirty-five states and three territories,²⁴ but several have replaced it with the 2005 Act. As of 2019, ten states and one territory use the 1962 Act—Alaska, Connecticut, Florida, Maine, Maryland, Massachusetts, Missouri, New York, Ohio, Pennsylvania, and the Virgin Islands.²⁵

The 1962 Act's failure to provide an express procedure, along with other perceived shortcomings, led to an updated Act in 2005. The changes from the 1962 Act are explained in the 2005 Act's prefatory note and include clarifying (in some cases enlarging) the definitions,²⁶ scope,²⁷ burdens of proof,²⁸ need to file a legal action in the enforcing state,²⁹ defenses,³⁰ and the addition of a statute of limitations.³¹ The 2005 Act has been adopted in twenty-six U.S. jurisdictions: Alabama, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, and Washington.³²

require notice to the judgment debtor. *See* *Detamore v. Sullivan*, 731 S.W.2d 122, 124 (Tex. Ct. App. 1987) (denying writ of mandamus). As a result, the Texas legislature amended its version of the 1962 Act to specify a notice requirement. *See* *Don Dockstader Motors, Ltd. v. Patal Enterprises, Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990).

22. Whether the foreign-country judgment is presented for collection or preclusion, it first requires recognition as a qualified judgment. For sister-state judgments, recognition is automatic so there is no need for a summary proceeding when submitting it for preclusion, which will necessarily be in an existing action. Enforcing the sister-state judgment, which usually means collecting a money judgment, requires registration under the US-UEFJA in order to give notice to the judgment debtor and to open a domestic cause number. *See generally* UNIF. FOREIGN MONEY JUDGMENTS RECOGNITION ACT.

23. In addition to the jurisdictional defenses under the sister-state act, the 1962 Act includes defenses such as unfair legal system and public policy violations that are unavailable under the sister state act. *See id.* § 4.

24. HAY ET AL., *supra* note 5, at 1425.

25. *See* UNIF. FOREIGN MONEY JUDGMENTS RECOGNITION ACT, U.L.A. Refs & Annos (2020). The Uniform Laws Annotated reference table lists Delaware and Illinois, but those states also appear on the 2005 Act reference table and both show current versions of the 2005 Act.

26. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 2 (refining the definitions to read “foreign country” and “foreign-country judgment”).

27. *See id.* § 3 (clarifying certain exclusions such as domestic relations judgments).

28. The judgment creditor or other party seeking recognition bears the initial burden to establish that the judgment falls within the Act's scope. *See id.* § 3(c). Once that burden is met, the judgment is presumed enforceable and the judgment debtor (or other party opposing recognition) bears the burden of establishing a basis for nonrecognition. *See id.* § 4(d).

29. *See id.* § 6.

30. *See id.* §§ 4(c)(7)–(8) (adding discretionary nonrecognition grounds based on the rendering court's integrity and due process violations in foreign proceedings). The best explanation of defense distinctions between the 1962 Act and the 2005 Act comes from the Fifth Circuit Court of Appeals in *DeJoria v. Maghreb Petroleum Exploration, S.A.*, 804 F.3d 373, 386 (5th Cir. 2015) [hereinafter *DeJoria I*], *rev'd*, 935 F.3d 381 (5th Cir. 2019) [hereinafter *DeJoria II*]. In *DeJoria II*, the judgment debtor successfully opposed a Moroccan judgment by lobbying the Texas legislature to adopt the 2005 Act which added crucial defenses. *DeJoria*, 935 F.3d at 387–88.

31. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 9.

32. *See* 2005 *Foreign-Country Money Judgments Recognition Act*, *supra* note 1.

3. *Proposals for a National Standard—Treaty or Unilateral Statute*

As noted above, state law governance of foreign-country judgment recognition is not a foregone conclusion. National standards have been continuously proposed at least back to *Hilton*. The most notable effort, which may now succeed in the United States, is through the Hague Conference on Private International Law, which in 1993 began drafting a Convention on Jurisdiction and the Recognition of Judgments. The process continued through 2001, but negotiations reached impasses on jurisdictional bases such as “tag jurisdiction” and “general jurisdiction” (doing business in the forum unrelated to the claim). When it became clear that no agreement was in sight, the negotiators took a fallback position and crafted an agreement on forum clauses that became the Hague Convention on Choice of Court Agreements.³³

During the Hague negotiations, the American Law Institute (ALI) undertook the drafting of a federal statute designed to implement the anticipated Hague Judgments Convention. The ALI work began in 1998,³⁴ and when the Hague efforts failed, the ALI switched the plan to creating a federal statute that would create a federal standard for recognizing foreign-country judgments. Controversies during that process included some ALI members’ resistance to a federal standard, and other members’ preference for a reciprocity requirement.³⁵ That work was completed in 2005 with a proposed federal statute that included reciprocity,³⁶ but it did not reach Congress.

Treaty proponents did not give up, and in 2019 the Hague Conference finalized the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.³⁷ The Convention states the standards for recognition including jurisdiction, defenses, and authentication,³⁸ but leaves the filing or registration procedure, along with enforcement, up to the enforcing state’s law.³⁹ Additionally, the Convention expressly retains the enforcing states’ existing recognition and enforcement methods.⁴⁰ The Convention opened for signing on July 2, 2019, but as of this writing only Uruguay has signed.⁴¹ Ratification in the United States is of course speculative,

33. See Convention on Choice of Court Agreements, 44 I.L.M. 1294 (2005), <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>. The United States has signed but not ratified the convention. See *Status Table*, HAGUE CONF. ON PRIVATE INT’L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last visited Nov. 23, 2020).

34. See Memorandum from Professor Andreas F. Lowenfeld & Professor Linda Silberman to the Council of the Am. L. Inst. (Nov. 30, 1998), https://www.ali.org/media/filer_public/ed/f9/edf92d0f-e280-4480-b8de-5aade127c56c/foreign-judgments-memorandum.pdf.

35. See Lance Liebman, *Foreword* to AMERICAN LAW INSTITUTE, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE, at xii–xiii (2005).

36. See *id.* at xi–xii.

37. See Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, July 2, 2019, <https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf>.

38. See *id.* at art. 5 (jurisdictional bases), art. 6 (in rem exclusion), art. 7 (defenses), art. 12 (authentication).

39. See *id.* at art. 13.

40. See *id.* at art. 15.

41. See *Status Table*, HAGUE CONF. ON PRIV. INT’L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137> (last visited Nov. 23, 2020).

and if ratified, it is not clear what reservations might be imposed. Assuming it is ratified in the United States and the implementing statute does not impose additional requirements on enforcing states (that would create a federal enforcement law), then the Convention appears to be compatible with both current recognition and enforcement methods, including common law, the 1962 Act, the 2005 Act, and (if enacted by states) the 2019 Canadian Judgment Registration Act.

B. CANADIAN APPROACHES TO FOREIGN-COUNTRY JUDGMENTS

This review of Canadian law is brief because this Article is about judgment enforcement in the United States. The discussion here involves Canadian jurisdictions only to the extent of harmonizing United States practice, at least in the twenty-six states using the 2005 Act, and hopefully in newly-adopting states. Interestingly, Canadian law on foreign-country judgment enforcement is more complex than in the United States because Canada has not only the same internal border issues, but has also managed to tie into specific treaties with the United Kingdom⁴² and France,⁴³ and has other federal legislation geared to judgment-enforcement treaties.⁴⁴ A full summation of the larger Canadian law on foreign-judgment enforcement would take several pages and is unnecessary in this Article about a new act for adoption in the United States. The discussion below is limited to Canada's uniform provincial laws directed to foreign-country judgment enforcement.

1. Common Law

Canada's foreign-judgment enforcement system evolved from common law enforcement which prevailed until statutory procedures emerged in the twentieth century. As with the doctrinal struggle in the United States, Canadian law on foreign-judgment enforcement vacillated between a preclusion-based system and a sovereignty-based comity approach that included reciprocity. The leading Canadian treatise on the subject explains the theoretical contrast between the common law and typical civil law systems: common law enforcement tends to be on a case-by-case basis, while many non-common law countries either do

42. See Convention Between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, Can.-U.K., Apr. 24, 1984, 1987 Can. T.S. No. 29 (enacted as the Canada-United Kingdom Civil and Commercial Judgments Convention Act, R.S.C., 1985, c. C-30); see also JEAN-GABRIEL CASTEL & JANET WALKER, CANADIAN CONFLICT OF LAWS § 14.27 (LexisNexis Can. Inc. 6th ed. 2005).

43. See Convention Between the Government of Canada and the Government of the French Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Legal Assistance in Maintenance, Can.-Fr., June 10, 1996, <https://www.ulcc.ca/en/annual-meetings/377-1997-whitehorse-yk/civil-section-documents/1132-convention-between-government-of-canada-and-government-of-french-republic-1997?showall=1&limitstart=>. For an example of adoption in a Canadian province, see The Enforcement of Judgments Convention and Consequential Amendments Act, C.C.S.M. c E117 (Can. Man.). See also CASTEL & WALKER, *supra* note 42, § 14.28.

44. See CASTEL & WALKER, *supra* note 42, § 14.29 (discussing Canadian federal statutes directed to foreign and international judgments regarding antitrust, foreign trade, oil pollution, and terrorism victims).

not recognize foreign judgments at all (requiring re-litigation) or recognize judgments from specific reciprocating countries, subject to a few objections.⁴⁵ This resembles the contrasting views in the United States as shown in the *Hilton* majority and dissent, and the *Hilton* dissent's echo in *Johnston*.⁴⁶

Like jurisdictions in the United States, the results in Canada have been a hybrid. The two Canadian statutory-enforcement systems—the REJA-C and the UEFJA-C—are based on the common law but differ in their procedures, and common law enforcement remains available as an alternative to registration or recognition under one of the standardized Canadian acts.⁴⁷

2. *The Reciprocal Enforcement of Judgments Act (REJA-C)*

Statutory procedures began to replace common law enforcement in the early twentieth century. The REJA-C, though originally derived from a 1924 model law, is now a collection of statutes with varying content⁴⁸ used in most Canadian provinces and territories—all but Quebec and Saskatchewan.⁴⁹ The adopted versions are not uniform in sections, wording, or scope.⁵⁰ According to Professor Janet Walker, the REJA-C was originally intended as a catch-all act to provide a registration procedure for civil money judgments from reciprocating jurisdictions—both Canadian and foreign.⁵¹ This is consistent, for example, with Alberta's REJA-C.⁵²

The adopted versions in various provinces and territories have naturally mutated over the many years, and now New Brunswick applies its REJA-C only to foreign-country judgments,⁵³ using other statutes to enforce other Canadian judgments. Ontario applies its REJA-C only to Canadian provinces and territories,⁵⁴ presumably leaving judgment creditors from foreign countries to use common law enforcement. There are, however, three common features among all REJA-C versions: a convenient registration procedure, the option to use common law recognition/enforcement, and a stiff reciprocity requirement.

45. *See id.* § 14.1.

46. *See* *Hilton v. Guyot*, 159 U.S. 113, 180–95 (1895); *Johnson v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 385 (1926).

47. *See generally* CASTEL & WALKER, *supra* note 42, ch.14.

48. *See id.* § 14.24 & n.1.

49. Ten Canadian jurisdictions have enacted a version of the REJA-C, labeled as such: Reciprocal Enforcement of Judgments Act, R.S.A. 2000, c R-6 (Can. Alta.); Reciprocal Enforcement of Judgments Act, R.S.M. 1987, c J20 (Can. Man.); Reciprocal Enforcement of Judgments Act, R.S.N.B. 2014, c 127 (Can. N.B.); An Act to Facilitate the Reciprocal Enforcement of Judgments, R.S.N. 1990, c R-4 (Can. Nfld.); Reciprocal Enforcement of Judgments Act, R.S.N.W.T. 1988, c R-1 (Can. N.W.T., Nun.); An Act Respecting the Reciprocal Enforcement of Judgments, R.S.N.S. 1989, c 388 (Can. N.S.); Reciprocal Enforcement of Judgements Act, R.S.O. 1990, c R.5 (Can. Ont.); Reciprocal Enforcement of Judgments Act, R.S.P.E.I. 1988, c R-6 (Can. P.E.I.); Reciprocal Enforcement of Judgments Act, R.S.Y. 2002, c 189 (Can. Yukon).

50. As with uniform acts in the United States, various differences exist between the Canadian jurisdictions' REJA-C adoptions. *See* CASTEL & WALKER, *supra* note 42, § 14.24.

51. *See id.*

52. *See* Reciprocal Enforcement of Judgments Act, R.S.A. 2000, c R-6, § 1 (Can. Alta.); Reciprocating Jurisdictions Regulation, Alta. Reg. 344/1985, § 1 (Can. Alta.).

53. *See* Reciprocal Enforcement of Judgments Act, R.S.N.B. 2014, c 127, §§ 1, 3 (Can. N.B.).

54. *See id.* § 1; *see also* Reciprocal Enforcement of Judgments Act, Ont. Reg. 322/92, § 1 (Can. Ont.).

The REJA-C is an improvement over the common law with its option for registering the foreign judgment instead of having to file a new action and endure a summary proceeding.⁵⁵ The disadvantage is the element of reciprocity, and not just the requirement, but the overlay of an administrative process. Under the REJA-C, reciprocity is not a question to be determined ad hoc by the enforcing court, but instead requires an administrative process in which the province's Lieutenant Governor declares the rendering jurisdiction to be a reciprocating jurisdiction.⁵⁶ Once a U.S. state is designated on a province's reciprocating list, future judgment creditors can benefit, but the list of approved U.S. states is small. Alberta, for example, has recognized only Arizona, Idaho, Montana, and Washington as eligible reciprocating states.⁵⁷ The process of having the rendering state placed on the reciprocating list is sufficiently difficult that many judgment creditors choose the common law recognition, although there is no available data to assess how many there are in each province. There is evidence, though, of frustration with the process. Some judgment creditors have tried to circumvent the reciprocity requirement by first filing in a reciprocating province and then seeking intra-Canadian enforcement. The REJA-C anticipates this and prohibits the practice. That is, the original rendering court must be from a jurisdiction officially recognized as reciprocating.⁵⁸

One common feature in the various REJA-Cs is the option of foregoing registration (and cumbersome reciprocity) and filing a new action. As with the 1962 Act and the 2005 Act in the United States, the new action is directed to the foreign-country judgment rather than the underlying claim and anticipates summary resolution based on preclusion.⁵⁹

Two Canadian jurisdictions have not adopted the REJA-C. Quebec—a civil code jurisdiction—has drafted code provisions⁶⁰ based on the 1971 Hague Judgments Convention.⁶¹ The Quebec code does not impose reciprocity but also has no registration option.⁶² Saskatchewan has adopted the latest version of Canada's Uniform Enforcement of Foreign Judgments Act, which offers a registration procedure, lacks reciprocity, and is discussed immediately below.

55. Professor Walker notes that the REJA-C registration process “is more efficient than the common law method of enforcement but it can still be cumbersome and expensive.” CASTEL & WALKER, *supra* note 42, § 14.24, at 14-103.

56. *See, e.g.*, Reciprocal Enforcement of Judgments Act, R.S.A. 2000, c R-6, § 8 (Can. Alta.); *see also* CASTEL & WALKER, *supra* note 42, § 14.24 & nn.4–5. In contrast, states in the United States using reciprocity treat it as a judicial question and some states make it discretionary. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 36A.004(c)(9) (2019).

57. *See* Reciprocating Jurisdictions Regulation, Alta. Reg. 344/1985, § 1 (Can. Alta.).

58. *See* CASTEL & WALKER, *supra* note 42, § 14.24 & n.5.

59. *See id.* § 14.24 & n.3.

60. *See* Civil Code of Québec, S.Q. 1991, c 64, arts. 3155–68 (Can.); Code of Civil Procedure, R.S.Q. 2014, c 1, arts. 507–08 (Can.).

61. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Feb. 1, 1971, 1144 U.N.T.S. 249, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=78>; CASTEL & WALKER, *supra* note 42, § 14.13 & n.3. The 1971 Hague Judgments Convention (ratified only by Albania, Cyprus, Kuwait, the Netherlands, and Portugal), not to be confused with the 2019 Hague Judgments Convention, just opened for signature.

62. *See* CASTEL & WALKER, *supra* note 42, § 14.3 & n.51.

3. *The Uniform Enforcement of Foreign Judgments Act (UEFJA-C)*

The Uniform Law Conference of Canada has long encouraged a reciprocity-free procedure for foreign-country judgments. The original model came out in 1933 with the Model Foreign Judgments Act, which has been revised many times since.⁶³ The earliest versions dropped the reciprocity requirement with its cumbersome administrative layer⁶⁴ but until recently the UEFJA-C did not have a registration option like the REJA-C. The Uniform Law Conference of Canada (ULC-C) produced the most recent version in 2003 and Saskatchewan enacted it in 2005.⁶⁵ New Brunswick has enacted, in addition to its REJA-C, what appears to be a prior version of the UEFJA-C entitled the Foreign Judgments Act. The New Brunswick version does not require reciprocity but lacks a registration procedure and instead requires a new action on the foreign judgment,⁶⁶ which makes it simply a codification of the common law similar to the 2005 Act in the United States.

The UEFJA-C is a well-structured Act that offers cost-and-time reduction while retaining due process concerns. While the REJA-C applies (with some exceptions) to judgments rendered outside the enforcing forum, including other Canadian jurisdictions,⁶⁷ the UEFJA-C is limited to judgments from “foreign States,” not referring to other Canadian provinces or territories.⁶⁸ A line-item comparison with the REJA-C is not practical because the REJA-C lacks a current model-law format and its ten adoptions vary significantly. A few general comparisons are possible, though. Compared to the general format for the various REJA-Cs, the UEFJA-C has more definitions,⁶⁹ a more tightly defined scope with additional exclusions,⁷⁰ a different limitations rule,⁷¹ a clearer default judgment rule,⁷² discretion to enforce non-monetary judgments,⁷³ an option for partial enforcement if parts of the foreign judgment exceed the Act’s scope,⁷⁴ more defenses for the judgment debtor,⁷⁵ a more nuanced burden of proof,⁷⁶ precise judgment interest rules,⁷⁷ and a clearer rule for monetary conversion.⁷⁸ Like the REJA-C, the UEFJA-C is structured around a registration process, and

63. *See id.* § 14.23 & n.1.

64. *Compare id.* § 14.23, *with id.* § 14.24.

65. The Enforcement of Foreign Judgments Act, R.S.S. 2005, c E-9.121 (Sask. Can.).

66. Although the New Brunswick Foreign Judgments Act does not expressly authorize an action on a foreign judgment, its only function is to regulate such an action. *See* Foreign Judgments Act, R.S.N.B. 2011, c 162, §§ 5–6, 8 (N.B. Can.).

67. *See supra* notes 51–52 and accompanying text.

68. *See* Uniform Enforcement of Foreign Judgments Act § 2 (Unif. L. Conf. Can. 2003) (Can.) (defining “foreign judgment”).

69. *See id.* § 2 (providing eight definitions).

70. *See id.* § 3.

71. *See id.* § 5.

72. *See id.* §§ 4(d), 9.

73. *See id.* § 7.

74. *See id.* §§ 6, 12.

75. *See id.* §§ 4, 10.

76. *See id.* § 10.

77. *See id.* § 15.

78. *See id.* § 13.

unlike the REJA-C, the UEFJA-C not only abandons the cumbersome administrative process regarding the reciprocity list with the Lieutenant Governor, but abandons the reciprocity element entirely. The UEFJA-C is one of this Article's three focus acts and its details are outlined in the chart below.⁷⁹

C. THE CANADIAN-U.S. PROJECT TO EXPEDITE CIVIL MONEY JUDGMENT ENFORCEMENT

Vibrant economies benefit from predictable and consistent judgment enforcement regimes. This was true when the drafters included the full faith and credit clause in the United States Constitution, and it remains true in the twenty-first century. On the other hand, judgment enforcement is also a local matter because of its in rem nature—an action against necessarily local assets. Those local interests explain why foreign-country judgment enforcement resists standardization. In a federalist system like the United States or even in more traditional polities, local customs and policies evolve both judicially and legislatively to accommodate those competing national and local interests. Finding the balance between them is essential.

The only universally agreed-upon point in transnational judgment enforcement is that the rendering forum must have jurisdiction over the defendant/judgment debtor.⁸⁰ For interstate judgment enforcement in the United States, the full faith and credit clause resolved recognition disparities and compelled common law enforcement through summary actions. Building on that, the Uniform Law Commission's UEFJA increased sister-state enforcement efficiency by replacing the summary legal action with a registration system.⁸¹

Judgments from foreign countries are a different matter because of inherent distrust of foreign legal systems. But arguments against greater efficiencies—such as registration—fade for judgments from countries with similar legal traditions. Canada and the United States are ideal matches, and at its January 2017 meeting, the Uniform Law Commission approved a joint project with the Uniform Law Conference of Canada to draft an act harmonizing the 2005 Act and the UEJFA-C.⁸² The stated goal was a registration procedure for United States jurisdictions that would match that in Canada and create a more efficient

79. See *infra* Part II.A.

80. See ANDREAS F. LOWENFELD, INTERNATIONAL LITIGATION AND ARBITRATION 471 (3d ed. 2005) (citing, *inter alia*, ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE (C. Platto & W.G. Horton eds., 2d ed. 1993)). Even with United States jurisdictions using the 2005 Act, the approach varies. Although the 2005 Act calls for the filing of a new legal action in the enforcing state, some states routinely allow registration. See, e.g., CE Design Ltd. v. HealthCraft Prods., Inc., 79 N.E.3d 325, 329–30 (Ill. App. Ct. 2017). In other states requiring a recognition action, courts sometimes allow registration anyway. See, e.g., Hyundai Sec. Co. v. Lee, 155 Cal. Rptr. 3d 678, 682–84 (Ct. App. 2013). Nonetheless, judgment registration has not taken hold with foreign-country judgments.

81. See, for example, TEX. CIV. PRAC. & REM. CODE ANN. § 35.003 (2019), the Texas version of the 1964 Act. Cross border judgment recognition is controversial enough that even sister-state judgment enforcement was not always efficient or consistent. See *supra* notes 4–5 and accompanying text.

82. See Unif. L. Comm'n, Minutes: Midyear Meeting of the Executive Committee 7 (Jan. 14, 2017), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2164ce27-3552-7548-25a2-457abf438c12>.

domestication of civil money judgments between the two countries.⁸³ The joint drafting committee had its first meeting in October 2017, and two years later presented its proposed final act at the 2019 Annual Meeting in Anchorage, Alaska. On July 17, 2019, the Uniform Law Commission approved the Uniform Registration of Canadian Money Judgments Act and forwarded it to the states for enactment.⁸⁴

II. THE UNIFORM REGISTRATION OF CANADIAN JUDGMENTS ACT

The 2019 Registration Act's purpose is to harmonize the 2005 Act with the UEFJA-C for civil money judgment enforcement in the adopting jurisdictions in Canada and the United States. Because the 2019 Registration Act is a drop-in amendment to the 2005 Act, there is a fair bit of necessary parallel in the two U.S. Acts. But to accomplish the harmonization between U.S. and Canadian law, the 2019 Registration Act varies from the 2005 Act on key points. The chart below lists the similarities and distinctions in the three acts. The summaries' points here are paraphrased and the full text, without comments, is attached as Appendix B. The 2019 Registration Act's text with comments is available on the Uniform Law Commission website.⁸⁵

A. THREE ACTS COMPARED

Following is a side-by-side comparison of the 2005 Act, the UEFJA-C, and the 2019 Registration Act. The 2019 Registration Act is intended to harmonize the 2005 Act and the UEFJA-C.

83. *See id.*

84. *See* Unif. L. Comm'n, Transcript of the Proceedings, 2019 Annual Meeting of the Uniform Law Commission, Tenth Session, Wednesday, July 17, 2019, at 302–10 (Unif. Law Comm'n 2019) (on file with author and Unif. L. Comm'n).

85. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT (UNIF. L. COMM'N 2019).

	Features	2005 Act (U.S.)	UEFJA (Canada)	2019 Reg Act (U.S.)
Basic Provisions				
1	Definitions	§ 2 Terms defined: foreign country foreign-country judgment	§ 2 Terms defined: civil proceeding enforcing court foreign civil protection order foreign judgment judgment creditor judgment debtor registration state of origin	§ 2 Terms defined: Canada Canadian judgment Consistent with the 2005 Act's limited definitions
2	Scope/ Applicability	§ 3(a) limits scope to foreign-country judgments to the extent they (1) grant or deny recovery for a sum of money, and (2) are final, conclusive and enforceable under the law of the rendering state. § 3(b) excludes: tax judgments fines or penalties domestic relations	Applies to <i>foreign judgments</i> as defined in § 2. § 3 excludes: tax judgments bankruptcy/insolvency maintenance/ support judgments recognizing a judgment from another foreign country fines or penalties judgments predating this Act § 3.1 covers foreign civil protection orders. § 6.1(3)—money damages includes an award by rendering court of costs/ expenses of litigation	§ 3(a) incorporates the 2005 Act's scope because the Registration Act is a drop-in for the 2005 Act. However, § 2(2) tracks the UEJFA-C by barring chain registration/recognition (for example, it limits judgments to those litigated in Canada). Comment 1 to § 3 discusses the Registration Act's position on bankruptcy but is unchanged from the 2005 Act.
3	Application to default judgments	Applies to default judgments without expressly so stating. § 4(c)(6) provides a discretionary non- recognition ground for judgments based only on personal jurisdiction which includes, but is not necessarily limited to, defaults. The judgment debtor may object if notice in the rendering state was not made in sufficient time to prepare a defense. See § 4 comment 7.	Yes. § 4(d) excludes only default judgments where notice was not received in sufficient time to present a defense. § 9 adds a jurisdictional nexus (real and substantial connection) requirement for default judgments (burden of proof on judgment debtor (§ 10)).	Applies to default judgments without expressly so stating, consistent with the 2005 Act.
4	Non- monetary awards	No. Limited by its terms to money judgments.	Yes. § 7 gives the enforcing court discretion to enforce a non-monetary award and modify it if necessary.	No, consistent with the 2005 Act's limit to money judgments.
5	Partial	Yes. § 3 provides that	Yes. § 6(1) provides a	Yes. § 3(c) expressly

	enforcement option	the Act applies to a foreign-country judgment to the extent it's within the Act's scope and does not apply to the extent it falls within an excluded category. The enforcing court is free to recognize and enforce the out-of-scope aspects under common law or comity. See § 3 comments 2 & 5.	court can reduce award for punitive damages, etc., to the extent they would be available in enforcing state. § 6(2) provides a court may reduce excessive actual damages, limiting to what the enforcing court could award. § 12(2) provides a judgment creditor may register only part of foreign judgment. § 12(4)(c) provides a creditor may seek amendment to render enforceable.	allows partial registration.
Filing				
6	Registration option	No. Judgment creditors must file a new lawsuit or raised by counterclaim, crossclaim, etc. See § 6.	Yes. § 12.	Yes. § 4, and to some extent, the entire Act is about the use of registration as a drop-in alternative to the 2005 Act.
7	Recognition option	Yes. § 7(1) provides for recognition for preclusion purposes and § 7(2) provides for enforcement as a local judgment.	Yes. § 11 provides for recognition for preclusion purposes under the same terms for enforcement.	No, but § 9 allows the alternative of filing a recognition action under the 2005 Act.
8	Litigation option	Yes, exclusive process, and § 11 preserves the common law action.	No express provision. But contract with § 3.1 allowing judgment creditor to proceed under another Act (UECJDA).	No, but § 9 allows filing a recognition action under the 2005 Act. As a result, the Registration Act can only be used for enforcement and not preclusion purposes.
9	Certification requirement	No express provision. Enforcing state's evidentiary laws on authentication govern, which may in turn look to rendering state's law.	Yes. § 12(4)(a) requires a copy of the foreign judgment certified by proper officer of the rendering court.	Yes. § 4(b)(1) is based on the UEFJA-C § 12(4)(a).
10	Translation	No express provision; presumably governed by enforcing state's law.	Yes. § 12(4)(d).	Yes. § 4(b)(10).
11	Notice of filing in enforcing state	No express provision. But § 6 (which requires the filing of a new action) would require notice under enforcing state's law.	§ 12(3) requires notice to judgment debtor of intent to register the foreign judgment.	Yes. § 6 requires notice of registration in the same manner as notice of a new claim.
12	Limitations period	§ 9 provides the earlier of (1) time allowed by	§ 5 provides the earlier of (1) time	No change from the 2005 Act. See § 7.

		rendering state, or (2) 15 years after date the judgment became effective in the rendering state.	allowed by rendering state, or (2) 10 years after date the judgment became enforceable in the rendering state.	
13	Act defines enforcing court	No express provision; presumably must be filed in a court having subject matter jurisdiction. See § 6.	Yes. § 2 provides “the superior court of unlimited trial jurisdiction in the enacting province or territory.”	No change from the 2005 Act. See § 4(a).
Defenses				
14	Defenses to registration/recognition/enforcement	<p>§ 4 provides two-tiers of defenses: mandatory and discretionary. § 4(b) is mandatory and bars recognition for lack of: impartial tribunal or reasonable procedural opportunities (must be systemic), personal jurisdiction, and subject matter jurisdiction.</p> <p>§ 4(c) provides discretionary non-recognition for: lack of notice in time to prepare a defense extrinsic fraud public policy conflict with a final and conclusive judgment conflict with a forum clause derogating from the rendering forum’s jurisdiction inconvenient forum (for judgments based only on personal jurisdiction) substantial doubts about rendering court’s integrity due process. § 5 defines non-exclusive bases for personal jurisdiction: personal service in the rendering forum (including transient jurisdiction), voluntary appearance, consent prior to case commencement, human domicile, or corporate presence (incorporation/formation or principal place of business) in the rendering state business presence in the rendering forum related</p>	<p>§ 4 provides a foreign judgment cannot be enforced if the: rendering court lacked personal or subject matter jurisdiction as defined in § 8 & § 9 judgment has been satisfied judgment is unenforceable in the rendering state, or appeal is pending, or time for appeal expired not properly served under the rendering state’s law, or did not receive notice in sufficient time to present a defense, and the judgment was allowed by default judgment was obtained by fraud lack of procedural fairness and natural justice in the rendering state judgment is manifestly contrary to the enforcing state’s public policy a parallel case in the enforcing state that began before the case seeking enforcement, or has resulted in another judgment or order in the enforcing state, or has been reduced to judgment in foreign state other than the rendering state. § 10 states a foreign judgment may not be enforced if the judgment debtor shows a lack of real</p>	No change from the 2005 Act. See § 7. The 2019 Act incorporates by reference all defensive grounds in the 2005 Act. See § 7(b) and comment 2.

		to the judgment vehicle/ aircraft operation in the rendering forum related to the judgment. In addition to defenses in § 4 & § 5, there are other primary defenses such as falling outside the Act's scope.	and substantial connection with the rendering state AND that jurisdiction was inappropriate there.	
15	Burden	§ 3(c) places the burden on the party seeking recognition to file a new lawsuit and obtain a local judgment based on preclusion. Once filed, § 4(d) places a burden of raising and proving defenses on the judgment debtor.	§ 10 places the burden on judgment debtor to establish the defenses of lack of real/ substantial connection, inappropriate jurisdiction. Other defense sections, § 4 (reasons for refusal), § 8 (personal jurisdiction), § 9 (real and substantial connection) do not specify.	§ 7. Once an authenticated foreign judgment is registered under § 4 and notice given under § 5, the burden is on the judgment debtor to establish a defense under § 7. Failing that, the registration results in a local judgment capable of enforcement.
16	Stay	Yes. § 8 places the burden on the judgment debtor to show the case is on appeal or that one will be taken; the court may issue a stay until the appeal concludes, time for appeal expires, or defendant has failed to prosecute the appeal.	§ 4(c) provides a defense to enforcement if on appeal, or time for filing appeal has not run.	Yes. § 8 provides that after filing a § 7 petition to set aside the registration, a party may request a stay which can be granted upon a showing of likelihood of success on the merits. The court may require security.
Outcome				
17	Effect of filing	There is no registration procedure. The judgment creditor files a new lawsuit, gives notice to the judgment debtor, then moves for summary judgment unless the judgment debtor pleads a defense. If judgment creditor prevails, the foreign judgment is domesticated and enforceable locally.	The filing of a properly attested foreign judgment leads to registration, notice to the judgment debtor, and enforcement under the enforcing jurisdiction's law unless the judgment debtor successfully raises a defense.	Same as the UEFJA-C. The filing of a properly attested foreign judgment leads to registration, notice to the judgment debtor, and enforcement under the enforcing forum's law unless the judgment debtor successfully raises a defense.
18	Enforcement	§ 7(2) provides enforcement as local judgment after recognition which requires summary judgment or trial.	§ 14 provides registered judgment is enforceable 30 days after filing as if it were local judgment so long as no successful defenses.	§ 7 provides the same result as under the UEFJA-C.
19	Costs	No express provision; presumably governed by enforcing state's law.	Yes. Under § 12(5), a judgment creditor may, if the regulations provide, recover the	Yes. § 4(b)(6)(B) requires listing of Canadian costs. § 4(b)(7) requires listing

			costs and expenses related to the registration of the foreign judgment.	of post-judgment costs up to the date of registration; no mention of enforcing state costs, presumably governed by enforcing state's law.
20	Interest	No express provision; presumably governed by enforcing state's law.	Yes. § 15 is governed by the rendering state's law up to date of currency conversion and thereafter by the enforcing state's law. Court has discretion to change the rate or calculation methodology if the judgment creditor would be under- or over-compensated.	§ 4(b)(6)(A) requires listing in the registration the rate and accrual of interest awarded by the rendering court; does not mention the cutoff date when Canadian law no longer governs, or the effect of the Canadian rate on the resulting enforcing state's judgment.
21	Currency conversion	No express provision; presumably governed by the enforcing state's law.	Yes. § 13 requires judgment creditor's statement that the judgment will be converted to local currency on the conversion date; the <i>conversion date</i> is the last day, before the day on which the judgment debtor makes a payment to the judgment creditor under the registered foreign judgment, on which the bank quotes a Canadian dollar equivalent to the other currency.	No mention, same as 2005 Act. See § 4 Comment 11, which notes the intent to track the 2005 Act on this point.

As the chart shows, the 2019 Registration Act follows its parent Act—the 2005 Act—on such fundamental points as definitions, scope, defenses, and several of the issues left to the enforcing state's law. On the other hand, the Registration Act accomplishes its harmonization task with key sections on the filing procedure (registration rather than a new legal action), notice, the expedited effect, changes in the stay provision, the petition to set aside, and the provisional remedies available upon registration.

B. A DRY RUN THROUGH REGISTERING AND OBJECTING

The chart above and this brief synopsis are paraphrases of the Act's elements. For a thorough understanding of the 2019 Registration Act, read its text in Appendix B or better still, read the Act and comments at the Uniform

Law Commission website.⁸⁶ The few case citations in this Subpart are of course for enforcement under the 2005 Act or the 1962 Act, and not the 2019 Registration Act which is just now being sent to the states.

1. Filing

a. Compliance

Although some cases hold that substantial compliance with filing requirements is enough,⁸⁷ certain elements are no doubt necessary for any court. One is a copy of the foreign-country judgment authenticated by the rendering court.⁸⁸ As to other requirements, the 2019 Registration Act includes a form as an appendix to Section 4.⁸⁹ The form is not required when filing, but its use makes acceptance more likely in states adopting the 2019 Act substantially intact.

b. Who May File

The named judgment creditor of course may file. The 2019 Act also contemplates that the judgment creditor's assignees or successors may file.⁹⁰ What about the judgment creditor's status in the enforcing state? In a New York case under the 1962 Act, a judgment debtor objected that the judgment creditor was neither present in nor registered to do business in the enforcing state. The court held that the state's corporate registration requirement did not apply to parties using the court to enforce a foreign judgment.⁹¹

c. No Chain Recognition

A judgment creditor may not use the 2019 Registration Act to register a Canadian judgment that merely recognized or domesticated another judgment.⁹² The Canadian judgment must be original, one that was litigated in the rendering court. This is consistent with the UEFJA-C and the drafting committee thought it essential for harmonization.⁹³

86. *See id.*; *see also id.*, Prefatory Note at 4–5.

87. *See Frymer v. Brettschneider*, 696 So. 2d 1266, 1267–68 (Fla. Dist. Ct. App. 1997) (decided under 1962 Act).

88. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 4(b)(1); *see also* *Ningbo FTZ Sanbang Indus. Co. v. Frost Nat'l Bank*, 338 F. App'x 415, 417 (5th Cir. 2009) (upholding district court's dismissal for failure to state a claim because the judgment creditor did not produce an authenticated copy of the Chinese judgment) (decided under 1962 Act).

89. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 4(d).

90. *See id.* § 4(b)(3).

91. *See Gemstar Can., Inc. v. George A. Fuller Co.*, 6 N.Y.S.3d 552, 554 (App. Div. 2015) (decided under 1962 Act).

92. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 2(2).

93. *See* Uniform Enforcement of Foreign Judgments Act §3(d) (Unif. L. Conf. Can. 2003) (Can.).

d. What to Seek

Judgment creditors are limited to the monetary amount stated in the rendering court's final judgment, minus payments, plus allowable costs.⁹⁴ Currency conversion is not addressed in the 2019 Registration Act but is mentioned in a comment, which notes that conversion will be handled under the enforcing state's law, as in the 2005 Act.⁹⁵ What if there is a delay because of appeal in the rendering forum, and the converted amount changes because of drastic currency fluctuations? There are no cases on point, but it is likely that any change other than appropriate conversion would amount to re-litigation and therefore be inappropriate.⁹⁶

e. Limitations

The 2019 Registration Act defers to the 2005 Act for filing limitations.⁹⁷ The 2005 Act requires that the judgment be filed within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.⁹⁸ The limitations rule in the 2005 Act (and incorporated into the 2019 Registration Act) applies to the filing period in the enforcing state. Any issue of limitations in the rendering forum would have to be raised there and cannot be relitigated in the enforcing forum.⁹⁹

f. Alternate Procedures

Section 9 of the 2019 Registration Act gives judgment creditors the option of registering an appropriate Canadian judgment, or seeking recognition under the 2005 Act by filing a legal action.¹⁰⁰ Either is available, but not both.¹⁰¹ For judgments (or portions of judgments) not within the 2019 Registration Act's scope, judgment creditors may seek recognition under another recognition statute or the common law.¹⁰²

2. Notice

The 2019 Registration Act has a detailed notice provision. This differs from the 2005 Act, which has no notice provision but instead requires the filing of a new recognition action under the enforcing state's law, which implicitly requires

94. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 4(b)(6)–(8).

95. See *id.* § 4 cmt. 11.

96. See *Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 220 (D.C. Cir. 2018) (filing a petition to enforce arbitration rather than an action under the 1962 or 2005 Acts; holding that the award had to be converted under current exchange rates and any other approach was relitigation).

97. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 7(b)(1); *id.* cmt. 3.

98. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 9 (UNIF. L. CMM'N 2005).

99. See *Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604, 612–16 (Cal. 2008) (explaining the functions of the limitations period in the rendering forum and the enforcing forum).

100. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 9(b).

101. See *id.* § 9(c).

102. See *id.* § 9 cmt. 5.

use of the enforcing state's notice rules.¹⁰³ Because the 2019 Act speeds up enforcement unless objections are raised, the notice requirements are crucial, and the 2019 Act specifies both the manner of service and the notice's content.

a. Manner of Service

The 2019 Act requires the registering party to "cause notice of registration to be served on the person against whom the judgment has been registered."¹⁰⁴ The notice must be served in the same manner as a summons and complaint is served under the enforcing state's version of the 2005 Act.¹⁰⁵

b. Content

The notice of registration must include (paraphrased here): (1) the registration date and court identity; (2) the docket number; (3) the registering person's name and address (and attorney, if any); (4) a copy of the registration including the documents required under Section 4(b); and (5) a statement advising the person against whom the judgment was registered that they have thirty days to petition the court with objections, and that the court may shorten or lengthen the thirty-day period.¹⁰⁶

After service, the judgment debtor (or person against whom the judgment is registered) has thirty days to file objections or seek a stay. Failing that, the Canadian judgment becomes domesticated and immediately enforceable. This is a crucial distinction from the 2005 Act where the judgment debtor has not only answer time, but the additional time required for a summary proceeding. Because of notice's link to the thirty-day period and domestication, it is likely that enforcing courts will strictly observe the details required in 2019 Act notice.

3. The Thirty-Day Grace Period and Provisional Remedies

Under Section 5 of the 2019 Registration Act, successful notice filed with the clerk triggers a thirty-day grace period during which the judgment "may not be enforced by sale or other property disposition of property, or by seizure of property or garnishment."¹⁰⁷ The thirty-day imposed period is another distinction from the 2005 Act which has implicit non-enforcement periods (answer time, summary judgment procedure, possibly discovery) during the required summary proceeding. The thirty-day period may be shortened or extended.¹⁰⁸ During the grace period, the judgment creditor may use provisional

103. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6 (requiring the filing of a new action); *id.* cmt. 4.

104. UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 6(a).

105. *Id.* § 6(b). If the enforcing state has amended its 2005 Act to add a notice section, that section controls. If not, then the enforcing state's basic notice law controls. See *id.*

106. See *id.* § 6(c).

107. See *id.* § 5(b).

108. See *id.*

remedies, such as judgment liens or injunction (to the extent available under local law), to prevent asset dissipation.¹⁰⁹

4. *The Judgment Debtor's Defenses*

The 2019 Registration Act incorporates the defenses from the 2005 Act.¹¹⁰ In 2005 Act lawsuits, the defenses are raised in an Answer or Motion to Dismiss. If the judgment debtor fails to object, the judgment creditor must file a summary judgment motion or seek another resolution to obtain judgment. This more structured procedure changes with the 2019 Registration Act, where the Canadian judgment is registered and becomes final and domesticated as a matter of course in thirty days if the judgment debtor fails to raise objections as outlined below. There is no need for summary resolution. The enforcing court's only function is to ensure that proper registration procedure is followed, to resolve any interlocutory motions, and to adjudicate any defenses. If there are no defenses, enforcement follows.

a. *The Petition to Vacate Registration*

The judgment debtor may invoke defenses by filing a Petition to Vacate Registration within thirty days of receiving notice.¹¹¹ For enforcement under the 2005 Act, these defenses would have been raised in an Answer or Motion to Vacate, or dismissal for failure to state a claim in federal court.¹¹² The defenses are limited to the grounds stated in the 2005 Act, or noncompliance with the filing requirements in the 2019 Registration Act.¹¹³

b. *Defenses to Registration*

The 2005 Act provides three mandatory and eight discretionary dismissal grounds, recited here because they apply to the 2019 Registration Act. The mandatory and discretionary dismissal grounds are discussed further below as indicated in the footnotes. The mandatory rejection grounds are that the rendering forum (1) was part of a judicial system “that does not provide impartial tribunals or procedures compatible with the requirements of due process of law,”¹¹⁴ (2) lacked personal jurisdiction,¹¹⁵ or (3) lacked subject matter

109. *See id.* § 5(b); *id.* cmt. 3.

110. *See id.* § 7(b)(1).

111. *See id.* § 7(a). The term “petition” is bracketed and may be replaced in adopting states by “motion” or other appropriate term. *See id.*

112. Federal courts can get picky about the defense procedure used under the 2005 Act. *See DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 389–90 (5th Cir. 2019) (admonishing the judgment debtor for using a “motion for nonrecognition” instead of summary judgment or a bench trial). *But see* LMS Commodities DMCC v. Libyan Foreign Bank, No. 1:18-CV-679-RP, 2019 WL 1925499, at *3 (W.D. Tex. Apr. 30, 2019) (dismissing the filing of a non-final judgment and using Federal Rule 12(b)(6) (failure to state a claim)).

113. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT §§ 7(b)(1)–(2).

114. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 4(b)(1) (UNIF. L. CMM'N 2005), discussed *infra* Part III.C.1.

115. *Id.* § 4(b)(2), discussed *infra* Part III.B.1(a).

jurisdiction.¹¹⁶ The eight discretionary grounds are: (1) lack of notice in time to prepare a defense in the rendering court;¹¹⁷ (2) extrinsic fraud;¹¹⁸ (3) the judgment or claim is repugnant to the enforcing courts or U.S. public policy;¹¹⁹ (4) conflict with another final and conclusive judgment;¹²⁰ (5) violation of a mandatory forum clause;¹²¹ (6) inconvenient forum (limited to cases with jurisdiction based only on personal service);¹²² (7) the rendering court's lack of integrity with respect to the judgment;¹²³ or (8) due process violations.¹²⁴ The 2005 Act also provides other defenses such as being outside the scope¹²⁵ or exceeding the limitations period.¹²⁶ Under the 2019 Registration Act, yet another defense is noncompliance with registration requirements.¹²⁷

c. Do Not Lie

In raising these defenses, do not assume that the rendering court's remoteness enables you to misrepresent what happened. In *Moersch v. Zahedi*,¹²⁸ the judgment debtor filed an affidavit attesting that he was not served and did not participate in the Luxembourg trial. The enforcing court found contrary evidence in the Luxembourg court record. The ease of access to Canadian court records will make honesty all the more essential under the 2019 Registration Act.

d. Stays

For judgment debtors with grounds to object, the thirty-day grace period may not be long enough to resolve those objections. Even so, a stay beyond the thirty-day period is not automatic—the judgment debtor or resisting party must request it, and must do so within the thirty-day grace period following notice.¹²⁹ In addition, the stay-seeking party must (1) have filed a Petition to Vacate Registration and (2) show a likelihood of success on the merits of the objections

116. *Id.* § 4(b)(3), discussed *infra* Part III.B.1(b).

117. *Id.* § 4(c)(1), discussed *infra* Part III.C.2.

118. *Id.* § 4(c)(2), discussed *infra* Part III.C.2.

119. *Id.* § 4(c)(3), discussed *infra* Part III.C.2.

120. *Id.* § 4(c)(4), discussed *infra* Part III.C.2.

121. *Id.* § 4(c)(5), discussed *infra* Part III.C.2.

122. *Id.* § 4(c)(6), discussed *infra* Part III.C.2.

123. *Id.* § 4(c)(7), discussed *infra* Part III.C.2.

124. *See id.* § 4(c)(8), discussed *infra* Part III.C.2.

125. *See, e.g.,* LMS Commodities DMCC v. Libyan Foreign Bank, No. 1:18-CV-679-RP, 2019 WL 1925499, at *3 (W.D. Tex. Apr. 30, 2019). The judgment creditor sought to enforce Tunisian judgment that was in fact an asset freeze order and not a final judgment. *Id.*

126. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 9.

127. Under the 2005 Act, the filing requirements are those governing the filing of a new action under the enforcing state's law. *See id.* § 6. This changes under the 2019 Registration Act where the filing requirements are the registration provisions in sections 4 and 6. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT §§ 4, 6 (UNIF. L. CMM'N 2019).

128. *Moersch v. Zahedi*, 228 F. Supp. 3d 1079, 1084–85 (C.D. Cal. 2017).

129. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 8.

(not the merits originally litigated). The court may require security for the stay.¹³⁰

e. Offsets or Counterclaims

The 2019 Registration Act covers only Canadian judgment registration and does not address offsets or counterclaims. For recognition actions under the 2005 Act, a judgment debtor could assert an opposing claim or offset because the recognition action is a lawsuit, albeit one seeking summary adjudication. For that sort of action under the 2005 Act, the opposing claim would have to be permissive because compulsory (that is, related) claims would be merged with the final judgment being recognized.¹³¹ Even though the permissive claim might be allowable in a 2005 Act action, it should not be allowed in a 2019 Registration Act procedure because there is no lawsuit.

f. Relitigating the Merits

It is a widely accepted rule for judgment preclusion and enforcement that a party cannot relitigate the merits of a properly rendered claim. The Restatement (Second) of Judgments makes the basic point in regard to preclusion generally: “No principle of law is more firmly settled than that the judgment of a court of competent jurisdiction, so long as it stands in full force and is unreversed, cannot be impeached in any collateral proceeding on account of mere errors or irregularities, not going to the jurisdiction.”¹³² The Restatement (Second) of Judgments cites several cases in support, quoting the oldest: “Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court.”¹³³ The Restatement (Second) Conflict of Laws makes the same point in regard to a judgment’s extraterritorial effect.¹³⁴ As a California court recently noted, the judgment debtor should have raised the issue of damage caps during the Canadian litigation and may not litigate that issue in the enforcing state, which can look only to enforcing the rendering jurisdiction’s final judgment.¹³⁵

130. *See id.* § 5(b).

131. *See Bank of Montreal v. Kough*, 612 F.2d 467, 473 (9th Cir. 1980) (holding that compulsory counterclaims may not be raised in enforcing forum because that amounts to relitigation) (decided under 1962 Act).

132. RESTATEMENT (SECOND) OF JUDGMENTS § 17, at 151 (AM. L. INST. 1982) (Reporter’s Note on comment d) (quoting 1 HENRY CAMPBELL BLACK, A TREATISE ON THE LAW OF JUDGMENTS § 271 (2d ed. 1902)).

133. *Id.* (quoting *Elliott v. Peirsol*, 26 U.S. (1 Pet.) 328, 340 (1828)).

134. *See* RESTATEMENT (SECOND) CONFLICT OF LAWS § 106 (AM. L. INST. 1971) (explaining that judgment will be enforced in spite of error of fact or law) (citing *MacDonald v. Grand Trunk Ry. Co.*, 52 A. 982 (N.H. 1902) (holding that Canadian judgment for defendant had preclusive effect in plaintiff’s subsequent lawsuit in the United States)); *see also id.* § 98 cmt. b (detailing how the rationale is the need for an end to litigation).

135. *See Silver Star Alpine Meadows Dev. Ltd. v. Quinlan*, No. A145358, 2016 WL 6649201, at *4 (Cal. Ct. App. Nov. 10, 2016); *see also Batbrothers LLC v. Paushok*, 101 N.Y.S.3d 297, 298 (App. Div. CMM’N (decided under 1962 Act); UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 6 cmt. 3 (UNIF. L. CMM’N 2005); UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 7 cmt. 5 (UNIF. L. CMM’N 2019).

g. Reciprocity

Reciprocity is the concept that the enforcing state will refuse recognition of a judgment from a foreign country that does not in turn recognize the enforcing state's judgments. It was the basis for the holding in *Hilton*,¹³⁶ is used in Canada's REJA,¹³⁷ is an element of the American Law Institute proposal,¹³⁸ and has been incorporated into some states' adoptions of the 1962 Act or the 2005 Act.¹³⁹ It is not, however, in the Uniform version of the 1962 Act or the 2005 Act, is not in Canada's UEFJA-C, and is not in the new 2019 Registration Act. The drafters of both the 1962 Act and the 2005 Act believed that judgment enforcement was best served by (1) clarifying the recognition standards and (2) omitting reciprocity.¹⁴⁰ With the 2019 Registration Act, the goal of judgment facilitation is even further served in aligning with Canada's UEFJA-C. Currently, only Saskatchewan has enacted the newest UEFJA-C, and one of the purposes of the 2019 Registration Act was to assure Canadian jurisdictions of a more open approach to properly presented judgments. To the extent that states adopting the 2005 Act have added a reciprocity requirement, it will appear in the list of defenses as it does with the Texas adoption, and will carry over to registrations under the 2019 Registration Act. Although that inclusion does not entirely thwart the 2019 Registration Act's purpose, it is inconsistent. It will be best if adopting states reconsider reciprocity in assessing the 2019 Registration Act.

5. Costs and Attorney Fees

Unlike the 2005 Act, which defers to the enforcing state's law, the 2019 Registration Act addresses costs and attorney fees in both the rendering forum and the enforcing forum. When registering the Canadian judgment, the judgment creditor lists the costs awarded by the rendering court,¹⁴¹ the attorney fees,¹⁴² and the post-judgment costs and fees incurred during enforcement up to the point of registration.¹⁴³ If only part of the Canadian judgment is being registered, the judgment creditor must allocate the costs and fees attributable to the registered portion.¹⁴⁴

136. See *supra* notes 6–8 and accompanying text.

137. See *supra* notes 55–58 and accompanying text.

138. See *supra* notes 34–36 and accompanying text.

139. See, e.g., *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1004–06 (5th Cir. 1990) (citing former TEX. CIV. PRAC. & REM. CODE ANN. §36.005(b)(7) (2017)) (decided under 1962 Act). In 2017, Texas adopted the 2005 Act and again included a reciprocity provision. See TEX. CIV. PRAC. & REM. CODE ANN. § 36A.004(c)(9) (2019).

140. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT, Prefatory Note at 1 (UNIF. L. CMM'N 2005).

141. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 4(b)(6)(B) (UNIF. L. CMM'N 2019).

142. See *id.* § 4(b)(6)(C).

143. See *id.* § 4(b)(7).

144. See *id.* § 4(b)(6), (9).

6. Appeals

For 2005 Act enforcements, any issue going to the merits of the underlying claim must be appealed in the rendering jurisdiction.¹⁴⁵ Consistently, under the 2019 Registration Act, issues on the merits must be appealed in the rendering Canadian jurisdiction.¹⁴⁶ Appeals in the enforcing jurisdiction are limited for 2005 Act cases to issues regarding the recognition process, including filing, stays and defenses. Consistently again, appeals under the 2019 Registration Act are limited to the registration process. Neither the 2005 Act nor the 2019 Registration Act address appeals in the enforcing forum, deferring to the enforcing state's law.

As to appeal timing, the 2005 Act appeals are presumably triggered by entry of final judgment recognizing the foreign-country judgment, or a denial. Under the 2019 Registration Act, appeals are triggered by the entering of the domesticated foreign-country judgment, or the vacating of registration. Presumably for both 2005 and 2019 procedures, the enforcing state's appeal timing would run such that the appealing party has, for example, thirty days to perfect an appeal under the enforcing state's law.

7. Enforcing the Domesticated Judgment

After the registered Canadian judgment is domesticated in the enforcing state, it is ready for enforcement under the enforcing state's laws. It is now a local judgment subject to all local procedures, including challenges to or appeals from collection issues.¹⁴⁷

8. Relation to the 2005 Act

Section 9 of the 2019 Registration Act explains that it is a supplement to the 2005 Act, all of which applies to registrations except for the 2005 Act's Section 6, which is the requirement of filing a lawsuit in the enforcing state to obtain recognition.¹⁴⁸ Of course, the 2005 Act remains available for Canadian judgments, so the Canadian judgment creditor has a choice between registering under the 2019 Registration Act or filing a recognition lawsuit under the 2005 Act's Section 6.¹⁴⁹ Either is available, but not both.¹⁵⁰

If the Canadian judgment creditor chooses registration but the court vacates the registration for noncompliance with registration procedures, then the judgment creditor again has a choice—file a new registration if the defect is

145. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 4 cmt. 12 (noting the need to exhaust remedies in the rendering forum).

146. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT §§ 7–8.

147. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 5 cmt. 1; see also UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT §§ 6 cmt. 4, 7(2) cmt. 3.

148. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 9(a).

149. See *id.* § 9(b).

150. See *id.* § 9(c).

curable,¹⁵¹ or file a recognition action under the 2005 Act's Section 6.¹⁵² If the enforcing state's court vacates registration or rules against the judgment creditor on any grounds other than non-compliance, that result is likely preclusive of further enforcement attempts, at least in that state and possibly other states.¹⁵³

C. DEFERRAL TO THE ENFORCING STATE'S LAW

Readers should not infer from the enforcement synopsis above that the steps provided in the 2019 Registration Act, or the 2005 Act for that matter, control the overall enforcement process. Both Acts facilitate the process to an extent (with the 2019 Registration Act limited to Canadian money judgments), but the enforcing state's law still determines much of the outcome. Control by the enforcing state is not limited to its local law—choice of law rules play a significant role, but the enforcing state controls that analysis.

The role of the enforcing state's law is best understood by categorizing the process. The 2019 Registration Act is limited to the registration process that supplants the lawsuit filing required under the 2005 Act. Beyond registration (or filing under the 2005 Act), two essential functions remain: (1) the recognition standards that will govern if the judgment debtor challenges registration with a Petition to Vacate, and (2) execution on the judgment if there is no challenge, or if the challenge fails. These functions are included in the dry run synopsis immediately above but need further explanation.

Recognition standards focus, of course, on the rendering state and include issues such as jurisdiction and due process. As explained above in the historical background, the standards are drawn from common law enforcement and were codified first in the 1962 Act, and again in the 2005 Act, to which the 2019 Registration Act defers.¹⁵⁴ Under both the 2005 Act and the 2019 Registration Act, the standards are presumed met unless the judgment debtor objects and proves noncompliance on at least one standard.¹⁵⁵ The 2005 Act addresses the recognition standards in some detail but also defers to the enforcing state's law on several fundamental issues. One example of detail versus deferral is the judgment debtor's amenability to the rendering state. The 2005 Act lists six examples creating presence-related amenability,¹⁵⁶ but then defers to the enforcing state's law for other bases of nonresident amenability.¹⁵⁷ Due process is an even broader example of deferral, invoked under two standards but leaving

151. *See id.* § 9(d)(1).

152. *See id.* § 9(d)(2).

153. Under the 1962 Act, a Texas appellate court rejected what it termed "back door" enforcement though prior recognition in Louisiana. *See Reading & Bates Const. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 715 (Tex. Ct. App. 1998) (upholding the Canadian judgment under a 2005 Act filing but rejecting the attempt to enforce the Louisiana recognition under full faith and credit).

154. *See Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604, 608 (2008) (citing 13 pt. II West's U. Laws Ann. (2002) Unif. Foreign Money-Judgments Recognition Act, Prefatory Note, p. 40).

155. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 7, discussed *supra* Part II.B.4.

156. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 5(a) (UNIF. L. CMM'N 2005); *see also infra* note 174 and accompanying text.

157. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 5(b).

its parameters to the enforcing state's law.¹⁵⁸ As further explained in Part III, the 2005 Act merely sets broad standards on many issues that require definition and substance from the enforcing state's law, all applying to cases registered under the 2019 Registration Act.

Once recognition is accomplished, the now-domesticated judgment is enforceable. Even so, questions remain. It may seem a truism to point out that foreign judgments, after domestication, are governed by the enforcing state's law. After all, it is no longer foreign but now a local judgment, so local law of course controls its execution. That simplification misses the complexity of legal issues and leads to the mistaken assumption that enforcement is routine with no fundamental differences between enforcing states. To the contrary, the enforcement phase reveals significant distinctions between states on fundamental issues such as asset susceptibility, privity, and a host of other issues. The degree and persistence of these distinctions between states' procedures shows the intensity of local control exercised over asset execution.

Even if the distinctions are happenstance rather than intentional policy differences, it is important for parties—both creditors and debtors—to understand that enforcement measures are distinct from recognition (whether it is registration or litigation),¹⁵⁹ and that distinctions exist between states, both foreign and domestic. Although the 2019 Registration Act is limited to the registration process, this discussion would be incomplete if it left off at registration and ignored the myriad of differing perspectives that follow. They are discussed below in Part III.

III. THE LARGER JUDGMENT ENFORCEMENT SETTING UNDER THE 2005 ACT

As noted immediately above, the two foreign judgment Acts in the United States—1962 and 2005—leave much to the enforcing state's law regarding recognition and everything regarding enforcement. This section addresses some of the issues, particularly governing law, that may arise when enforcing a judgment under the 2005 Act or the 2019 Registration Act. It also distinguishes a few points that differ when using the 2019 Registration Act instead of the 2005 Act for a Canadian judgment. Because the 2005 Act is still being considered for adoption and has only been used in some states for a few years, most of the cases cited in this Article were rendered in a state using the 1962 Act, and some were rendered in a state such as Kansas or Mississippi that uses the common law enforcement method. Where this Article cites 1962 Act cases, they are identified with the parenthetical “(decided under 1962 Act)” but they should be valid for the 2005 Act. On the other hand, whether the enforcing Act was 1962 or 2005, the law in one state is not necessarily the law in another as illustrated several times in the discussion. That is, all points made here depend on variations under

158. *See id.* § 4(a)(1), (b)(8).

159. To the extent it is not obvious, see Ronald A. Brand, *The Continuing Evolution of U.S. Judgments Recognition Law*, 55 COLUM. J. TRANSNAT'L L. 277, 336–41 (2017).

local law, but this review may give guidance. This summary does not include all the nuances but does cover the basic issues in a 2005 Act enforcement.

A. SCOPE OF APPLICABILITY

As discussed in Part II, the 1962 and 2005 Acts apply to foreign-country judgments that: (1) award or deny a sum of money; (2) are not directed to taxes, fines, penalties or family law; and (3) are final, conclusive and enforceable in the rendering country.¹⁶⁰ Although litigation can arise on any aspect of the scope,¹⁶¹ subject matter disputes require more clarification. That is, the subject matter exclusions do not disqualify every such judgment. In family law, for example, some judgments award money damages that arose in a support claim but were not directed to support and therefore qualify for recognition.¹⁶² Similar

160. The 2005 Act states:

SECTION 3 APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this [act] applies to a foreign-country judgment to the extent that the judgment: (1) grants or denies recovery of a sum of money; and (2) under the law of the foreign country where rendered is final, conclusive, and enforceable.

(b) This [act] does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is: (1) a judgment for taxes, (2) a fine or other penalty; or (3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this [act] applies to the foreign-country judgment.

UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 3; *see also* UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT §§ 1–2 (UNIF. L. COMM’N 1962).

161. *See DeTray v. AIG Ins. Co. of Can.*, No. 2:17-CV-0983 RAJ, 2018 WL 4184334, at *6 (W.D. Wash. Aug. 31, 2018) (holding that the Canadian court’s declaration of nonliability to Washington resident for accident in Washington was not enforceable under Washington’s version of the 2005 Act because it was not for a sum of money).

162. *See Savage v. Zelent*, 777 S.E.2d 801, 807 (N.C. Ct. App. 2015) (holding that Scottish court’s award of attorney fees and costs in failed support claim were within the 2005 Act’s scope) (citing persuasive authority from Ohio and New York and cited no contrary authority). The same distinctions occurred under the 1962 Act. *See Burrelle v. Gilbert*, 806 N.Y.S.2d 443 (App. Term. 2005) (enforcing a Canadian judgment regarding marital property distribution and finding this was not support but equitable property distribution) (decided under 1962 Act).

distinctions occur with fines and penalties.¹⁶³ The 2019 Registration Act ties into the 2005 Act's scope¹⁶⁴ but clarifies on issues such as bankruptcy.¹⁶⁵

B. JURISDICTION AND VENUE

Forum competence is a common issue in the cross-border enforcement of any judicial order. Competence includes personal jurisdiction (both amenability and notice), subject matter jurisdiction, and venue. All three issues matter even when challenging competence within one forum. Although venue tends to fade in a cross-border analysis, all three are nonetheless considered below as they may arise under the 2005 Act or the 2019 Registration Act. There are two distinct questions: Was the rendering forum competent? Is the enforcing forum competent? It is important to distinguish them either to establish or attack them.

1. *The Rendering Forum*

The rendering forum's competence is governed initially by that forum's law, subject to safeguards under Sections 4 and 5 of the 2005 Act. Section 4 of the 2005 Act imposes jurisdictional requirements, specifically that no foreign-country judgment may be enforced unless it satisfies personal jurisdiction¹⁶⁶ and subject matter jurisdiction.¹⁶⁷ Section 5 lists acceptable bases of personal jurisdiction along with a catchall allowing the enforcing forum to find other acceptable bases.

a. Personal Jurisdiction—Amenability and Notice

Personal jurisdiction is a frequent defense to foreign-country judgments¹⁶⁸ and it is important to note both its components and the proper terminology. Personal jurisdiction comprises amenability and notice.¹⁶⁹ Amenability is the

163. See, e.g., *L'Institute Nat'l De L'Audiovisuel v. Kultur Int'l Films, Ltd.*, No. CIV. 11-6309, 2012 WL 296997, at *3 (D.N.J. Feb. 1, 2012) (holding that French judgment for copyright infringement, obtained by a French government agency, was compensatory and not penal) (decided under 1962 Act). See *infra* notes 262–267 for further discussion of fines and penalties.

164. The 2019 Registration Act states:

SECTION 3. APPLICABILITY.

(a) This [act] supplies to a Canadian judgment to the extent the judgment is within the scope of [cite to Section 3 of the Uniform Foreign-Country Money Judgments Recognition Act].

(b) A Canadian judgment that grants both recovery of a sum of money and other relief may be registered under this [act], but only to the extent of the grant of monetary relief.

(c) A Canadian judgment regarding both subject matter within the scope of this [act] and subject matter not within the scope of this [act] may be registered under this [act], but only to the extent the judgment relates to subject matter within the scope of this [act].

UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT § 3 (UNIF. L. CMM'N 2019).

165. See *id.* § 3 cmt. 1.

166. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 4(b)(2) (UNIF. L. CMM'N 2005).

167. See *id.* § 4(b)(3).

168. Tanya J. Monestier, *Whose Law of Personal Jurisdiction? The Choice of Law Problem in the Recognition of Foreign Judgments*, 96 B.U. L. REV. 1729, 1731–32 (2016).

169. “Every foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings, and due notice.” *Hilton v. Goyot*, 159 U.S. 113, 166–67 (1895). For more recent affirmations regarding foreign judgment recognition, see

defendant's susceptibility to a forum's assertion of jurisdiction and is governed both by the adjudicating forum's law and a fairness standard.¹⁷⁰ Notice is the act of notifying defendants of the pending action, and it is also governed by the adjudicating forum's law and a due process or reasonableness standard.¹⁷¹ Both elements—amenability and notice—are required to exercise adjudicatory jurisdiction.¹⁷² That is, a defendant who resides in the forum is still not subject to personal jurisdiction until proper notice is served. Similarly, nonresidents who receive proper legal notice are not subject to the court's jurisdiction unless they have a sufficient connection to the adjudicating state. Terminology is sometimes misapplied in analyzing these two. Although "notice" is generally used in the proper context, "amenability" is sometimes discussed synonymously with "personal jurisdiction."¹⁷³ Whatever terms are used, it's important to remember that both are required.

(1) *Amenability*

The judgment debtor's amenability to the rendering forum is of course governed initially by that jurisdiction's law, at least when assessed there. Once the foreign judgment is filed or registered in the United States, that earlier assertion of personal jurisdiction must comply with Section 5 of the 2005 Act, which lists six acceptable grounds for jurisdiction. That is, the enforcing court must accept the rendering court's jurisdiction if it is based on the defendant having any one of six acts occur in the rendering jurisdiction: (1) personal service; (2) voluntary appearance other than a special appearance; (3) a forum clause; (4) domicile, or a business entity's principal place of business or incorporation there; (5) a business office with the claim arising from business done there; or (6) operation of a motor vehicle or airplane related to the claim.¹⁷⁴

AO Alfa-Bank v. Yakovlev, 230 Cal. Rptr. 3d 214, 224–25 (2018) (discussing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999)); *see also* *DeJoria v. Maghreb Petroleum Expl., S.A.*, 804 F.3d 373, 386 (5th Cir. 2015) (decided under 1962 Act).

170. In the United States, the fairness standard comes from constitutional due process. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 470–72 (1985). In other countries, fairness may be imposed by local law, and if not, then by a reasonableness standard under public international law. *See* RESTATEMENT (FOURTH) FOREIGN RELATIONS LAW OF THE U.S. §§ 402–04 (AM. L. INST. 2017). In addition, jurisdictional reasonableness is collectively imposed by other countries whose courts refuse to recognize judgments rendered without a reasonable claim of defendant's amenability to the forum.

171. *See* *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950).

172. *See* *AO Alfa-Bank*, 230 Cal. Rptr. 3d at 224–25 (discussing *Murphy Bros.*, 526 U.S. at 350 regarding foreign-country judgment recognition). *But see* *Louis Dreyfus Commodities Suisse, SA v. Fin. Software Sys., Inc.*, 703 F. App'x 79, 83 (3d Cir. 2017). Personal jurisdiction defense "refers only to the substantive dimensions of personal jurisdiction, such as sufficient minimum contacts, and not the technical requirements for service of process." *Id.*

173. *See, e.g.*, *EOS Transp. Inc. v. Agri-Source Fuels LLC*, 37 So. 3d 349 *passim* (Fla. Dist. Ct. App. 2010) (discussing amenability under the larger heading of "personal jurisdiction") (decided under 1962 Act); *accord*, *DeTray v. AIG Ins. Co. of Can.*, No. 2:17-CV-0983 RAJ, 2018 WL 4184334 *passim* (W.D. Wash. Aug. 31, 2018).

174. Section 5 of the 2005 Act reads:

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if: (1) the defendant was served with process personally in the foreign country;

These six grounds are non-exclusive; the enforcing court may find other acceptable grounds, but must accept these six grounds. Other than the examples in Section 5, the 2005 Act does not discuss the law of personal jurisdiction or its components and instead leaves that to the enforcing state's law to interpret in the recognition process.¹⁷⁵ Defendants who have a feasible challenge to the rendering forum's jurisdiction should consider raising that challenge in the rendering forum, although many defendants make a tactical choice to wait until the resulting judgment is enforced.

When the question of the rendering forum's competence reaches the enforcing forum, courts have split on what law governs the rendering forum's amenability. Understanding the function of jurisdictional analysis—not only in foreign-judgment enforcement but in all jurisdictional settings—requires reference to the Supreme Court's consistent application of a non-formulaic approach. In *Burger King Corp. v. Rudzewicz*, the Court expressly rejected “any talismanic jurisdictional formulas; ‘the facts of each case must [always] be weighed’ in determining whether personal jurisdiction would comport with ‘fair play and substantial justice.’”¹⁷⁶ Emphasizing further that it was not merely a factual determination, but one in which the formula was often vague, the Court added that “any inquiry into ‘fair play and substantial justice’ necessarily requires determinations ‘in which few answers will be written in black and white. The greys are dominant and even among them the shades are innumerable.’”¹⁷⁷ The Court was referring of course to the due process test rather than a state's assertion of jurisdiction under its long arm rules. On that point, it is important to remember that the due process test does not itself create amenability, but merely serves as a limit on the various forum states' long-arm assertions, whose formulae have varied significantly. Amenability, then, is a matter of various opinions controlled largely by often differing state and federal opinions.

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a [cause of action] [claim for relief] arising out of that operation.]

UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 5 (UNIF. L. CMM'N 2005).

175. See *id.* § 6 cmt. 4. For criticism of jurisdictional analyses in judgment enforcement, see generally Monestier, *supra* note 168. For examples of jurisdictional issues that can arise, see *infra* notes 211–228 and accompanying text.

176. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485–86 (1985) (alteration in original) (quoting *Kulko v. Cal. Super. Ct.*, 436 U.S. 84, 92 (1978)).

177. *Id.* at 486 n.29 (quoting *Kulko*, 436 U.S. at 92).

The 2005 Act's six jurisdictional bases in Section 5(a) should accommodate most fact patterns. To allow for the flexibility inherent in amenability questions, the 2005 Act's Section 5(b) also gives the enforcing forum the discretion to recognize other jurisdictional bases. Even so, many enforcing courts have ignored Section 5(a)'s six bases, even where one or more clearly applies, and instead analyzed the rendering forum's jurisdiction under one or more of three laws: (1) the rendering forum's law,¹⁷⁸ (2) the enforcing forum's long-arm law,¹⁷⁹ or (3) the due process standard of *International Shoe* and progeny.¹⁸⁰ Some courts have applied combinations,¹⁸¹ including all three.¹⁸² Arguments can be made for any of these, but a review of the 2005 Act and preclusion principles should narrow the choices, as explained here:

(a) *Applying the Rendering Forum's Law*: The 2005 Act is limited to a foreign-country judgment that, "under the law of the foreign country where rendered, is final, conclusive, and enforceable."¹⁸³ At least in countries where enforceability required personal jurisdiction, it is clear that the rendering court's law applies to the qualifying determination of personal jurisdiction. But this does not mean that the enforcing forum will invariably be analyzing the rendering court's law of jurisdiction. Because of preclusion, the rendering court's amenability law should require analysis in the enforcing forum in only one of

178. See *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1352 (S.D. Fla. 2009) (not a default) (applying only Nicaraguan law and reversed the rendering court's finding of jurisdiction and concluding that it had not followed Nicaraguan law); see also *Naves v. Nat'l W. Life Ins. Co.*, No. 03-08-00525-CV, 2009 WL 2900755, at *2 (Tex. Ct. App. Sept. 10, 2009). In *Naves*, the Texas Court of Appeals rejected a Brazilian court's jurisdiction to render a default judgment by applying only Brazilian law, relying on the Texas Uniform Foreign Money Judgment Recognition Act and sections 36.0044(g) and 36.005(a)(2) of the Texas Civil Practice and Remedies Code. *Id.* at *4. These two cases applied only the rendering court's jurisdictional rules, but several others have applied the rendering court's law along with *International Shoe's* due process standards. *E.g.*, *EOS Transp. Inc.*, 37 So. 3d at 354 (decided under 1962 Act) (default in Canada) (enforcing court applied both Canadian law and due process in holding that Canada lacked personal jurisdiction).

179. See *Monks Own Ltd. v. Monastery of Christ in Desert*, 142 P.3d 955, 961–62 (N.M. Ct. App.), *aff'd*, 168 P.3d 121 (N.M. 2006) (decided under 1962 Act) (default judgment in Ontario) (enforcing court in New Mexico applied both the New Mexico long arm statute and due process).

180. See *Bank of Montreal v. Kough*, 430 F. Supp. 1243, 1247 (N.D. Cal. 1977) (explaining that Canadian court's personal jurisdiction over defendant must have been, "at a minimum, in compliance with the requirements of traditional notions of fair play and substantial justice under the due process clause of the United States Constitution"), *aff'd*, 612 F.2d 467 (9th Cir. 1980); *Royal Extrusions Ltd. v. Cont'l Window & Glass Corp.*, 812 N.E.2d 554, 558–59 (Ill. App. Ct. 2004) (decided under 1962 Act). In *Royal Extrusions*, the judgment debtor objected to Canadian jurisdiction in the original action, then challenged it again when the final Canadian judgment was filed for enforcement in Illinois. *Id.* at 556–57. The Illinois court upheld Canadian jurisdiction under Fourteenth Amendment due process, focusing on *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), *Burger King Corp.*, 471 U.S. 462, and Illinois cases applying those principles. *Id.* at 558–59.

181. Perhaps the most common combination is the enforcing court's long arm statute and due process. See, *e.g.*, *Pure Fishing, Inc. v. Silver Star Co.*, 202 F. Supp. 2d 905, 913–17 (N.D. Iowa 2002). A New York court applied the rendering court's law and New York state law but not due process. See *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*, 899 F. Supp. 1248, 1252 (S.D.N.Y. 1995) (decided under 1962 Act).

182. See *Evans Cabinet Corp. v. Kitchen Int'l, Inc.*, 593 F.3d 135, 144–46 (1st Cir. 2010). The case was litigated on the merits in Canada and the judgment debtor challenged Canadian jurisdiction in the enforcing court, which examined the jurisdictional laws of Quebec, Massachusetts, and federal due process to find a lack of jurisdiction. *Id.* at 140, 144–46.

183. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(a)(2) (UNIF. L. CMM'N 2005).

three possible circumstances. First, if the judgment debtor objected to amenability in the rendering forum (either by special or general appearance) and lost the objection, the rendering forum's decision may be preclusive of any further review in the enforcing forum. That is, the enforcing forum should not second-guess the rendering forum's decision about its own law of jurisdiction.¹⁸⁴ Second, if the judgment debtor failed to object in the rendering forum but otherwise participated, that failure probably waived any objection to amenability, depending on the rendering forum's law. Once again, the enforcing forum should defer to the rendering forum's application of its law. Third, if the judgment debtor failed to participate at all in the rendering forum's litigation and suffered a default judgment, then the amenability issue was not litigated and can be raised in the enforcing court. Only the third scenario—default—calls for the enforcing court to apply the rendering forum's amenability law.¹⁸⁵

(b) *Applying the Enforcing Forum's Long-Arm Law*: Although some courts have unquestioningly applied their own amenability law (not including due process) to test the power of the rendering court, it is difficult to justify. The practice is effectively the internationalization of the forum's long arm rule, and it violates *Hilton*'s description of the comity appropriate for foreign-country judgments.¹⁸⁶ Nonetheless, some courts have done that.¹⁸⁷

(c) *Applying Due Process/Minimum Contacts*: If the enforcing court chooses to apply a jurisdictional standard other than the six listed in Section 5(a) of the 2005 Act, the most appropriate standard is *International Shoe*'s due process test, and that is the choice of most enforcing courts either by itself or along with the rendering or enforcing forum's law.

In contemplating the new 2019 Registration Act, the drafters anticipated that Canadian judgments would seldom rest on exorbitant jurisdictional grounds.¹⁸⁸ There are, however, several examples of various states rejecting Canadian jurisdiction, but not because the Canadian standard was exorbitant.¹⁸⁹

184. See *Hilton v. Guyot*, 159 U.S. 113, 194 (1985) (quoting Chief Justice John Marshall in *Elmendorf v. Taylor*, 23 U.S. (10 Wheat.) 152, 159–60 (1825)). But see *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1324–26 (S.D. Fla. 2009), which rejected the rendering court's finding of jurisdiction in a litigated case, almost certainly plain error.

185. See, e.g., *EOS Transp., Inc. v. Agri-Source Fuels LLC*, 37 So. 3d 349, 352 (Fla. Dist. Ct. App. 2010) (decided under 1962 Act); see also *Monestier*, *supra* note 168, at 1731–32 (arguing that only the enforcing state's law should determine the rendering court's jurisdiction).

186. See *Hilton*, 159 U.S. at 194.

187. See *Evans Cabinet*, 593 F.3d at 144–46 (applying Quebec law, Massachusetts law, and due process to find no jurisdiction in the rendering court); *DeJoria v. Maghreb Pretroleum Expl., SA*, 804 F.3d 373, 386–89 (5th Cir. 2015) (applying Moroccan law, Texas law, and due process to uphold the rendering court's jurisdiction).

188. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT, Prefatory Note at 3 (UNIF. L. COMM. 2019) (“There is a high expectation that Canadian courts ‘will follow procedures comporting with U.S. notions of fundamental fairness and jurisdiction’”).

189. See *DeTray v. AIG Ins. Co. of Can.*, No. 2:17-CV-0983 RAI, 2018 WL 4184334, at *5 (W.D. Wash. Aug. 31, 2018); *EOS Transp., Inc.*, 37 So. 3d at 354 (decided under 1962 Act); *Att’y Gen. of Can. v. Gorman*, 769 N.Y.S.2d 369, 373–75 (Civ. Ct. 2003) (holding that the judgment creditor failed to offer evidence of Canada's in personam jurisdiction); *K & R Robinson Enters. Ltd. v. Asian Exp. Material Supply Co.*, 178 F.R.D. 332, 345 (D. Mass. 1998) (decided under 1962 Act).

(2) *Notice of the Rendering Forum's Action*

The 2005 Act addresses notice in several ways. Section (b)(2) forbids recognition if the rendering court lacked personal jurisdiction.¹⁹⁰ Because personal jurisdiction requires both amenability and notice¹⁹¹ it is clear that the 2005 Act requires notice and forbids recognition without it. The 2005 Act's due process defenses include notice, consistent with the *Mullane* case.¹⁹² In addition to *Mullane*'s basic notice standard, the 2005 Act also imposes the rendering country's notice standard (along with amenability) in its requirement that the foreign-country judgment be enforceable under the rendering court's law.¹⁹³ In addition to these requirements to serve notice, Section 4(c)(1) provides that the enforcing court may discretionarily refuse to recognize the foreign-country judgment if defendant did not receive notice in time to prepare a defense in the rendering forum.¹⁹⁴ Finally, Section 5(a)(1) recognizes amenability if the judgment debtor was served with process personally in the foreign country.

In spite of these multiple notice references, the 2005 Act expressly mentions notice in the rendering forum only once—Section 4(c)(1), providing a discretionary ground for the enforcing court to dismiss if late notice in the rendering forum hampered the judgment debtor's defense there. Critics complain that this lack of express references to notice (as opposed to implied references in personal jurisdiction, due process, and the rendering court's law) has led courts to misconstrue the notice requirement,¹⁹⁵ and it has. Some courts have found no notice requirement,¹⁹⁶ some have accepted actual notice as sufficient,¹⁹⁷ and some have imposed the strictest due process standards.¹⁹⁸ In cases upholding a notice requirement, there is disagreement about which law

190. Section 4(b) provides that, "[a] court of this state may not recognize a foreign-country judgment if . . . (2) the foreign court did not have personal jurisdiction over the defendant." UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b) (UNIF. L. COMM. 2005).

191. The role of notice in creating personal jurisdiction goes back at least to 1869 in *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814 (1869) (holding that an English judgment without notice "was wholly without jurisdiction of the person" and "can have no validity here"). *Hilton* echoed this in stating the prima facie validity requirements for foreign-country judgments: "Every foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings, and due notice." *Hilton*, 159 U.S. at 166–67. The Uniform Acts have, of course, not altered this.

192. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS ACT § 4(b)(1) (due process as a mandatory defense), § 4(c)(8) (giving the enforcing court discretion to reject a judgment rendered in questionable due process grounds); see also *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950).

193. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(a)(2).

194. "A court of this state need not recognize a foreign-country judgment if: (1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend . . ." *Id.* § 4(c)(1).

195. See *Monestier*, *supra* note 168, at 1774–83 and sources cited there.

196. *E.g.*, *Louis Dreyfus Commodities Suisse, SA v. Fin. Software Sys.*, 703 F. App'x 79, 83 (3d Cir. 2017).

197. See *DeJoria v. Maghreb Petroleum Expl., S.A.*, 804 F.3d 373, 387 (5th Cir. 2015).

198. *E.g.*, *Koster v. Automark Indus., Inc.*, 640 F.2d 77, 81 n.3 (7th Cir. 1981) (citing *Wuchter v. Pizzutti*, 276 U.S. 13, 24 (1928)) (determining that Dutch service of process was mailed to the United States and received by the judgment debtor; in spite of that actual notice, the Dutch method was constitutionally inadequate because the Dutch service rule did not require the Dutch official to mail the notice, thus failing the reasonably calculated requirement).

controls notice.¹⁹⁹ As with amenability, it is doubtful that Canadian notice standards will violate due process although the proceeding in a particular case may.²⁰⁰

(3) *Default Judgment in the Rendering Jurisdiction*

A default judgment can implicate both amenability and notice issues. Although a default judgment can only be set aside by the rendering forum, the judgment debtor may prevent enforcement in the enforcing forum if the default judgment's basis of jurisdiction violates the 2005 Act's requirements for amenability²⁰¹ or notice.²⁰² Moreover, even though a foreign country default judgment would still stand unless set aside where rendered, a collateral attack in the enforcing forum may be preclusive on the issue of lack of amenability or notice if that issue was not litigated earlier in the rendering forum.

A foreign default judgment is only a problem under the 2005 Act if it becomes final.²⁰³ If a final default judgment from a foreign country is filed under the 2005 Act, and if the judgment debtor earlier challenged the default in the rendering forum, the rendering forum's decision is preclusive of any challenge in the enforcing forum unless the rendering forum's standard violates the 2005 Act's due process safeguard.²⁰⁴

b. Subject Matter Jurisdiction

The 2005 Act blocks enforcement of a foreign-country judgment from a court lacking subject matter jurisdiction.²⁰⁵ Unlike its treatment of personal jurisdiction, the 2005 Act does not list acceptable bases for foreign subject matter jurisdiction and it is obvious that the issue is controlled entirely by the rendering forum's law. If the defendant litigates the issue in the rendering forum,

199. *See Naves v. Nat'l W. Life Ins. Co.*, No. 03-08-00525-CV, 2009 WL 2900755, at *4 (Tex. Ct. App. Sept. 10, 2009) (decided under 1962 Act) (applying only Brazilian law in finding lack of notice); *Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 617 (9th Cir. 2017) (applying only Dutch law to uphold notice, holding that American due process doesn't necessarily control); *AO Alfa-Bank v. Yakovlev*, 230 Cal. Rptr. 3d 214, 233–36 (Ct. App. 2018) (applying Russian law and the federal due process standard); *DeJoria*, 804 F.3d at 386–87 (decided under 1962 Act) (applying Moroccan law, Texas law, and federal due process); *Syncrude Can. Ltd. v. Highland Consulting Grp., Inc.*, 916 F. Supp. 2d 620, 626 (D. Md. 2013) (decided under 1962 Act) (holding that notice under the Hague Convention on Service of Process Abroad was sufficient to establish personal jurisdiction); *Hubei Gezhouba Sanlian Indus. Co., v. Robinson Helicopter Co.*, No. 2:06-CV-01798-FMCSSX, 2009 WL 10672970, at *1 (C.D. Cal. Sept. 25, 2009) (holding that Hague service sufficient where it also satisfied Federal Rule of Civil Procedure 4(d)(3)).

200. *See Vrozos v. Sarantopoulos*, 552 N.E.2d 1093, 1097–98 (Ill. App. Ct. 1990) (decided under 1962 Act); *Isack v. Isack*, 733 N.W.2d 85, 89 (Mich. Ct. App. 2007) (decided under 1962 Act); *K & R Robinson Enters. Ltd. v. Asian Exp. Material Supply Co.*, 178 F.R.D. 332, 343 (D. Mass. 1998) (decided under 1962 Act).

201. *See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT* § 4(b)(1) (UNIF. L. CMM'N 2005).

202. *See id.* § 4(b)(c)(7)–(8).

203. Interlocutory defaults are not enforceable under the 2005 Act, *see id.* § 3(a)(2) (finality requirement), or for that matter under the common law. *See Hilton v. Guyot*, 159 U.S. 113 *passim* (1985).

204. *See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT* § 4(b)(1), (c)(7)–(8).

205. *See id.* § 4(b)(3).

that decision is preclusive of any collateral attack in the enforcing forum.²⁰⁶ If the defendant waits to challenge subject matter jurisdiction until the foreign judgment is filed in the United States under the 2005 Act, the rendering forum's law will control that question. The 2019 Registration Act makes no change to this and defers entirely to the 2005 Act.

c. Venue

The 2005 Act does not mention venue in the rendering forum, and neither does the 2019 Registration Act. As with other rendering-forum validity issues, the matter is necessarily controlled by the rendering forum's law.²⁰⁷ Venue issues in the rendering forum are not grounds for objection in the enforcing forum.

2. The Enforcing Forum

This Subpart focuses only on the enforcing forum's jurisdiction.²⁰⁸ The guidepost for the enforcing forum's jurisdiction is found in Section 6, Comment 4 of the 2005 Act which provides that the judgment creditor's filing in the enforcing forum must comply with all procedural rules in the enforcing forum. That is, the 2005 Act contemplates the filing of a new lawsuit that will use a summary procedure to domesticate the foreign-country judgment. The 2019 Registration Act, in comparison, merely requires registration of the foreign-country judgment which then becomes enforceable if the judgment debtor does not raise objections within thirty days.²⁰⁹ In spite of the 2019 Registration Act's use of a registration procedure, the registration must still comply with the enforcing forum's procedure in several regards, as explained below. The overall guidepost for both the 2005 Act's and the 2019 Registration Act's procedures is that the enforcing forum's law governs questions not otherwise addressed by the 2005 Act.

a. Personal Jurisdiction

(1) Amenability

The 2005 Act does not address amenability and disclaims any intent to do so.²¹⁰ The 2019 Registration Act serves merely as a corollary to the 2005 Act and also refrains from addressing amenability in the enforcing state.²¹¹ To summarize the two Acts' position on enforcing state amenability, the 2005 Act

206. See *supra* notes 184–185 and accompanying text.

207. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 2 (citing RESTATEMENT (SECOND) OF CONFLICTS OF LAWS ch. 5, topic 3, intro. note (AM. L. INST. 1971)).

208. For a discussion of challenging the rendering forum's jurisdiction in the enforcing court, see *supra* notes 176–204 and accompanying text.

209. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 5.

210. "Nor does this Act address the question of what constitutes a sufficient basis for jurisdiction to adjudicate with regard to an action under Section 6." *Id.* § 6 cmt. 4.

211. The 2019 Registration Act uses the term "jurisdiction" eight times, none in reference to the enforcing forum. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT (UNIF. L. CMM'N 2019).

directs that the judgment creditor can implement recognition by filing a new lawsuit in the enforcing state²¹² on which a summary proceeding may be possible unless the judgment debtor raises fact issues that require a trial. The 2019 Registration Act, serving merely as an inset to the 2005 Act, provides a registration procedure that circumvents the summary proceeding unless the judgment debtor raises objections requiring adjudication. In providing these two approaches—filing and registering—the two Acts leave other procedural questions to the enforcing state’s law.²¹³

The enforcing state’s law, then, controls procedural aspects of the foreign judgment’s processing, including the requirements for the judgment debtor’s amenability there.²¹⁴ This should be a matter of routine but can raise interesting questions, based partly on how we perceive the domestication of foreign-country judgments. One view is that domestication is a new lawsuit that the plaintiff hopes will lead to a summary judgment based on the preclusive effect of the judgment rendered in the foreign country.²¹⁵ This view, of course, suggests that the defendant/judgment debtor be traditionally amenable to the forum state. A different view is that domestication is necessarily a summary proceeding (assuming the foreign judgment qualifies) based on valid and final litigation concluded elsewhere. This second view supports but does not compel the conclusion that full-fledged amenability does not apply and instead the only issue is the presence of the judgment debtor’s assets.

Both arguments are plausible, and courts have gone in both directions, though not necessarily articulating the bases stated above. This has led to at least three positions on the requirement for the judgment debtor’s amenability in the enforcing forum. The first is that the judgment debtor must be subject to standard amenability under the enforcing forum’s long arm rules and due process.²¹⁶ The second position is that some forms of in rem jurisdiction may be acceptable.²¹⁷

212. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6(a).

213. “While this Section sets out the ways in which the issue of recognition of a foreign-country judgment may be raised, it is not intended to create any new procedure not currently existing in the state or to otherwise effect existing state procedural requirements. The parties to an action in which recognition of a foreign-country judgment is sought under Section 6 must comply with all state procedural rules with regard to that type of action.” *Id.* § 6 cmt. 4.

214. See *id.*; see also RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 99 (AM. L. INST. 1971) (local law governs enforcement methods).

215. Comment 3 of Section 6 of the 2005 Act undermines this view with the statement that, “[a]n action seeking recognition of a foreign-country judgment under this Section is an action on the foreign-country judgment itself, not an action on the underlying cause of action that gave rise to that judgment.” UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6 cmt. 3. However, that comment goes on to explain that the characterization as a mere action on the judgment means that the defendant cannot relitigate the merits. *Id.* As noted above, comment 4 of Section 6 further provides that the enforcing forum’s law controls procedure and jurisdiction for the enforcement action. See *supra* note 214 and accompanying text.

216. See Ronald A. Brand, *Federal Judicial Center International Litigation Guide: Recognition and Enforcement of Foreign Judgments*, 74 U. PITT. L. REV. 491, 506 (2013) (discussing *Base Metal Trading Ltd. v. OJSC “Novokuznetsky Aluminum Factory,”* 283 F.3d 208 (4th Cir. 2002) (decided under 1962 Act)).

217. See *Electrolines, Inc. v. Prudential Assurance Co.*, 677 N.W.2d 874, 878, 885–86 (Mich. Ct. App. 2003) (decided under 1962 Act) (enforcing court may exercise in personam or in rem jurisdiction, but Michigan had neither in this case); *Intrigue Shipping, Inc. v. Shipping Assocs., Inc.*, No. FSTCV135014113S, 2013 WL 6978815, at *4 (Conn. Super. Ct. Dec. 13, 2013) (decided under 1962 Act) (citing several cases, holding that

The third position is that there is no need to establish in personam or in rem jurisdiction in the enforcing forum.²¹⁸ The 2005 Act observes this split of authority, noting that the Supreme Court provided a possible basis for in rem jurisdiction in its *Shaffer v. Heitner* opinion.²¹⁹ Interestingly, the Canadian Supreme Court took the third position in 2015.²²⁰

There is no indication that the 2019 Registration Act adopts any of these three positions, which is consistent with the 2005 Act's non-position here. Nonetheless, because the 2019 Registration Act removes the requirement of a new lawsuit and substitutes a registration procedure that will be clerical in many cases, the argument can be made that the 2019 Registration Act is all the more a summary proceeding against assets, consistent with any local judgment enforcement. How that directs the jurisdictional analysis is for the enforcing forum to decide.

Yet another question is the amenability required for a third-party asset holder. The 2005 Act's jurisdictional defenses refer to "defendant" even though in some cases the filing in the United States may be against another party such as a garnishee. The 2019 Registration Act acknowledges this with references to "the person against whom the judgment is being registered"²²¹ or similar phrases. No cases on point were found, but this would seem to be an in rem or quasi in rem jurisdictional assertion to be decided under the enforcing state's law.

proof of personal jurisdiction unnecessary and further that judgment creditor alleged presence of assets in forum); *Electrolines, Inc.*, 677 N.W.2d at 880 (decided under 1962 Act) (holding that there must be an in personam basis if judgment creditor fails to allege presence of property); *Pure Fishing, Inc. v. Silver Star Co.*, 202 F. Supp. 2d 905, 910 (N.D. Iowa 2002) (citing *Shaffer v. Heitner*, 433 U.S. 186, 210 n.36 (1977)) (decided under 1962 Act) (holding that there is no need for personal jurisdiction in judgment enforcement cases). Note that *Pure Fishing, Inc.* is discussed above for the point requiring the minimum contacts standard for personal jurisdiction for rendering courts. See supra note 181 and accompanying text.

218. New York courts (following the 1962 Act) have articulated this more than courts in other states. See *Lenchyshyn v. Pelko Elec., Inc.*, 723 N.Y.S.2d 285, 291 (App. Div. 2001) (decided under 1962 Act) (holding that no in personam jurisdiction is necessary and no property need be present; often cited for that point), *clarified in AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 73 N.Y.S.3d 1, 3 (App. Div. 2018) (decided under 1962 Act) (holding that if defendant raises objection under the 2005 Act, then enforcing court must have a jurisdictional basis, in personam or in rem), *further clarified in Diaz v. Galopy Corp. Int'l, N.V.*, 79 N.Y.S.3d 494, 498 (Sup. Ct. 2018) (finding that if no defense raised under the 2005 Act, then no need for any proof of jurisdiction). For other states, see *Haaksman v. Diamond Offshore (Bermuda) Ltd.*, 260 S.W.3d 476, 481 (Tex. Ct. App. 2008) (decided under 1962 Act) (determining that there was no need for in personam or in rem, following *Lenchyshyn*). *Accord Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300, 305 (Tex. App. 2009) (decided under 1962 Act); see also *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co.*, 986 N.Y.S.2d 454, 457–58 (App. Div. 2014).

219. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6 cmt. 4 (citing *Shaffer*, 433 U.S. at 210 n.36 (1977) ("Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.")).

220. See *Chevron Corp. v. Yaiguaje*, [2015] 3 S.C.R. 69, paras. 63–77 (Can.).

221. E.g., UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 4(b)(4) (UNIF. L. CMM'N 2019).

(2) *Notice in the Enforcing Forum*

Although there are differing theories on amenability in the enforcing forum, it is inconceivable that enforcement would not entail sufficient notice. The 1962 Act did not provide a filing procedure, which resulted in confusion on a few points including notice.²²² The 2005 Act clarified the filing procedure with a new section specifying that for newly initiated recognition actions, the process is commenced “by filing an action seeking recognition of the foreign-country judgment.”²²³ Similarly, a party may raise a foreign judgment in a pending claim (for preclusion, offset, or as a distinct enforcement claim) by counterclaim, cross-claim, or affirmative defense.²²⁴ The comment to Section 6 emphasizes that the 2005 Act’s process is a new lawsuit which must comply with all local procedures in the enforcing state, and that the Act itself does not create any supplemental procedures other than the codifying the common law of preclusion.²²⁵ The filing of a new action necessarily requires the notice that goes with that action under the enforcing state’s law. The success of that 2005 change may be measured by the lack of notice cases arising in the adopting states.

The 2019 Registration Act goes further and provides a distinct notice section which requires notice “in the same manner that a summons and [complaint] must be served”²²⁶ under the 2005 Act. The drafting committee considered less notice such as certified mail under the theory that the 2019 Registration Act is a registration procedure rather than a new lawsuit, and the judgment debtor would have already had notice of the foreign judgment. This, of course, raised the problem of default judgments in the foreign jurisdiction, and the drafting committee could not design an effective means of a distinct notice requirement only for foreign defaults. As a result, the drafting committee decided to require the same notice as required under the 2005 Act, which is the notice given when filing a new lawsuit in the enforcing state. Although the terminology may vary, this means a summons or praecipe issued and served under the enforcing state’s law.

In some instances, the 2005 Act or the 2019 Registration Act could be used against a party other than the judgment debtor. One example is a garnishment action against a bank holding funds for the judgment debtor. Several questions arise for this setting, and one is the notice required for the judgment debtor and the third-party asset holder. Neither the 2005 Act nor the 2019 Registration Act

222. Perhaps the most pointed reaction came from a Texas court of appeals which held the Texas version of the 1962 Act unconstitutional for its lack of a notice provision. *See Detamore v. Sullivan*, 731 S.W.2d 122, 124 (Tex. Ct. App. 1987). The case did not go to the Texas Supreme Court so there was no immediate opportunity to reverse it, but the Texas Supreme Court disapproved of it in *Don Dockstader Motors, Ltd. v. Patal Enters., Ltd.*, pointing out that the 1962 Act implicitly required the filing of a new lawsuit including notice and an opportunity to object. 794 S.W.2d 760, 761 (Tex. 1990). After *Dockstader*’s initial proceedings, the Texas legislature amended its version of the 1962 Act to clarify the procedural steps. *Id.* at 761 n.1.

223. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6(a) (UNIF. L. COMM’N 2005).

224. *Id.* § 6(b).

225. *Id.* § 6 cmt. 4. See *supra* note 210 and accompanying text.

226. *Id.* § 6.

address this, but it should be clear from both Acts that the enforcing state's law controls.

(3) *Defaulting in the Enforcing Forum*

This Subpart considers the effect of a default in the enforcing forum, not a default in the rendering forum.²²⁷ Under the 2005 Act, the judgment creditor is pursuing a new claim and has the burden of proving the judgment debtor's obligation by using the foreign-country judgment as preclusive. The judgment debtor has the ordinary answer time available under the enforcing state's law for a lawsuit. If the judgment debtor fails to answer, its default would presumably concede the judgment creditor's case, subject to a prove up with other variations according to the enforcing state's law. The 2019 Registration Act does not contemplate a new lawsuit but the judgment debtor nonetheless has thirty days to respond and raise a defense.²²⁸ If the judgment debtor fails to respond, the resulting default would immediately implement enforcement.

b. Subject Matter Jurisdiction in the Enforcing Forum

The 2005 Act implicitly requires that a proper court in the enforcing state be used for its instructed process of filing a new lawsuit seeking recognition of the foreign-country judgment.²²⁹ This necessarily includes an enforcing state's court with subject matter jurisdiction, including the proper amount in controversy.²³⁰ The Registration Act expressly points to the 2005 Act's court-selection requirement.²³¹ If the judgment creditor files or registers in the wrong court, not only may the judgment debtor object, but the improper court's resulting actions may be invalidated subject to the enforcing state's law.

c. Venue in the Enforcing Forum

Neither the 2005 Act nor the 2019 Registration Act address venue at the recognition/enforcing stage. Because both Acts emphasize their deference to the enforcing state's law on procedural questions, it should be clear that venue is

227. For a discussion of default judgments in the rendering forum, see *supra* notes 201–204 and accompanying text.

228. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT §§ 5(b), 7 (UNIF. L. CMM'N 2019).

229. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 6(a). If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

230. See, e.g., *Sask. Mut. Ins. Co. v. CE Design, Ltd.*, 865 F.3d 537, 540–42 (7th Cir. 2017) (filing enforcement action in Illinois federal court and court dismissing for lack of diversity jurisdiction). The issue may also be the appellate court's jurisdiction on a timely-filed appeal, as discussed in *N.H. Ins. Co. v. Magellan Reinsurance Co.*, No. 02-11-00334-CV, 2013 WL 105654, at *3–5 (Tex. Ct. App. Jan. 10, 2013) (decided under 1962 Act) (acknowledging the need for jurisdiction but finding it existed there).

231. Section § 4(a) of the 2019 Registration Act states:

A person seeking recognition of a Canadian judgment in order to enforce the judgment may register the judgment in the office of the [clerk] of a court in which an action for recognition of the judgment could be filed under [cite to Section 6 of the Uniform Foreign-Country Money Judgments Recognition Act].

UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 4(a).

governed for actions under both the 2005 Act and the 2019 Registration Act by the enforcing state's law. Some states have modified their foreign-judgment Act to include a venue provision.²³² When Texas adopted the 2005 Act in 2017, it did not include a venue rule, so its version presumably defaults to Texas's standard venue rules. There are no reported rulings on this question from a state applying the 2005 Act.

The United States' UEFJA for sister-state judgment enforcement also lacks a venue rule for the enforcing state, and that has led some courts to conclude that there is no venue rule and the judgment creditor may pursue enforcement in any court or district in the enforcing state.²³³ Other states have interpreted the sister-state Act's silence on venue as calling for the general venue rule in those states.²³⁴ As noted above, there are no reported rulings on enforcing state venue under the 2005 Act. Whatever the approach—general venue or venue-free—it is up to the enforcing state's law.

C. NON-JURISDICTIONAL CHALLENGES TO THE FOREIGN-COUNTRY JUDGMENT

Section 4 of the 2005 Act provides two categories of defenses—mandatory and discretionary—to the foreign-country judgment's recognition or enforcement. As with many other issues in the 2005 Act, the enforcing court must decide whether the objection is sufficient to justify rejection of the foreign-country judgment.

1. *Mandatory Grounds for Dismissal*

The mandatory dismissal grounds in Section 4(b) are that the rendering forum (1) was part of a judicial system “that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;”²³⁵ (2)

232. See, for example, TEX. CIV. PRAC. & REM. CODE ANN. § 36.0041, 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.” *Id.* (repealed 2017).

233. See *L & R Expl. Venture v. Grynberg*, 271 P.3d 530, 533–36 (Colo. Ct. App. 2011) (determining that there was no venue requirement for sister-state judgment registrations in Colorado, reasoning that a judgment enforcement under full faith and credit is not an “action” under Colorado venue law).

234. See *Garrett v. Okla. Panhandle State Univ.*, 156 P.3d 48, 50–51 (Okla. Civ. App. 2006); *Cherwood, Inc. v. Marlin Leasing Corp.*, 601 S.E.2d 356, 357–58 (Ga. Ct. App. 2004); *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 737–38, 741–42 (Tex. Ct. App. 2008).

235. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT §4(b)(1) (UNIF. L. CMM'N 2005). Note that this mandatory ground requires the judgment debtor to show that the foreign legal system lacks impartiality or due process in its entirety and not just in that particular case. See *DeJoria v. Maghreb Petroleum Expl., SA*, 804 F.3d 373, 382 (5th Cir. 2015) (holding that the judgment debtor failed to prove that the Moroccan system was deficient as a whole). Contrast this with the discretionary ground under section 4(c)(7) of the 2005 Act which focuses only on the foreign judgment at issue. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION § 4(c)(7). Revolution or war has been a successful argument that the foreign judicial system was defective. See *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 143 (2d Cir. 2000), in which the court declined to recognize a Liberian judgment rendered during the Liberian Civil War, noting that “Liberia’s judicial system was in a state of disarray and the provisions of the Constitution concerning the judiciary were no longer followed.” *Id.* at 138; see also *Harris Corp. v. Nat’l Iranian Radio & Television*, 691 F.2d 1344, 1357 (11th Cir. 1982) (“[T]he Islamic regime now governing Iran has shown a deep hostility toward the United States and its citizens, thus making effective access to the Iranian courts unlikely.”); *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406,

lacked personal jurisdiction,²³⁶ or (3) lacked subject matter jurisdiction.²³⁷ The jurisdictional issues are discussed above.²³⁸ As to impartial tribunals, the judgment debtor must show that the failing exists with the entire judicial system as a whole as opposed to the events occurring in that particular case.²³⁹ Few countries are found to meet this low standard, and never Canada.

2. Discretionary Grounds for Dismissal

Section 4(c) lists eight discretionary grounds for rejecting the foreign-country judgment. They are (1) lack of notice of the foreign proceeding “in sufficient time to enable the defendant to defend”;²⁴⁰ (2) “the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case”;²⁴¹ (3) “the judgment or underlying claim is repugnant to the public policy of this state or of the United States”;²⁴² (4) “the judgment conflicts

1411–13 (9th Cir. 1995) (refusing to enforce Iranian judgment and concluding that the Iranian judicial system did not comport with due process). At the other extreme, the mere lack of American litigation opportunities is often an unsuccessful challenge. *See Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 477–78 (7th Cir. 2000) (finding the English system acceptable even though it lacks the United States concept of pre-trial discovery); *Soc’y of Lloyd’s v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002); *Ingersoll Milling Mach. Co. v. Granger*, 833 F.2d 680, 688 (7th Cir. 1987).

236. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b)(2).

237. *Id.* § 4(b)(3).

238. *See supra* notes 166–204 and accompanying text (personal jurisdiction), 205–206 and accompanying text (subject matter jurisdiction).

239. *See Bank Melli Iran*, 58 F.3d at 1410, 1413 (decided under 1962 Act). In contrast, section 4(c)(7)–(8) of the 2005 Act provide discretionary grounds based on a lack of due process or doubting the rendering court’s integrity in a particular case. *See infra* note 246 and accompanying text (referencing *DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 387 (5th Cir. 2019)).

240. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(c)(1).

241. *Id.* § 4(c)(2).

242. *Id.* § 4(c)(3). In general, the public policy defense is difficult to prevail on. *See Allianz Suisse Versicherungs-Gesellschaft v. Miller*, 24 F. Supp. 3d 670, 676–79 (W.D. Mich. 2014) (explaining the difficult standard while holding that a Swiss judgment for hockey injuries sustained in Switzerland did not violate the enforcing state’s public policy). Among other limits, a mere difference in law is insufficient. *See* UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 8. That the difference concerns fundamental rights in the United States may not be enough. *See Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 1013 (9th Cir. 2013) (holding that the emotional distress judgment in Japan against church did not violate religion clause under California or United States law). On the other hand, the defense sometimes works when invoking rights less than religious freedom. *See Aguerre v. Schering-Plough Corp.*, 924 A.2d 571, 582 (N.J. App. Div. 2007) (decided under 1962 Act) (ruling in favor of judgment debtors’ public policy defense based on their objection that the Argentine judgment that violated the rights of whistle blowers). A North Carolina court explained public policy based on the 2005 Act’s definition: “Public policy is violated only if recognition of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of the law, or would undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel.” *Savage v. Zelent*, 777 S.E.2d 801, 809 (N.C. Ct. App. 2015) (quoting the North Carolina version of the Uniform Foreign-Country Recognition Act, North Carolina General Statutes section 1C-1853(c)(3) cmt. 8, consistent with the 2005 Act section 4 cmt. 8) (denying judgment debtor’s public policy challenge to a Scottish judgment for attorney fees and costs). As a mostly common law jurisdiction, Canadian judgments will be even less likely to be refused on public policy grounds, but it has happened. *See Jaffe v. Accredited Sur. & Cas. Co.*, 294 F.3d 584, 598 (4th Cir. 2002) (decided under 1962 Act). *Jaffe* was a Canadian default judgment against a bail bond company and its agents for kidnapping plaintiff. Virginia refused to enforce the Canadian judgment because a Florida court (where it was originally brought for enforcement) refused to give it recognition. *Id.* Florida would not recognize the Canadian judgment because doing so would

with another final and conclusive judgment”;²⁴³ (5) “the proceeding in the foreign court was contrary to forum agreement between the parties”;²⁴⁴ (6) “in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action”;²⁴⁵ (7) “substantial doubt about the rendering court’s integrity with respect to the judgment”;²⁴⁶ or (8) “the specific proceeding in the foreign court was not compatible with the requirements of due process of law.”²⁴⁷ Several of these eight discretionary grounds have no reported decisions. That does not mean the challenges are not raised, but merely that they did not result in case law.

D. GOVERNING LAW BEYOND PERSONAL JURISDICTION

Choice of law rules in the United States are more court-made than legislative and tend to be governed by state and not federal law.²⁴⁸ This state law dominance is subject to a few constitutionally compelled exceptions. The only one relevant here is the due process requirement that the chosen law be reasonably related to the dispute.²⁴⁹ If the United States ratifies the new Hague Judgments Convention, it is possible that Congress will federalize foreign-country judgment enforcement, which may change some of the governing law points noted below. In the current arrangement, whether the judgment creditor

contravene Florida’s public policy which promotes the apprehending of fugitives. *Id.* The most notable public policy issue between the United States and Canada concerns Canadian defamation judgments which would be barred in the United States by the First Amendment. In reaction to such judgments from Canada and other countries, Congress enacted the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, 28 U.S.C. §§ 4101 et seq, and Canadian case law provided some of the motivation. *See, e.g.*, *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 487 (5th Cir. 2013). Even without the federal statute, it is likely the public policy grounds in the 2005 Act would be grounds to reject the foreign defamation judgments. Just to be sure, three states have amended their foreign-country judgment acts to provide an extra defense against defamation judgments rendered in foreign countries. *See* CAL. CODE CIV. PRO. § 1725 (2019) (effective Jan. 1, 2018); OKLA. STAT. tit. 12, § 718A (2015) (effective Nov. 1, 2013); FLA. STAT. ANN. § 55.6055 (2019) (effective July 1, 2009) (amending its version of the 1962 Act). The amendments do not appear to be from a uniform or standardized statute.

243. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(c)(4).

244. *Id.* § 4(c)(5); *see, e.g.*, *Montebueno Mkt., Inc. v. Del Monte Corp-USA*, 570 Fed. App’x 675, 676 (9th Cir. 2014) (denying recognition based on violation of arbitration clause designating the Philippines).

245. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(c)(6).

246. *Id.* § 4(c)(7). Note the difference between the 2005 Act’s section 5(a)(1) defense of impartial tribunal (which looks to the foreign country’s system as a whole), and sections 5(c)(7) and (8) (which look only to the particular proceedings leading to the judgment in question). *See DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 387 (5th Cir. 2019).

247. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(c)(8). Under state and federal law in the United States, due process entails many specific rights in litigation. But when applied to foreign-country judgments, the due process concept does not guarantee those same rights and instead assures fundamental fairness. *See Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 615–16 (9th Cir. 2017) (holding that Dutch court’s discovery rulings did not render the Dutch judgment fundamentally unfair).

248. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 78–79 (1938). When federal courts have attempted to craft choice of law rules for diversity cases, calling it a function of federal common law, the Supreme Court has repeatedly reversed those courts and redirected them to the local state’s choice of law rule. *E.g.*, *Day & Zimmerman, Inc. v. Challoner*, 423 U.S. 3, 4–5 (1975).

249. *See Home Ins. Co. v. Dick*, 281 U.S. 397, 410–11 (1930).

uses a state or federal court to enforce a foreign-country judgment, the choice of law calculus will be drawn from the enforcing state's rule.

Choice of law rules are also overwhelmingly directed to substantive legal issues. Because most of the enforcement issues are procedural, even when involving two countries, it is a general rule that the rendering jurisdiction's law will control most issues up to the point of filing under the 2005 Act, or registering under the 2019 Registration Act, and the enforcing jurisdiction's law will control most questions in the enforcing jurisdiction from that point.²⁵⁰ That approach will get most answers correct, but not all.

1. *In the Rendering Court*

The most puzzling choice of law questions will arise in the enforcing court. The governing law decisions made in the rendering court will typically concern the merits of the initial case, and those decisions must be litigated and then appealed in the rendering jurisdiction. Once that initial judgment is final, the choice of law decisions made there are generally unassailable.²⁵¹

One possible exception is legislative jurisdiction. That is, if the rendering court chooses a law (including its own) that lacks a reasonable connection to the dispute, then the judgment debtor may have an objection in the enforcing court under the enforcing forum's public policy or jurisdictional standards.²⁵² This could be true even if the judgment debtor argued and lost the point in the rendering jurisdiction, if the rendering jurisdiction failed to apply the correct reasonableness standard followed in the United States. There are no known examples of the rendering forum's choice of law decisions being challenged in the enforcing court. To be clear, there are several cases challenging the fairness of the law applied in the rendering court,²⁵³ but not because the law lacked a reasonable connection to the dispute. If the rendering court had personal jurisdiction over the defendant/judgment debtor, it very likely has legislative jurisdiction, at least to the extent of applying its own substantive law.

2. *In the Enforcing Court*

Once again, the forum's choice of law rule applies, subject to due process (legislative jurisdiction) limits.²⁵⁴

a. *Forum Clauses*

Forum clause disputes will of course relate to the rendering forum's jurisdiction because parties do not draft forum clauses for judgment

250. See RESTATEMENT (SECOND) CONFLICT OF LAWS § 99 (AM. L. INST. 1971) (explaining that local law governs enforcement methods).

251. Reconsidering the rendering forum's choice of law decisions would be relitigating the original case. See *supra* notes 136–140 and accompanying text.

252. The United States Supreme Court recognized the due process limitation on choice of law in *Home Ins. Co.*, 281 U.S. at 411, and later cases. See generally HAY ET AL., *supra* note 5, at 157–66.

253. See *infra* notes 290–297 and accompanying text.

254. See *supra* note 252 and accompanying text.

enforcement. The Author, at least, has never heard of one. But even though the forum clause dispute will focus on the rendering forum, the dispute can occur in the enforcing forum in two distinct scenarios: First, the judgment debtor may object to amenability in the rendering court under Section 4(b)(2) of the 2005 Act, a mandatory grounds for dismissal in the enforcing court. This is an example of a prorogating clause—one that supports (or is argued as supporting) the plaintiff's choice of forum.

Second, the judgment debtor may object under the 2005 Act's section 4(c)(5) that the judgment creditor's original filing in the rendering court was contrary to the parties' forum clause designation of another place. That is called a derogating clause—one that undermines plaintiff's choice of forum—and it's a discretionary ground for dismissal.

In both instances—prorogating and derogating clauses—if the issue was litigated in the rendering court, then the results there are likely preclusive of any reconsideration in the enforcing court. Additionally, if the judgment debtor participated in the rendering forum long enough to submit to the jurisdiction but failed to object to a prorogating clause or assert their rights under the derogating clause, then the issue is likely waived. But if the judgment debtor defaulted, then the forum clause issue can be raised in the enforcing forum, and that brings up the choice of law issue.

For both categories—prorogating and derogating—the enforcing court will have to consider the clause's validity, interpretation, and ultimately its enforceability.²⁵⁵ Those questions are difficult enough in routine litigation. The choice of law permutations are too complex to address briefly here but are conceptually more difficult when two forums are involved, and the second is analyzing the first's jurisdiction based on a forum clause that one jurisdiction may accept and the other may not. The fallback rule may be that the enforcing forum's choice of law rule should control as to all three issues—validation, interpretation, and enforceability.

These potential complexities often go unnoticed. In a typical foreign-judgment-enforcement case involving forum clauses, the court does not engage in a complex choice of law analysis.²⁵⁶ That simple approach is justified in most cases because the court applies the forum's choice of law without objection. The only foreign-judgment case found involving a detailed choice of law analysis of a forum clause is from a federal court in Kansas, a common law state that has

255. See *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 62–64 (2013); James P. George, *Forum Clauses at the Margin*, 71 BAYLOR L. REV. 267, 333–49 (2019).

256. See *Dart v. Balaam*, 953 S.W.2d 478, 482 (Tex. Ct. App. 1997) (decided under 1962 Act) (enforcing Australian judgment because forum clause did not deprive Australia of jurisdiction); *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 338 (Tex. Ct. App. 2002) (decided under 1962 Act) (denying enforcement of Japanese judgment in deference to arbitration clause); *Montebueno Mktg., Inc. v. Del Monte Corp.-USA*, 570 Fed. App'x 675, 677 (9th Cir. 2014) (denying enforcement of Philippine judgment based on contract arbitration clause, no analysis of clause); *Iraq Middle Mkt. Dev. Found. v. Harmoosh*, 848 F.3d 235, 241 (4th Cir. 2017) (decided under 1962 Act) (enforcing an Iraqi judgment over forum clause objection because judgment debtor waived right to arbitration by voluntarily participating in the foreign litigation; applying forum law with no analysis of the clause itself).

never adopted either of the Uniform Acts regarding foreign-country judgments.²⁵⁷ In spite of that sole Kansas case, forum clauses are potential trouble spots in 2005 Act cases.

b. Classifying the Foreign Judgment as Within the 2005 Act's Scope

What law governs the characterization of the Canadian judgment in regard to its coming within the scope of the 2019 Registration Act? Claims and remedies sometimes have differing interpretations from one jurisdiction to another. Although the rendering court's law labels a dispute one way, the enforcing court's law may see it another way. The difference does not matter if the claim's altered label is nonetheless covered by the 2019 Registration Act, but if the re-defined claim or remedy falls outside the 2019 Registration Act's scope, then the foreign-country judgment will not qualify for the 2005 Act or the 2019 Registration Act.²⁵⁸ Interestingly, the foreign claim or remedy is at that point controlled by the enforcing state's law because the question is whether the foreign-country judgment falls within the scope of the enforcing state's version of the 2005 Act.

Because the 2005 Act's scope excludes domestic relations judgments,²⁵⁹ those cases sometimes provide examples for claim re-labeling. In a Scottish court, Julie Zelent sued Alan Savage for support after their relationship failed. Zelent lost her case and the court awarded Savage £148,516.75 in attorney fees and costs.²⁶⁰ Savage filed the resulting Scottish judgment in North Carolina which upheld it, applying North Carolina law to characterize the Scottish judgment as one for attorney fees (a sum of money) and not for support or alimony.²⁶¹

An example of remedy re-labeling is the judgment debtor's challenge of a damage award as a fine or penalty which falls outside the 2005 Act's scope.²⁶² In *De Fontbrune v. Wofsy*,²⁶³ a 2001 French judgment awarded de Fontbrune damages for Wofsy's copyright infringement in reprinting Picasso's work. The French court also imposed a sanction, or *astreinte*, of €10,000 for each future violation. Ten years later de Fontbrune brought another French action to enforce the 2001 *astreinte*, and this time won two million euros for Wofsy's multiple violations. When de Fontbrune sought enforcement in California, Wofsy

257. See *Herr Indus., Inc. v. CTI Sys., SA*, 112 F. Supp. 3d 1174, 1178 (D. Kan. 2015) (common law recognition) (applying an *Atlantic Marine* analysis as to validity, interpretation and enforcement).

258. Common law preclusion may be an option as long as the redefined claim or remedy does not violate the enforcing state's public policy. See *supra* notes 2–15 and accompanying text.

259. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(b)(3) (UNIF. L. CMM'N 2005); see also UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 3(a) (UNIF. L. CMM'N 2019) (linking the 2019 Registration Act's scope to that of the 2005 Act).

260. See *Savage v. Zelent*, 777 S.E.2d 801, 803–04 (N.C. Ct. App. 2015).

261. *Id.* at 804–07 (citing similar holdings from Ohio and New York).

262. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(b)(2); see also UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 3(a) (linking the 2019 Registration Act's scope to that of the 2005 Act).

263. *De Fontbrune v. Wofsy*, 838 F.3d 992 (9th Cir. 2016).

objected that the *astreinte* was a penalty or fine and therefore uncollectible.²⁶⁴ The lower court agreed and dismissed the enforcement action but the Ninth Circuit reversed. In determining that the *astreinte* was merely a judgment for a sum of money and not a penalty, the court of appeals applied California law to characterize the *astreinte*'s function, but was influenced by French law's description as an enforcement of a private right and not a public sanction.²⁶⁵

To the extent the labeling question involves arguments about penalties, the enforcing forum's law is likely to dominate because the old common law rule rejected penalties from other jurisdictions. Nonetheless, the common law rule itself calls for an examination of the foreign law's purpose, as done in the *de Fontbrune* case.²⁶⁶ Apart from the penalty label, foreign judgments are also objected to as excessive and thus violating public policy, although the challenge is difficult to maintain.²⁶⁷

As shown in the examples above, damages challenges are often piecemeal, attacking only one portion of the judgment such as punitive damages or some other line item. The 2005 Act addresses mixed judgments and line-item challenges with its "to the extent" language.²⁶⁸ In spite of that language, at least one court has questioned whether recognition under the 2005 Act permits line-item damages challenge.²⁶⁹ The 2019 Registration Act further emphasizes the ability to enforce only portions of a mixed judgment (aiding the judgment creditor) and also facilitates challenges (aiding the judgment debtor) by

264. *Id.* at 995.

265. *Id.* at 1000–06.

266. *Huntington v. Attrill*, 146 U.S. 657 (1892) is the definitive common law statement about penalties in the United States. In *Huntington*, the Supreme Court drew from United States case law, English case law, and Blackstone's Commentaries to come up with the following definition.

The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offence against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act.

Huntington, 146 U.S. at 673–74. *Huntington* is still invoked in judgment enforcement cases including those under the 2005 Act. *E.g.*, *De Fontbrune*, 838 F.3d at 1001; *L'Institute Nat'l de L'Audiovisuel v. Kultur Int'l Films, Ltd.*, No. CIV. 11-6309, 2012 WL 296997, at *3 (D.N.J. Feb. 1, 2012) (finding that French judgment was remedial and not penal); *Desjardins Ducharme v. Hunnewell*, 585 N.E.2d 321, 323–24 (Mass. 1992) (finding that Canadian damages were remedial rather than a penalty); *Chase Manhattan Bank, N.A. v. Hoffman*, 665 F. Supp. 73, 75 (D. Mass. 1987) (finding that Belgian damages from civil case but related to criminal activity were remedial and not penal); *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 89, 89 cmt. d, 98, 120 cmt. d (AM. L. INST. 1971).

267. *See, e.g.*, *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 711–12 (Tex. App. 1998) (enforcing Canadian judgment over objections that the Canadian court's measure of damages for patent infringement was excessive and violated public policy).

268. Section 3(a) of the 2005 Act that the Act applies "to the extent that the judgment: (1) grants or denies recovery of a sum of money; and (2) under the law of the foreign country where rendered, is final, conclusive, and enforceable." UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(a). Section 3(b) repeats this in its exclusion of certain judgments, stating that the Act does not apply "to the extent that the judgment is: (1) a judgment for taxes; (2) a fine or other penalty; or (3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations". *Id.* § 3(b).

269. "We find no authority for the proposition that the circuit court can pick and choose the portions of a foreign court's order that will be recognized and enforced." *CE Design Ltd. v. HealthCraft Prods., Inc.*, 79 N.E.3d 325, 333 (Ill. App. Ct. 2017).

requiring the judgment creditor to designate which portions of the foreign-country judgment are being pursued in the enforcing forum.²⁷⁰

c. Finality in the Rendering Jurisdiction

Judgment finality is a basis for disqualifying the foreign-country judgment.²⁷¹ Although the issue would seemingly be governed by the rendering jurisdiction's law, arguments sometimes arise when the enforcing forum's definition of finality differs from that in the rendering forum. A common ground for the differing definitions is the effect of appeal on finality—does appeal postpone enforcement, or must the judgment debtor post a bond pending the appeal's outcome?

Those differing views apply only to a jurisdiction's internal treatment of its own judgments, but what happens when the jurisdiction is assessing a judgment from another jurisdiction? In the United States, full faith and credit requires that states give sister-state judgments the same effect they have in the rendering state.²⁷² Should that view apply to foreign-country judgments? The California Supreme Court offered a thorough discussion in *Manco Contracting Co. (W.L.L.) v. Bezdikian*²⁷³ in which it disapproved of a California Court of Appeals opinion that applied California's finality definition to a Korean judgment. The *Manco* court held the rendering jurisdiction's law controlled finality in the enforcing court, and noted that to its knowledge no other court in the United States had reached the same conclusion as that in *Korea Water*.²⁷⁴

d. Authentication or Certification of the Foreign Judgment

The 2005 Act states only that, "A party seeking recognition of a foreign-country judgment has the burden of establishing that this [act] applies to the foreign-country judgment."²⁷⁵ The 2019 Registration Act at least implies, if not directs, that the rendering jurisdiction's law (Canadian federal or provincial) controls authentication (or certification).²⁷⁶ This seems to be a settled issue and no case law disputes this.

e. What Assets Are Subject to Execution

Related to damages objections, another question is what assets are subject to execution in the enforcing state after the foreign judgment is domesticated.

270. See UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 4(b)(4) (UNIF. L. CMM'N 2019).

271. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(a)(2), cmt. 3 (limiting the Act's scope to final judgments).

272. See U.S. CONST. art. IV, § 1; see also *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985).

273. *Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604 (Cal. 2008).

274. *Id.* at 611 (citing several consistent holdings from other states); see also *Nicholas v. Env't Sys. (Int'l) Ltd.*, 499 S.W.3d 888, 898–900 (Tex. Ct. App. 2016) (finding that rendering state's law controls finality).

275. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 3(c).

276. The 2019 Registration Act provides that, "[a] registration under subsection (a) must include: (1) a copy of the Canadian judgment authenticated as accurate by the court that entered the judgment." UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 4(b)(1).

The convenient (and perhaps wrong) answer is that the enforcing jurisdiction's law governs enforcement procedures, including asset susceptibility. Logic suggests that the enforcing state's law would govern which assets are subject to execution because at that point, the judgment has been domesticated in the enforcing state. The Washington Supreme Court saw it differently in *Shanghai Commercial Bank Limited v. Kung Da Chang*.²⁷⁷ In that case, Chang defaulted on loan to Shanghai Commercial Bank in Hong Kong. The bank obtained a \$9 million judgment from a Hong Kong court, then sought to enforce it in Chang's home state—Washington—and sought collection against Chang's marital property. That is, the bank filed against both husband and wife, where the wife had not been a party to the loan, was not in the lawsuit, and may not have been subject to Hong Kong jurisdiction. The Changs objected in the Washington court, pointing out that Washington law barred enforcement against the marital property in these circumstances. But the marital property was a proper target under Hong Kong law. The Washington Supreme Court held that Hong Kong law governed based on the loan's choice of law clause (and again, she was not a party to that agreement) and the court's finding that Hong Kong had the most significant relationship to the issue.²⁷⁸ In spite of this Washington result, there should be valid arguments for asset susceptibility to be a question purely of the enforcing state's law. Those arguments' validity may vary with the facts of particular cases (such as party status or whether the asset was pledged as security), but otherwise it is difficult to see asset execution—an in rem procedure—as anything other than a local law question.

Yet another variation is what assets are subject to provisional remedies in the enforcing court pending the foreign judgment's domestication. The 2005 Act does not address this, again because that Act requires the filing of a lawsuit and litigation, even if summary. That lawsuit's status as local litigation almost certainly means that the enforcing state's law governs provisional remedies. The answer is the same with the 2019 Registration Act, but perhaps with a twist. The 2019 Registration Act speeds up domestication by presuming the Canadian judgment to be enforceable though subject to a thirty-day waiting period for the judgment debtor to raise defenses.²⁷⁹ Because of this quicker finality, the 2019 Registration Act bars the use of provisional remedies that dispose of the judgment debtor's property, but allows remedies under the enforcing state's law that secure the property.²⁸⁰ If the judgment creditor seeks to place a lien on the judgment debtor's property, what law governs exemption? The express answer in the 2019 Registration Act is that the enforcing state's law governs,²⁸¹ but it's conceivable that Canadian law could be pertinent, especially where corporate assets are at issue.

277. *Shanghai Com. Bank Ltd. v. Chang*, 404 P.3d 62 (Wash. 2017).

278. *Id.* at 65–70.

279. *See* UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 5.

280. *See id.*

281. *See id.* § 5(b).

f. Privity with the Judgment Debtor—Who Is Subject to Execution?

Judgments may also be enforced in many cases against non-parties such as successors in interest or asset holders such as banks. The 2005 Act does not address privity with the judgment debtor because that issue requires addressing in the litigation to domesticate the foreign-country judgment. The 2019 Registration Act, however, directs enforcement as to “the person against whom recognition of the judgment through registration is sought”²⁸² and “[a] person against whom a Canadian judgment has been registered.”²⁸³ This creates the possibility of filing against someone not named in the Canadian judgment. To the extent the 2019 Registration Act allows filing against an alleged asset holder, various arguments could be made about what law defines privity. The few cases that have addressed this have split between the rendering forum’s law²⁸⁴ and the enforcing forum’s law.²⁸⁵

g. Interest

In discussing judgment interest, both in this Article and with the enforcing court, it is important to distinguish prejudgment and post-judgment interest. Prejudgment interest is awarded as compensable damages in the final judgment and will be subsumed in the judgment award. Once that foreign judgment reaches the enforcing court, any question of the prejudgment interest will not be subject to challenge because of the proscription on relitigating the merits. It could be said that if the subject does arise, it should be governed by the rendering jurisdiction’s law, but that point is unnecessary because the issue has been finally decided.²⁸⁶

Post-judgment interest consists of the rate awarded in the final judgment and the effective date from which it runs. Just as the prejudgment interest rate is not subject to re-litigation, so should the rendering court’s award of post-

282. *Id.* § 6(a).

283. *Id.* § 7(a).

284. *See Johnson v. Ventra Grp., Inc.*, 191 F.3d 732, 738–39 (6th Cir. 1999). Johnson obtained a judgment in Ontario against Canadian company Manutec for breach of an employment contract. *Id.* at 737. After that, Manutec went through corporate reorganization and became Ventra, which in a prior structure had been Manutec’s parent. *Id.* Johnson filed his Canadian judgment in a Michigan state court, and Ventra removed it to federal court. *Id.* To collect, Johnson had to prove that as a matter of Canadian law, Ventra was liable as successor to Manutec’s assets. *Id.* at 737–38. The trial court ruled against Johnson on this and the Sixth Circuit Court of Appeals affirmed. *See id.* at 738, 750.

285. *See United Steelworkers, Local 1-1000 v. Forestply Indus., Inc.*, 702 F. Supp. 2d 798, 802–03 (W.D. Mich. 2010). Canadian judgment in favor of Canadian labor union and against Michigan-based steel company, for violation of collective bargaining in Canada. *Id.* at 799–800. The Canadian judgment included damages against Forestply and one officer/owner, but when the union filed in Michigan for enforcement, Forestply was insolvent. *Id.* The union then sought enforcement against two of Forestply’s principals who were not named in the Canadian judgment. *Id.* at 801. The enforcing court allowed this but required a trial to determine the new defendants’ status as principals. *Id.* at 807.

286. In *Sw. Livestock & Trucking Co. v. Ramón*, the enforcing court found that a Mexican judgment on a promissory note with a forty-eight percent prejudgment interest rate did not violate Texas public policy and precluded relitigation in Texas. 169 F.3d 317, 319, 322–23 (5th Cir. 1999).

judgment interest be a precluded issue unless the judgment debtor can persuade the enforcing court that it violates public policy.²⁸⁷

Although post-judgment interest is generally not re-litigable in regard to the original award, it is subject both to calculation and change in the enforcing court because of (1) the interest accrued after rendering but before filing in the enforcing court, and (2) the interest accrued in the enforcing jurisdiction after domestication. As with other enforcement procedures, this is a matter of the enforcing court's law. Although the 2005 Act does not address post-judgment interest,²⁸⁸ the 2019 Registration Act does in Section 4(b)(6)(A), limited to requiring the judgment creditor to list the interest rate awarded in the rendering court, the effective date, and the portions of the judgment to which it applies. Other issues are up to the enforcing jurisdiction's law. Logic suggests that the enforcing court would calculate the post-judgment interest accrued under the rendering jurisdiction's law (from issuance up to the date of domestication in the enforcing jurisdiction), then include that amount in the new domesticated judgment, and impose an appropriate post-judgment rate under the enforcing state's law.²⁸⁹

h. Evaluating Due Process, Fundamental Fairness, and Impartiality

Foreign-country judgment enforcement under both comity and the Uniform Acts is replete with due process references and its synonyms. In stating the common law standard, *Hilton* used terms like “full and fair trial,” “regular proceedings,” and “impartial administration of justice,”²⁹⁰ rather than due process, perhaps to avoid confusion with the United States meaning. The 2005 Act, however, uses “due process” as the basis for a mandatory and a discretionary dismissal grounds. Section 4(b)(1) requires dismissal if the enforcing court finds that the rendering court's judicial system as a whole lacked impartial tribunals or used procedures incompatible with due process.²⁹¹ Section 4(c)(8) allows discretionary dismissal if the specific proceeding (rather than the system in general) violated due process.²⁹²

In contemplating an enforcement or a defense, it is important to note that the due process concept in the 2005 Act is not limited to familiar standards under state or federal law in the United States. Although many (but not all) enforcing

287. See *Hyundai Sec. Co. v. Lee*, 182 Cal. Rptr. 3d 264, 271–73 (Ct. App. 2015) (finding that the Korean court's post-judgment interest rate of twenty percent did not violate California public policy).

288. See generally UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (UNIF. L. CMM'N 2005). There was no need because the 2005 Act's requirement of filing a new lawsuit which, if successful, produced a new local judgment. *Id.* § 7 cmt. 3. The 2019 Registration Act, in contrast, simply registers and domesticates the Canadian judgment unless judgment debtor raises an appropriate challenge. UNIF. REGISTRATION OF CANADIAN MONEY JUDGMENT ACT § 4(b)(6)(A) (UNIF. L. CMM'N 2019).

289. In *Hyundai Sec.*, the California court did exactly that, holding that the twenty percent Korean rate would run from the date of the Korean judgment up to the date of domestication in California, and after that, the California post-judgment rate of ten percent would be used. *Hyundai Sec.*, 182 Cal. Rptr. 3d at 273.

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

291. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(b)(1).

292. See *id.* § 4(c)(8).

courts use the United States due process standard to assess amenability and notice in the rendering court,²⁹³ other challenges to the foreign process should be measured by a broader assessment. Specifically, for challenges under Sections 4(b)(1), 4(c)(7), and 4(c)(8), the question is whether the foreign proceeding conformed to what the Seventh Circuit has termed the “international concept of due process.”²⁹⁴ As a comment the 2005 Act notes: “Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under subsection (b)(1), so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding.”²⁹⁵ The case law applying these elusive standards do not exercise a choice of law as such, but instead conduct an assessment of basic fairness.²⁹⁶ Although United States law may inform the due process and fairness analysis, it should not define it. And while the standard is vague, due process objections do prevail in some cases.²⁹⁷

i. Superseding Law in the Enforcing Court: Federal and International

The enforcing court’s local law will govern most aspects of enforcement but in some cases will be superseded by federal law or even international law. One example of federal law is the SPEECH Act²⁹⁸ which Congress passed in 2010 in response to defamation judgments from foreign courts based on statements made in the United States. Statements intentionally and originally placed on the internet are often the source of the foreign court’s jurisdictional assertion,²⁹⁹ but in one case a Canadian plaintiff based it on her ability to download a book from the internet.³⁰⁰ SPEECH is an acronym for Securing the Protection of our Enduring and Established Constitutional Heritage Act,³⁰¹ which is also known as the Libel Tourism Act. Under the SPEECH Act, a judgment creditor with a foreign defamation judgment must show that the foreign law offers at least as much protection for speech as that protected by our First Amendment and resulting case law. Three states have amended their foreign-country money judgment Acts to provide extra defense against defamation judgments rendered in foreign countries. Two states—California and

293. See *supra* notes 178–187 and accompanying text.

294. Soc’y of Lloyd’s v. Ashenden, 233 F.3d 473, 478 (7th Cir. 2000).

295. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4 cmt. 5.

296. See *Ashenden*, 233 F.3d at 477.

297. See *DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 395–96 (5th Cir. 2019) (declining a Moroccan judgment); *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 144 (2d Cir. 2000) (declining a Liberian judgment rendered during the Liberian Civil War).

298. Securing the Protection of Our Enduring and Established Constitutional Heritage Act, 28 U.S.C. §§ 4101–05 (2018).

299. See *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 483–84, 496 (5th Cir. 2013) (rejecting Nova Scotia defamation judgment regarding statements made on a website based in Mississippi).

300. See *Pontigon v. Lord*, 340 S.W.3d 315, 316 (Mo. Ct. App. 2011) (rejecting an Ontario defamation judgment arising from a book written in Missouri which the Canadian judgment creditor was able to download on her computer).

301. 28 U.S.C. §§ 4101–05.

Oklahoma—amended their versions of the 2005 Act³⁰² and Florida amended its 1962 Act.³⁰³ The amendments do not appear to be from a uniform or standardized statute.

The Foreign Sovereign Immunities Act³⁰⁴ is another example. The FSIA applies to both state and federal courts for any claim filed against a foreign state as defined in the Act.³⁰⁵ It governs the immunity of foreign countries and their subsidiaries,³⁰⁶ and in doing so addresses personal jurisdiction, service of process, governing law for the underlying claim, and subject matter jurisdiction if the claim is filed in federal court. The FSIA is premised on claims filed originally in a court in the United States, but by its wording also applies to assertions of judicial jurisdiction over a foreign sovereign for judgment execution purposes.³⁰⁷ If a Canadian court renders a judgment against a foreign sovereign and the judgment creditor then attempts to enforce it under the 2019 Registration Act, the filing in the enforcing state (state or federal court) would have to comply with the FSIA. Several enforcing courts have applied the FSIA to recognitions under the 1962 Act or the 2005 Act, generally without question as to the FSIA's applicability. There have been four 2005 Act cases in the past two years, all in the District of Columbia.³⁰⁸ An interesting question is whether the FSIA governs or at least assesses the rendering court's jurisdiction. In *Commissions Import Export, S.A. v. Republic of Congo*, the D.C. Circuit Court of Appeals held that it did.³⁰⁹

If the United States signs on to the new Hague Judgments Conventions³¹⁰ (or any other judgments treaty), it will preempt any inconsistent aspects of state enforcement law, although the Convention appears compatible with both the 2005 Act and the 2019 Registration Act.³¹¹ In addition, if the United States eventually ratifies the Hague Choice of Court Convention,³¹² the 2019 Registration Act may inform contested issues on forum clauses in establishing

302. See CAL. CIV. PROC. CODE § 1725 (2019); OKLA. STAT. tit. 12, § 718A (2015).

303. FLA. STAT. ANN. § 55.6055 (2019).

304. 28 U.S.C. §§ 1330, 1602–11.

305. See *id.* § 1603.

306. See *id.* § 1603(b).

307. See *id.* § 1610 (referring to execution “upon a judgment entered by a court of the United States or of a State”).

308. See *Comm'ns Imp. Exp., S.A. v. Republic of the Congo*, 118 F. Supp. 3d 220 (D.D.C. 2018); *BCB Holdings Ltd. v. Gov't of Belize*, 232 F. Supp. 3d 28 (D.D.C. 2017); *Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 603 F. App'x 1 (D.C. Cir. 2015); *SACE S.p.A. v. Republic of Para.*, 243 F. Supp. 3d 21 (D.D.C. 2017).

309. See *Comm'ns Imp.*, 118 F. Supp. 3d at 226–28.

310. Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, *supra* note 37.

311. *Id.* at art. 13 (“The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise.”); see also *id.* at art. 15 (allowing for alternative enforcement under national law).

312. Convention on Choice of Court Agreements, *supra* note 33.

the rendering court's jurisdiction, or in challenging that jurisdiction if it conflicted with the parties otherwise valid choice.³¹³

Apart from possible treaty application, customary international law has applicable provisions even though they are less likely to be used by enforcing courts. Specifically, customary international law echoes the due process clause's requirement that personal jurisdiction and choice of law (legislative jurisdiction) be based on a reasonable connection between the parties, the dispute, and the forum.³¹⁴

Other issues can arise inside or outside the terms of the 2019 Registration Act. As to which law governs, the default rule should be that the enforcing state's law governs, either through its local law regarding judgment enforcement or through its conflict of laws rule.

E. PARALLEL AND COLLATERAL LITIGATION

A conflicting judgment is a defense to recognition under the 2005 Act, and accordingly to registration under the 2019 Registration Act.³¹⁵ There are no reported cases raising that defense, but parallel or collateral litigation can affect enforcement in other ways. With any parallel (that is, coinciding) litigation, the first lawsuit to final judgment will have whatever preclusive effect is appropriate against the remaining lawsuit or lawsuits.³¹⁶

Otter Valley Foods, Inc. v. Aliko Foods, LLC,³¹⁷ involved parallel litigation in Connecticut and Ontario regarding frozen food products. Otter Valley was a Canadian manufacturer of frozen food products and had various contracts with Aliko, a Connecticut marketer of frozen foods. In 2005, the parties renegotiated their agreement so that Aliko could pay down its accumulated debt to Otter. Then in 2007, Otter shipped contaminated food to Aliko which had to be recalled. Aliko sued Otter in federal court in Connecticut, and Otter then sued Aliko in Ontario for breaching the 2005 agreement.³¹⁸ The Ontario case was first to judgment, and Otter filed for recognition in Connecticut. Aliko defended on grounds that Otter's claim was (1) repugnant to public policy because of the attorney fees based on English law, (2) a compulsory counterclaim which required filing in the Connecticut action (which still had not reached final judgment), and (3) subject to a set-off from the Connecticut action.³¹⁹ The enforcing Connecticut

313. See *supra* note 244 and accompanying text (discussing section 4(c)(5) of the 2005 Act).

314. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 402-04 (AM. L. INST. 1987).

315. See UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(c)(4) (UNIF. L. COMM. 2005).

316. See, e.g., *Cromwell v. County of Sac*, 94 U.S. 351, 353 (1877) (addressing both claim and issue preclusion); see also HAY ET AL., *supra* note 5, at 1376-84.

317. *Otter Valley Foods, Inc. v. Aliko Foods, LLC*, No. CV094009931, 2010 WL 2573760 (Conn. Super. Ct. May 21, 2010).

318. See *id.* at *1.

319. See *id.* at *2-3.

court disagreed with all three defenses and ordered recognition of the Canadian judgment.³²⁰

Otter Valley was only a two-lawsuit dispute. *Kitchens Intern., Inc. v. Evans Cabinet Corp., Ltd.*,³²¹ was a drawn-out dispute in Quebec, Georgia, New York, and New Jersey regarding breach of contract. Kitchens obtained a Canadian judgment and sought to enforce it in the United States and preclude Evans's parallel U.S. actions. Evans objected to the Canadian judgment on personal jurisdiction grounds.³²² The New Jersey trial court upheld the Canadian judgment but the court of appeals reversed, citing the federal action in the First Circuit where Evans's personal jurisdiction objection was pending, and noting that the Canadian judgment was not conclusive.³²³

Parallel cases may also be filed as declaratory judgment actions to be used preclusively against an action on the merits. *CE Design Ltd. v. HealthCraft Products, Inc.*³²⁴ is an example where a party—ING Insurance Company—used Illinois's version of the 1962 Act to gain recognition of its Canadian declaratory judgment to preclude liability incurred by a policy holder. The dispute started when CE Design obtained a judgment against Healthcraft in Illinois, then took an assignment of Healthcraft's insurance rights against ING Insurance Co., an Ontario corporation. Meanwhile, ING filed an action in Canada seeking a declaration that it had no duty to defend Healthcraft.³²⁵ When CE Design used its assignment from Healthcraft to sue ING in Illinois, ING responded by filing its Canadian declaratory judgment which led to the dismissal of Healthcraft's claim.³²⁶

Collateral litigation, filed after the foreign judgment is filed in the enforcing state, is another variation. *Drake v. Brady*³²⁷ involved two default judgments from Canadian small claims courts against two Minnesota couples for unpaid bills to a Canadian resort, Northern Outpost (Brady). The judgment creditor filed the two Canadian defaults in two Minnesota counties against the respective couples. The couples then sued the resort in a separate Minnesota court for deceptive trade practices and a declaration of the Canadian judgments' unenforceability.³²⁸ The Minnesota trial court (the collateral attack court, not the enforcing court) dismissed the judgment debtors' declaratory judgment claim for legal inadequacies, and found it had no jurisdiction over the Canadian defendants for the deceptive trade claims.³²⁹ The Minnesota appellate court

320. *See id.* at *3–4.

321. *Kitchens Int'l, Inc. v. Evans Cabinet Corp.*, 993 A.2d 252 (N.J. App. Div. 2010).

322. *Id.* at 253–56.

323. *Id.* at 256–58 (referring to *Evans Cabinet Corp. v. Kitchen Int'l, Inc.*, 584 F. Supp. 2d 410 (D. Mass. 2008), *rev'd*, 593 F.3d 135 (1st Cir. 2010)) (stating that fact issues regarding personal jurisdiction precluded summary judgment).

324. *CE Design Ltd. v. HealthCraft Prods., Inc.*, 79 N.E.3d 325 (Ill. App. Ct. 2017).

325. *See id.* at 327–29.

326. *See id.* at 329–33.

327. *Drake v. Brady*, No. A08-2137, 2009 WL 2928157, at *5 (Minn. Ct. App. Sept. 15, 2009).

328. *See id.* at *1.

329. *See id.*

affirmed the dismissal of the declaratory judgment action but reversed regarding Minnesota jurisdiction over the Canadian parties on the deceptive trade claim.³³⁰ The court remanded the case to the trial court for consideration of the judgment creditor's preclusion claim (based on the Canadian judgments), which the trial court had not addressed because of the jurisdictional dismissal.³³¹

*Investorshub.com, Inc. v. Mina Mar Group, Inc.*³³² is an example of using a federal court for a collateral attack raising federal public policy. Investorshub.com is a website based in the United States, which posted derogatory comments about Mina Mar Group, based in Ontario with a subsidiary in Texas. Mina Mar obtained an Ontario default judgment against Investorshub and other defendants which it then filed in a Florida state court.³³³ In response, Investorshub sued in federal court seeking a declaration that the Canadian judgment was unenforceable under the SPEECH Act and under the Florida version of the 1962 Act.³³⁴ During the pre-trial phase, Mina Mar conceded and the court entered the declaratory judgment as a consent decree.³³⁵ This was an effective use of a federal collateral attack, but unnecessary because the defense could have been raised in the Florida state court.

CONCLUSION AND SPECULATIONS

The 2019 Registration of Canadian Money Judgments Act offers a new level of efficiency for civil money judgment enforcement between Canada and the United States. Rather than a stand-alone statute, it supplements the 2005 Uniform Foreign Country Money Judgment Recognition Act. But unlike the 2005 Act's requiring "filing an action seeking recognition," the 2019 Registration Act presumes the Canadian judgment's enforceability and avoids litigation unless the judgment debtor raises a defense.

That efficiency does not short-circuit due process safeguards. The 2019 Registration Act requires detailed information that both assists the court and protects the judgment debtor. That detail—ranging from judgment authentication to an accounting of the amount and interest already collected—replicates the prima facie proof required in any summary judicial proceeding for enforcement. Notice is also crucial. Where the 2005 Act implicitly requires notice with the filing of a recognition lawsuit, the 2019 Registration Act expressly requires both detailed information at the outset and service consistent with the enforcing state's rules for new lawsuit. In addition, the registering attorney must attest to the judgment's propriety, an express declaration of validity as opposed to the imputed claim validity when filing an enforcing lawsuit.

330. *See id.* at *2–5.

331. *See id.* at *6.

332. *Investorshub.com, Inc. v. Mina Mar Grp., Inc.*, No. 4:11CV9-RH/WS, 2011 WL 12506239 (N.D. Fla. June 20, 2011).

333. *See id.* at *1–2.

334. *See id.* at *2.

335. *See id.* at *3.

Proper registration and completed notice trigger a thirty-day waiting period after which the judgment is enforceable under local law unless the judgment debtor files a petition to vacate. Stays are not automatic but available upon a showing of likelihood of success. The concern that foregoing litigation exposes people to invalid judgments fails to consider that the current lawsuit process typically allows only thirty days to respond before default.

The registration process is a balance of efficiency and detail that aids the court and protects the judgment debtor. Matched with its Canadian counterpart, money judgment enforcement between Canada and the United States will be shortened (by months in some cases), and costs reduced, without sacrificing the judgment debtor's defenses.

So what's next? If the registration process is viable for Canadian judgments, what does it offer for other foreign-judgment enforcement in the United States, or for that matter between other countries? It is tempting to argue that this registration process provides a model for wider use, and that may be. If the concern is the filing of questionable or even fraudulent judgments from any given country, that can be done now under the 2005 Act. As the 2019 Registration Act does for Canadian judgments, a wider registration process would retain all the defenses and protection of the 2005 Act along with more detailed filing and notice requirements.

That's the argument for wider use but it's not realistic, at least not yet. The reason is that governments are inherently resistant to commands—executive, legislative, or judicial—from other governments. This resistance exists even between polities in the same system. In the United States, for example, we needed constitutional compulsion for interstate judgment recognition, and even then states resist.³³⁶ That inherent resistance to external judgments is not only about the application process (such as registration), but the very idea of domesticating foreign adjudication. A primary issue, then, is not so much registration as it is recognition—what makes a foreign judgment acceptable for domestication? Registration and other cross-border efficiencies won't occur without consensus on recognition standards.

That's not to say that consensus on recognition is operationally necessary for a registration process to work. It's just to say that without recognition consensus, the comfort level with registration won't be there. The 2019 Hague Judgments Convention,³³⁷ focused on recognition standards and deferring to signatories for the recognition process (for example, registration or litigation), appears to be a good vehicle to pursue that consensus widely. But consensus need not be universal. Smaller groups—two, for example—can benefit as well. The group may be defined by a common legal history, culture, trade, or location, and it's notable that all four factors are true of Canada and the United States.

336. See *Fauntleroy v. Lum*, 210 U.S. 230, 236–38 (1908) (finding that full faith and credit required Mississippi to enforce Missouri judgment that violated Mississippi public policy); see also HAY ET AL., *supra* note 5, at 1406–12 (discussing later cases).

337. Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, *supra* note 37.

Wherever that alignment on recognition occurs, that group will be poised to consider changing the application process to registration.³³⁸

In achieving agreement, it may be important to limit consensus to recognition standards and defer to the enforcing state's local law on some fundamental concepts as well as the enforcement process. Although the use of local law for much of enforcement is obvious and difficult to imagine otherwise, the point is not its use but the sharp distinctions among states on a wide variety of fundamental issues, including some involving international standards. These polar differences, many discussed in Part III, can encourage forum shopping by creditors and asset hiding by debtors. This is not to propose that states abandon local control, but merely that greater harmonization on key issues would benefit predictable judgment enforcement. Local control and local distinctions are understandable in light of the inherent in rem nature of executing against local assets, but greater alignment on crucial issues could lead to comprehensive judgment conventions. But we are not there yet, even for sister-state enforcement in the United States.³³⁹

Even without more alignment in the enforcing stage, we will see a growing harmonization of judgment recognition standards, emanating from the 2019 Hague Judgments Convention or elsewhere. That standardization will in turn lead to emphasis on more efficient application processes, and the 2019 Registration Act offers an excellent model.

338. While a comparative study beyond Canada and the United States is outside this Article's scope, the 2007 Lugano Convention appears to create a registration procedure: "The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application." Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters art. 41, Dec. 21, 2007, 2007 O.J. (L 339) 3, [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22007A1221\(03\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22007A1221(03)). The earlier European Union judgment conventions merely referred to local law. See 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters art. 33, Dec. 31, 1972, 1968 O.J. (L 299) 32, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41968A0927\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41968A0927(01)); Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters art. 33, Nov. 25, 1988, 1988 O.J. (L 319) 9, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41988A0592>. Of course, the full faith and credit statute, now codified at 28 U.S.C. § 1738, has mandated a simple authentication process for sister-state judgment recognition in the United States since 1790. Although that can be described as an internal procedure, it was not necessarily perceived that way at the time.

339. See *Baker v. General Motors Corp.*, 522 U.S. 222, 235 (1998) (quoting *McElmoyle ex rel. Bailey v. Cohen*, 38 U.S. (13 Pet.) 312, 325 (1839)); see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 99 (AM. L. INST. 1971).

IV. APPENDICES

A. THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (2005)

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT³⁴⁰

SECTION 1. SHORT TITLE. This [act] may be cited as the [Uniform Foreign-Country Money Judgments Recognition Act].

SECTION 2. DEFINITIONS. In this [act]:

(1) “Foreign country” means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) “Foreign-country judgment” means a judgment of a court of a foreign country.

SECTION 3. APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this [act] applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

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(b) This [act] does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (1) a judgment for taxes;
- (2) a fine or other penalty; or
- (3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of

establishing that this [act] applies to the foreign-country judgment.

SECTION 4. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this [act] applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

SECTION 5. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a [cause of action] [claim for relief] arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive.

The courts of this state may recognize bases of personal jurisdiction other than those listed in

subsection(a) as sufficient to support a foreign-country judgment.

SECTION 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. If the court in a proceeding under Section 6 finds that the foreign-country judgment is entitled to recognition under this [act] then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered

in this state.

SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGNCOUNTRY JUDGMENT. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

SECTION 9. STATUTE OF LIMITATIONS. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

SECTION 10. UNIFORMITY OF INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. SAVING CLAUSE. This [act] does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this [act].

SECTION 12. EFFECTIVE DATE.

[(a) This [act] takes effect

[(b) This [act] applies to all actions commenced on or after the effective date of

this [act] in which the issue of recognition of a foreign-country judgment is raised.]

SECTION 13. REPEAL. The following [acts] are repealed:

- (a) Uniform Foreign Money-Judgments Recognition Act,
- (b)

B. THE UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT (2019)

UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT³⁴¹

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Registration of Canadian Money Judgments Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Canada” means the sovereign nation of Canada and its provinces and territories. “Canadian” has a corresponding meaning.

(2) “Canadian judgment” means a judgment of a court of Canada, other than a judgment that recognizes the judgment of another foreign country.

SECTION 3. APPLICABILITY.

(a) This [act] applies to a Canadian judgment to the extent the judgment is within the scope of [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 3], if

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recognition of the judgment is sought to enforce the judgment.

(b) A Canadian judgment that grants both recovery of a sum of money and other relief

may be registered under this [act], but only to the extent of the grant of recovery of a sum of money.

(c) A Canadian judgment regarding subject matter both within and not within the scope

of this [act] may be registered under this [act], but only to the extent the judgment is with regard

to subject matter within the scope of this [act]

SECTION 4. REGISTRATION OF CANADIAN JUDGMENT.

(a) A person seeking recognition of a Canadian judgment described in Section 3 to

enforce the judgment may register the judgment in the office of the [clerk] of a court in which an

action for recognition of the judgment could be filed under [cite to Uniform Foreign-Country

Money Judgments Recognition Act Section 6].

(b) A registration under subsection (a) must be executed by the person registering the

judgment or the person's attorney and include:

(1) a copy of the Canadian judgment authenticated [under [cite to state's law on authentication of a foreign-country judgment]] [in the same manner as a copy of a foreign

judgment is authenticated in an action under [cite to Uniform Foreign-Country Money

Judgments Recognition Act Section 6]] as an accurate copy by the court that entered the

judgment;

(2) the name and address of the person registering the judgment;

(3) if the person registering the judgment is not the person in whose favor the judgment was rendered, a statement describing the interest the person registering the judgment has in the judgment which entitles the person to seek its recognition and enforcement;

(4) the name and last-known address of the person against whom the judgment is being registered;

(5) if the judgment is of the type described in Section 3(b) or (c), a description of the part of the judgment being registered;

(6) the amount of the judgment or part of the judgment being registered, identifying:

(A) the amount of interest accrued as of the date of registration on the judgment or part of the judgment being registered, the rate of interest, the part of the judgment to which interest applies, and the date when interest began to accrue;

(B) costs and expenses included in the judgment or part of the judgment being registered, other than an amount awarded for attorney's fees; and

(C) the amount of an award of attorney's fees included in the judgment or part of the judgment being registered;

(7) the amount, as of the date of registration, of post-judgment costs, expenses, and attorney's fees claimed by the person registering the judgment or part of the judgment;

(8) the amount of the judgment or part of the judgment being registered which has been satisfied as of the date of registration;

(9) a statement that:

(A) the judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered;

(B) the judgment or part of the judgment being registered is within the scope of this [act]; and

(C) if a part of the judgment is being registered, the amounts stated in the registration under paragraphs (6), (7), and (8) relate to the part;

(10) if the judgment is not in English, a certified translation of the judgment into English; and

(11) [a registration fee of \$[____]] [the registration fee stated in [cite to applicable statute or administrative rule]].

(c) On receipt of a registration that includes the documents, information, and registration fee required by subsection (b), the [clerk] shall file the registration, assign a [registration] docket

number, and enter the Canadian judgment in the court's [registration] docket.

(d) A registration substantially in the following form complies with the registration requirements under subsection (b) if the registration includes the attachments specified in the form:

SECTION 5. EFFECT OF REGISTRATION.

(a) Subject to subsection (b), a Canadian judgment registered under Section 4 has the same effect provided in [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 7] for a judgment a court determines to be entitled to recognition.

(b) A Canadian judgment registered under Section 4 may not be enforced by sale or other

disposition of property, or by seizure of property or [garnishment] [trustee process], until 31 days

after notice under Section 6 of registration is served. The court for cause may provide for a

shorter or longer time. This subsection does not preclude use of relief available under law of this

state other than this [act] to prevent dissipation, disposition, or removal of property

SECTION 6. NOTICE OF REGISTRATION.

(a) A person that registers a Canadian judgment under Section 4 shall cause notice of registration to be served on the person against whom the judgment has been registered.

(b) Notice under this section must be served in the same manner that a summons and

[complaint] must be served in an action seeking recognition under [cite to Uniform Foreign Country Money Judgments Recognition Act Section 6] of a foreign-country money judgment.

(c) Notice under this section must include:

(1) the date of registration and court in which the judgment was registered;

(2) the [registration] docket number assigned to the registration;

(3) the name and address of:

(A) the person registering the judgment; and

(B) the person's attorney, if any;

(4) a copy of the registration, including the documents required under Section 4(b); and

(5) a statement that:

(A) the person against whom the judgment has been registered, not later than 30 days after the date of service of notice, may [petition] the court to vacate the registration; and

(B) the court for cause may provide for a shorter or longer time.

(d) Proof of service of notice under this section must be filed with the [clerk] of the court

SECTION 7. [PETITION] TO VACATE REGISTRATION.

(a) Not later than 30 days after notice under Section 6 is served, the person against whom the judgment was registered may [petition] the court to vacate the registration. The court for cause may provide for a shorter or longer time for filing the [petition].

(b) A [petition] under this section may assert only:

(1) a ground that could be asserted to deny recognition of the judgment under [cite to Uniform Foreign-Country Money Judgments Recognition Act]; or

(2) a failure to comply with a requirement of this [act] for registration of the judgment.

(c) A [petition] filed under this section does not itself stay enforcement of the registered judgment.

(d) If the court grants a [petition] under this section, the registration is vacated, and any act under the registration to enforce the registered judgment is void.

(e) If the court grants a [petition] under this section on a ground under subsection (b)(1), the court also shall render a [judgment] denying recognition of the Canadian judgment. A [judgment] rendered under this subsection has the same effect as a [judgment] denying recognition to a judgment on the same ground under [cite to Uniform Foreign-Country Money Judgments Recognition Act].

SECTION 8. STAY OF ENFORCEMENT OF JUDGMENT PENDING DETERMINATION OF [PETITION]. A person that files a [petition] under Section 7(a) to vacate registration of a Canadian judgment may request the court to stay enforcement of the judgment pending determination of the [petition]. The court shall grant the stay if the person establishes a likelihood of success on the merits with regard to a ground listed in Section 7(b) for vacating a registration. The court may require the person to provide security in an amount determined by the court as a condition of granting the stay

SECTION 9. RELATIONSHIP TO UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT.

(a) This [act] supplements [cite to Uniform Foreign-Country Money Judgments Recognition Act] and that [act], other than [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 6], applies to a registration under this [act].

(b) A person may seek recognition of a Canadian judgment described in Section 3 either:

(1) by registration under this [act]; or

(2) under [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 6].

(c) Subject to subsection (d), a person may not seek recognition in this state of the same judgment or part of a judgment described in Section 3(b) or (c) with regard to the same person

under both this [act] and [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 6].

(d) If the court grants a [petition] to vacate a registration solely on a ground under Section

7(b)(2), the person seeking registration may:

(1) if the defect in the registration can be cured, file a new registration under this

[act]; or

(2) seek recognition of the judgment under [cite to Uniform Foreign-Country Money Judgments Recognition Act Section 6].

SECTION 10. UNIFORMITY OF APPLICATION AND INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. TRANSITIONAL PROVISION. This [act] applies to the registration of a Canadian judgment entered in a proceeding that is commenced in Canada on or after [the effective date of this [act]].

SECTION 12. EFFECTIVE DATE. This [act] takes effect