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Transnational Family Litigation

Lawyers and judges working in family law face complex procedural and conflict-of-laws issues, and these issues are even more pronounced in cases that reach across national borders. International litigation has many unique aspects and traps for the unwary. Besides the usual range of state common law and statutes, these cases may require reference to international treaties, such as Hague Conventions on Service of Process, Taking of Evidence, and Legalisation of Documents. This chapter gives an overview of the special requirements of transnational family litigation, considering questions of jurisdiction and choice of law, international assistance with service of process and obtaining evidence, and recognition and enforcement of judgments.

Determining Jurisdiction and Choice of Law

Judicial jurisdiction for most family law matters in the United States lies exclusively with the state courts. The subject matter jurisdiction of state courts in family cases is largely defined by statute. Personal jurisdiction presents a more complicated problem. Under the prevailing norms in the United States, a divorce decree does not require personal jurisdiction over the respondent spouse. Thus, a court may enter an ex parte divorce decree in the state where the petitioner is domiciled, even if the respondent spouse is not subject to the court's jurisdiction.¹ For litigation over family financial matters, however, courts must have personal jurisdiction over the respondent, as determined by state long-arm statutes and the Due Process Clause of the Constitution.² The Uniform Interstate Family Support Act (UIFSA) requires personal jurisdiction for litigation of child support matters.³ Jurisdiction for custody litigation is defined by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which does not require personal jurisdiction.⁴

In the United States, personal jurisdiction in family law matters may be based on consent, residence within the forum state, or tag service on an individual who is physically present within the territory of the state. The Supreme Court upheld a state court's exercise of personal jurisdiction over a nonresident based on tag service in a child-support case in *Burnham v. Superior Court*.⁵ Tag jurisdiction is widely criticized in other nations, however, that may not recognize and enforce orders from the United States

entered on this basis.⁶ State courts may also exercise jurisdiction under a long-arm statute if the respondent has constitutionally sufficient “minimum contacts” with the state.⁷ Beyond the minimum contacts inquiry, the Supreme Court has held that the exercise of personal jurisdiction must be reasonable and consistent with “traditional conception[s] of fair play and substantial justice.”⁸

In *Kulko v. Superior Court*, the Supreme Court applied the minimum-contacts approach to a child-support case in which the children and their mother resided in California and the father lived in New York.⁹ When the mother sought a child-support award, the Court concluded that the father did not have sufficient contacts with California to sustain the exercise of personal jurisdiction for this purpose. The Supreme Court has not addressed the question of whether minimum contacts might be required (and what contacts might be sufficient) to sustain personal jurisdiction over a respondent in a custody proceeding.¹⁰ State long-arm statutes vary widely in their reach, and this factor may complicate adjudication of marital-property issues. In family support and parentage cases, however, the UIFSA includes a long-arm provision extending jurisdiction to its full constitutional extent.¹¹

Federal Court Jurisdiction

International civil litigation often takes place in the federal courts based on diversity of citizenship. Under 28 U.S.C. § 1332(a)(2), federal district courts have original jurisdiction in civil actions between “citizens of a State and citizens or subjects of a foreign state” where the matter in controversy is greater than \$75,000. However, most international family litigation that would meet the diversity and amount-in-controversy requirements of the statute is excluded from federal courts under the domestic relations exception to diversity jurisdiction. As reaffirmed in *Ankenbrandt v. Richards*,¹² this exception extends to suits for divorce, alimony decrees, and child-custody orders, and it applies in both international and domestic cases.¹³ The Supreme Court has also concluded that the jurisdiction of the federal courts in “all Cases affecting Ambassadors, other public Ministers and Consuls” does not include domestic-relations matters.¹⁴ Diversity actions seeking enforcement of alimony or child-support decrees that meet the amount-in-controversy requirement have been heard in federal courts,¹⁵ as have family tort actions for monetary damages. If filed in state court, an action that meets the requirements for diversity jurisdiction may be removed to federal court by the defendant.¹⁶ When a court concludes that an action outside the scope of the domestic relations exception is nonetheless “inextricably intertwined” with matters addressed in a state court family law proceeding, it will abstain from hearing the matter.¹⁷

International family litigation falls within the federal question jurisdiction of the federal courts under 28 U.S.C. § 1331 in a few situations. Primarily, this occurs with claims under the International Child Abduction Remedies Act (ICARA),¹⁸ which implements the Hague Child Abduction Convention, and with several federal criminal statutes.¹⁹ A number of federal courts have considered whether family law torts can be litigated under the Alien Tort Statute (ATS), 28 U.S.C. § 1350, which confers federal court jurisdiction when an alien sues for a tort committed “in violation of the laws of nations.” But because the Supreme Court has narrowly construed that statute, these claims are unlikely to be allowed.²⁰

Parallel Proceedings and Injunctive Relief

Many international family disputes could be heard in more than one forum, based on the parties' ties to different countries. In this circumstance, courts in two different jurisdictions may proceed simultaneously in hearing the case. Comity does not compel one court to defer to another until one of the actions has proceeded to judgment. This principle is illustrated by two decisions in *Bourbon v. Bourbon*, a divorce case litigated simultaneously in France and New York by a French couple who lived in both locations.²¹ A week after the wife filed proceedings in New York, the husband began litigation in France. The New York court rejected the husband's challenge to its jurisdiction and declined to dismiss the wife's action on grounds of comity or forum non conveniens. After the French court issued a final divorce decree, however, the New York court dismissed the wife's suit based on comity, res judicata, and collateral estoppel.

In the case of competing lawsuits in different jurisdictions, one of the parties may seek an injunction forbidding the other party from litigating in another forum.²² Although a court with personal jurisdiction over both parties has authority to take this step, anti-suit injunctions raise complex issues of comity and are rarely ordered in family law cases in either the domestic or international setting.²³ The federal courts are divided as to the proper standard for issuing foreign anti-suit injunctions, several circuit courts take a strict approach, and several others apply more flexible standards.²⁴ Alternatively, a trial judge may have discretion to stay proceedings under the doctrine of lis alibi pendens, which is closely related to the inconvenient-forum doctrine.²⁵

More limited injunctive relief may be requested to secure assets or otherwise preserve the status quo during the pendency of litigation. Prejudgment attachment orders and other measures to freeze assets are common in international litigation and may extend to property both within and beyond the jurisdiction where the injunction is granted.²⁶ A financial restraining order is a routine consequence of a divorce filing in many states, but in international cases doing so might require the cooperation of authorities in different jurisdictions. For example, on the request of a Guatemalan family court, *Cardenas v. Solis* approved a temporary injunction under Florida law freezing half of the funds in the defendant's bank accounts in the state.²⁷

Forum Non Conveniens

A court with personal and subject matter jurisdiction may decline to hear an action based on forum non conveniens, a common law doctrine that allows the court to dismiss or stay the proceeding. In international forum non conveniens cases, state courts often draw on the Supreme Court's analysis in *Gulf Oil Corp. v. Gilbert*,²⁸ which held that courts should consider (1) the private interests of the plaintiff; (2) the relative ease of access to sources of proof; (3) the availability of compulsory process and the cost for attendance of witnesses; (4) the necessity and possibility of a view of the premises; (5) whether the plaintiff's choice of forum was made solely to vex, harass, or oppress the defendant; and (6) whether, in light of the public interest in having a localized controversy decided where it originated, the state in which the suit was filed has some tangible or intangible relation to the litigation.²⁹

Under *Gulf Oil* and other cases, there is a strong presumption that a court should respect the plaintiff's choice of forum unless the balance of these factors weighs strongly

in favor of the defendant. In *Piper Aircraft Co. v. Reyno*,³⁰ the Supreme Court held that a U.S. plaintiff's choice of a U.S. forum was entitled to particularly strong deference, noting, however, that it might not be reasonable to assume that a U.S. forum is convenient when it is chosen by a foreign plaintiff.³¹

In custody proceedings, UCCJEA § 207 provides that a court “may decline to exercise jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum.”³² The statute includes a list of factors the court must consider and provides that if the court determines another forum is more appropriate, it should stay its proceedings on the condition that another child-custody proceeding be started promptly in another jurisdiction.

Choice of Law and Proof of Foreign Law

Many family law matters require reference to the law of another country. The validity of a marriage or divorce decree is determined by the law of the place where the marriage or divorce took place. Rights of custody in a proceeding under the Hague Child Abduction Convention are determined based on the law of the child's habitual residence. In these and other contexts, proof of foreign law may be a significant challenge.³³

For courts in the United States, “the rule is that unless the law of a foreign jurisdiction is proved to be otherwise, it will be presumed to be the same as the law of the forum state.”³⁴ A party seeking to have the court apply foreign law must adhere to local rules, which follow several different patterns. The common law required a party intending to rely on foreign law to plead and prove the applicable law as a matter of fact. Under Rule 44.1 of the Federal Rules of Civil Procedure, the pleading requirement was relaxed, and the issue was reframed as a matter of law to be determined by the court.³⁵

Rule 44.1 requires reasonable written notice that a party intends to rely on foreign law, and it allows the court to consider “any relevant material or source, including testimony, whether or not submitted by a party or admissible” under the rules of evidence. The court may either carry out its own research or rely on experts appointed by the court or designated by the parties. This is relatively uncomplicated in some circumstances, where the relevant sources are available in English and easily understood.³⁶ But in other

Researching Foreign Law

These web sites provide a useful starting point for research into foreign law.

OAS Internet Treaty Database: http://www.oas.org/DIL/treaties_and_agreements.htm

Library of Congress: Multinational Reference Guide: <http://www.loc.gov/law/help/guide/multiref.php>

Global Legal Information Network (GLIN): <http://www.loc.gov/lawweb/servlet/Glic?home>

FindLaw International Resources: Country Listings: <http://www.findlaw.com/12international/countries/index.html>

LLRX: Comparative and Foreign Law: http://www.llrx.com/comparative_and_foreign_law.html

LLRX: Features: International Family Law: A Selective Resource Guide (Marilyn J. Raisch 2000): http://www.llrx.com/features/int_fam.htm

Further Reading: Jurisdiction and Choice of Law

GARY B. BORN & PETER B. RUTLEDGE, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS* (2007).

SOFIE GEEROMS, *FOREIGN LAW IN CIVIL LITIGATION: A COMPARATIVE AND FUNCTIONAL ANALYSIS* (2004).

INTERNATIONAL LITIGATION STRATEGIES AND PRACTICE (Barton Legum ed., 2005).

VED P. NANDA & DAVID K. PANSIUS, *LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS* (2d ed. 2005).

cases, there may be difficulty finding sources, or disagreement between the experts on the point of foreign law in question.³⁷ State rules take a range of different approaches to this problem; some follow the lead of Rule 44.1 and others take the common law approach.³⁸

Obtaining International Judicial Assistance

Transnational litigation often requires the cooperation of judicial or other authorities across borders. In many countries, an attempt to serve process or conduct discovery without invoking the assistance of public authorities is viewed as an infringement of national sovereignty and may violate the criminal law.³⁹ Traditionally, judicial cooperation was accomplished with letters rogatory, which are formal requests for assistance from the courts in one country to the judicial authorities of another country. The process can be time-consuming and cumbersome, and there is no guarantee that it will succeed.⁴⁰ Bilateral and multilateral treaties provide an alternative to letters rogatory. These treaties include the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. In addition, counsel may make use of the 1975 Inter-American Convention on Letters Rogatory and its Additional Protocol (IACAP).

Judicial Assistance

In the United States, both the State Department and the Justice Department have responsibilities for international judicial assistance. The Office of American Citizen Services, located in the Bureau of Consular Affairs in the U.S. State Department, has detailed, country-specific judicial assistance information at http://travel.state.gov/law/judicial/judicial_2510.html. See also the information circular on Judicial Assistance, available at http://travel.state.gov/law/judicial/judicial_702.html.

The Office of International Judicial Assistance (also known as the Office of Foreign Litigation) in the Civil Division of the Department of Justice, 1100 L St. N.W. Room 11006, Washington DC 20530—phone: (202) 307-0983; fax: (202) 514-6584—acts as the U.S. Central Authority under the Hague litigation conventions. Incoming and outgoing requests for formal service of process are managed by Process Forwarding International (PFI), 633 Yesler Way, Seattle, WA 98104—phone: (206) 521-2979; fax: (206) 224-3410; website: <http://www.hagueservice.net>.

Service of Process

Constitutional due process norms mandate service of process on the defendant in all litigation in state and federal courts. As construed by the Supreme Court, due process requires notice “reasonably calculated under all of the circumstances” to inform the defendant of the action and give the defendant an opportunity for a hearing.⁴¹ This may be accomplished by personal service, or by some alternative method, including service by publication when the defendant’s location cannot be determined. Beyond this notice function, personal service on the defendant within the territory where the court is located may be the basis for obtaining personal jurisdiction over the defendant pursuant to *Burnham*.⁴² Personal service on the defendant outside the territory where the court is located may be the basis for an assertion of personal jurisdiction over a defendant who has constitutionally sufficient minimum contacts with the forum. Without those minimum contacts, personal service outside the court’s territory, even if it is completed according to the rules described below, does not confer personal jurisdiction over the defendant.⁴³

Service of process on an individual in a foreign country is subject to the law of the forum where the action has been filed⁴⁴ and to any applicable provisions of foreign or international law. Useful information, including country-specific flyers on service of process, is available on the State Department’s website.⁴⁵ The Hague Service Convention provides a vehicle for service in many foreign countries; if the Convention is not applicable, service by letters rogatory may be required. Service of process on a member of the U.S. armed services who is stationed abroad may be facilitated by military authorities.⁴⁶ Foreign defendants who are present within the territory of the United States may be served with process here, provided that service complies with the applicable procedural rules of the forum.⁴⁷ If service within the forum state is relied upon to confer personal jurisdiction on the court, counsel should be aware that foreign jurisdictions may not be willing to enforce an in personam decree based only on tag jurisdiction, which is widely rejected outside the United States.

Hague Service Convention

For service of process in civil proceedings, including family law matters, adherence to the Hague Service Convention is mandatory in any of the more than 60 countries where it is in force.⁴⁸ As a treaty, the Convention preempts inconsistent provisions of state law, but service must also nonetheless comply with applicable state laws.⁴⁹ Service in treaty countries that does not comply with the Convention is ineffective, even if the respondent

For assistance with international service, contact Process Forwarding International (PFI), 633 Yesler Way, Seattle WA 98104—phone: (206) 521-2979; fax: (206) 224-3410; website: <http://www.hagueservice.net>. PFI manages all incoming and outgoing requests for formal service of process under the Hague Service Convention, the Inter-American Convention, and letters rogatory.

The U.S. State Department information circular on Service of Legal Documents Abroad is available at http://travel.state.gov/law/judicial/judicial_680.html, and the circular on Judicial Assistance—Service of Process Abroad is available at http://travel.state.gov/law/judicial/judicial_2513.html.

had actual notice of the proceeding.⁵⁰ A party who fails to raise objections to service in a timely manner may be deemed to have waived them, however.⁵¹ Under the Convention, each contracting state designates a Central Authority to receive incoming requests for service of documents.⁵² The U.S. Central Authority is the Office of International Judicial Assistance in the Department of Justice, and outgoing requests are managed by a contractor acting on behalf of the Central Authority.⁵³

Under Article 5 of the Service Convention, the Central Authority in the receiving country has responsibility to serve the document or arrange to have it served by an appropriate agency, either “(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or (b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.” The receiving country may require that the document be written or translated into one of its official languages. Article 5 also provides that “the document may always be served by delivery to an addressee who accepts it voluntarily,” unless this is incompatible with the law of the state addressed.

In addition to service through the Central Authority under Article 5, the Convention permits other types of service under Article 10. Contracting States may object to this aspect of the treaty, however.⁵⁴ Unless there has been an objection in the country where service will be made, Article 10(a) protects “the freedom to send judicial documents, by postal channels, directly to persons abroad,” and Articles 10(b) and 10(c) allow requests for service to be sent directly to the judicial officers, officials, or other competent persons of the State of destination.⁵⁵ Many Contracting States have made objections to aspects of Article 10; and in these countries, service through the Central Authority may be necessary.⁵⁶ Complete information on the types of service accepted in participating countries is available on the Hague Conference website and in the U.S. State Department’s country-specific judicial assistance information circulars.

Courts in the United States have held that service need not be made according to the Service Convention when the defendant can be served within the United States. In *Volkswagenwerk AG v. Schunk*,⁵⁷ the Supreme Court affirmed this reading of the treaty in the context of service on a foreign corporation through a domestic subsidiary. The Court held that the question of whether “service abroad” was required should be answered

Caution: Although international registered mail services are available for most countries in the world, this method of service may be prohibited by law in a particular foreign country. Counsel should not attempt service of process by mail in the following countries, which have objected to this type of service under Article 10(a) of the Hague Service Convention.

Argentina	Greece	Mexico	Slovak Republic
Bulgaria	Hungary	Monaco	Sri Lanka
China (PRC)	India	Norway	Switzerland
Croatia	Korea, Republic of	Poland	Turkey
Czech Republic	Kuwait	Russian Federation	Ukraine
Egypt	Lithuania	San Marino	Venezuela
Germany	Macedonia	Serbia	

Hague Service Convention

Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. 6638, 658 U.N.T.S. 163, *reprinted in* 4 I.L.M. 341 (1965).

The full text and current status information for the Service Convention is available on the Hague Conference website at <http://www.hcch.net> (under "Conventions" and "14"). See also Hague Conference on Private International Law, *Practical Handbook on the Operation of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (3d ed. 2006).

with reference to the internal law of the state where the action is pending. As the opinion also noted, however, compliance with the Convention may make it easier to enforce a judgment abroad, even if the law of the forum state does not require it.

Inter-American Convention

The United States has a treaty relationship with a dozen countries under the IACAP, thus providing another mechanism for service of documents through a central authority. The Inter-American Convention is not exclusive, and service under the Convention and Protocol is generally similar to the Hague Service Convention.⁵⁸ Currently, the treaty is in force for purposes of service of process only between the United States and Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela. Requests from the United States are transmitted by Processing Forwarding International (PFI), the private contractor working with the Office of International Judicial Assistance in the Department of Justice.

Letters Rogatory

Letters rogatory, the traditional method of securing judicial cooperation across international borders, are typically drafted by counsel and signed by a judge in the United States.⁵⁹ Depending on the country to which they are sent, the letters must be authenticated and translated and then submitted to the Secretary of State for transmittal through diplomatic channels. Depending on the law of the other country involved, it may be

Inter-American Convention and Protocol

Inter-American Convention on Letters Rogatory, OAS Treaty Series No. 43, *reprinted in* 14 I.L.M. 328 (1975); Additional Protocol, OAS Treaty Series No. 56, *reprinted in* 18 I.L.M. 1238 (1979).

For the text of the Inter-American Convention and current status information, see the OAS Internet Treaty Database at <http://www.oas.org/juridico/english/treaties/b-36.html>; for the text of the Additional Protocol and status information, see <http://www.oas.org/juridico/english/sigs/b-46.html>.

The U.S. State Department information circular on the Inter-American Service Convention and Additional Protocol is available at http://travel.state.gov/law/judicial/judicial_5219.html.

The U.S. State Department information circular on Preparation of Letters Rogatory is available at http://travel.state.gov/law/judicial/judicial_683.html.

possible to transmit the letter through local legal counsel. A useful explanation of the process, including country-specific information on what is required, is available on the State Department's website. Transmission of letters rogatory is governed by the Vienna Convention on Consular Relations (VCCR) and various bilateral consular conventions.⁶⁰

Discovery and Taking Evidence

In many foreign countries, there is no equivalent to the wide pretrial discovery permitted in the United States.⁶¹ Particularly in civil law jurisdictions, the practice is for judicial officers—rather than the parties and their counsel—to collect evidence. Failure to follow the laws of the country where evidence is sought is a violation of territorial and judicial sovereignty, and it may be a criminal offense. In some countries “blocking statutes” prohibit production of evidence for purposes of foreign legal proceedings unless appropriate procedures are followed.⁶² Accordingly, counsel should proceed with caution. International judicial assistance in collecting evidence is available under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, or through the use of letters rogatory.⁶³

To the extent that a court in the United States has personal jurisdiction over the parties or witnesses, discovery in an international case may proceed in largely the same manner as in a purely domestic proceeding. In 1987, a majority of the Supreme Court concluded in *Société Nationale Industrielle Aérospatiale v. United States District Court* that use of the Hague Evidence Convention was optional to the extent that it “did not deprive the District Court of the jurisdiction it otherwise possessed to order a foreign national party before it to produce evidence physically located within a signatory nation.”⁶⁴ Rather, the Court concluded that lower courts should take considerations of international comity into account in exercising their power to supervise pretrial discovery proceedings. Some state courts have followed this approach, while others have directed litigants to proceed first under the Evidence Convention.⁶⁵ To the extent that parties seek discovery within a foreign country, or from an individual who is not subject to the court's personal jurisdiction, this approach is not available.

There is substantial literature on the mechanics of extraterritorial discovery, but the country-specific judicial assistance information assembled by the State Department is a useful starting point.⁶⁶ Depositions in foreign countries are addressed in the Federal Rules of Civil Procedure. Under Rule 28(b), depositions may be taken pursuant to any applicable treaty or convention, pursuant to a letter of request or letter rogatory, “on notice before a person authorized to administer oaths in the place where the examination is held,” or “before a person commissioned by the court” and authorized “to administer any necessary oath and take testimony.”⁶⁷ State courts may also issue letters rogatory or commissions for taking depositions according to their rules of procedure and evidence.⁶⁸

Consular officials have an important role in this process. Under federal law, consular officials of the United States can provide notarial services similar to those provided

The U.S. State Department information circular on Notarial and Authentication Services of U.S. Consular Officers Abroad is available at http://travel.state.gov/law/judicial/judicial_2086.html.

by a notary public in the United States,⁶⁹ including taking depositions on notice,⁷⁰ provided that these functions do not violate the local law of the country where the services are requested. In addition, federal statutes provide for taking evidence from “a national or resident of the United States who is in a foreign country” by authorizing the federal courts to issue a subpoena under 28 U.S.C. § 1783 to require appearance of a witness or production of a document or other thing if the court finds that it is “necessary in the interest of justice.” Contempt sanctions are available under 28 U.S.C. § 1784 if the subpoena is ignored.⁷¹

Hague Evidence Convention

More than 50 countries participate in the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and the Convention is in force for the United States in most of these countries.⁷² The Convention uses a Central Authority system, which for the United States is the Office of International Judicial Assistance in the Department of Justice. Because participating nations have made different reservations and declarations regarding the Convention, the U.S. Central Authority provides country-specific information on its website.

Under the Evidence Convention, a judicial authority in one contracting state may send a Letter of Request to the competent authorities of another contracting state, requesting that those authorities obtain evidence intended for use in judicial proceedings or perform some other judicial act.⁷³ Letters of Request are transmitted through the Central Authority of the receiving state. The Convention specifies what must be included in a Letter of Request, and participating countries may also require a certified translation. In executing a Letter of Request, authorities must “apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.”⁷⁴ Execution of these requests is mandatory, with a few narrow exceptions specified in the treaty, and must be completed expeditiously and largely without cost. The evidence taken is returned to the requesting authority, and if the request is not executed for any reason, the requesting authority must be informed and advised of the reasons.

Although Article 9 of the Evidence Convention provides that the judicial authority executing a Letter of Request “shall apply its own law as to the methods and procedures to be followed,” it also provides that the executing authority “will follow a request of the requesting authority that a special method or procedure be followed,” unless this provision is incompatible with its internal law or is impossible to perform “by reason of its internal practice and procedure or by reason of practical difficulties.” This allows for the possibility that lawyers from the United States may be able to conduct discovery following U.S. procedures even if those methods would not generally be available in the

Hague Evidence Convention

Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters, 23 U.S.T. 2555, T.I.A.S. 7444, 847 U.N.T.S. 231, appended to 28 U.S.C. § 1781, reprinted in 8 I.L.M. 37 (1969).

The full text and current status information for the Evidence Convention is available from the Hague Conference website at <http://www.hcch.net> (under "Conventions" and "20"). See also Hague Conference on Private International Law, PRACTICAL HANDBOOK ON THE OPERATION OF THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS (1984).

requested country. This may be important in obtaining evidence in a form that is admissible in court. Besides providing for the sending and execution of Letters of Request, the Evidence Convention allows for the taking of evidence by diplomatic officers or consular agents and commissioners under Articles 15, 16, and 17. Generally, this procedure must take place without compulsion, and with the acquiescence of the requested state; it may be used for taking voluntary depositions at a U.S. embassy or consulate. Article 23 of the Evidence Convention permits a contracting state to declare when it joins the Convention that it will not execute Letters of Request "for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries." Many states have made this declaration, either in broad or more limited form.⁷⁵ The drafters evidently intended to prevent counsel from conducting U.S.-style "fishing expeditions" that are seen as objectionable in many countries.⁷⁶

When the Hague Evidence Convention is not available for obtaining evidence abroad, the alternative is to use letters rogatory, typically sent through diplomatic channels. The principal difference is that execution of letters rogatory is voluntary, although execution may be subject to bilateral agreements.⁷⁷ Letters rogatory are used routinely between courts in the United States and Canada, which has not ratified the Evidence Convention.

Obtaining Evidence in the United States for Use Abroad

Under 28 U.S.C. § 1781, Letters of Request or letters rogatory may either be submitted directly to a court in the United States that is requested to provide assistance or sent through diplomatic or consular channels. Letters received through these channels are typically routed through the Justice Department and the U.S. Attorney's office and filed with the federal district court.⁷⁸ The United States also permits direct execution within the United States of a commission for taking evidence issued by a foreign court. In addition, 28 U.S.C. § 1782 authorizes the federal district courts to order any person residing or found within the district to give testimony or produce a document or other thing for use

For assistance in obtaining evidence in the United States for use abroad, contact the U.S. Department of Justice, Office of International Judicial Assistance, 1100 L Street N.W., Room 11006, Washington DC 20530—phone: (202) 514-7455; fax: (202) 514-6584.

in a foreign or international tribunal “upon the application of any interested person.”⁷⁹ In the family law context, this statute has been used to order individuals to provide blood samples for testing in paternity cases.⁸⁰

Legalization and the Apostille Convention

To use foreign documents such as marriage or birth certificates in the United States, it is often necessary to legalize the documents. This process involves two steps: The document must first be authenticated or certified by the foreign ministry of the country where it originated, and then it is legalized by the U.S. embassy or consulate in that country. Traditionally, legalization involved sealing the original document and then attaching an authentication form by grommet. This process has been simplified for documents from countries that have adopted the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, also known as the Apostille Convention.⁸¹

Under the Convention, the foreign document is certified by an apostille completed by the appropriate authority according to the terms of the Convention.⁸² Once certified in this manner, the document must be accepted as authentic by courts and other authorities in the United States.⁸³ The Convention applies to a variety of public documents: “documents emanating from an authority or an official connected with the courts or the tribunals of the State, including those emanating from a public prosecutor, a clerk of court or a process server,” administrative documents, notarial acts, and “official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.”⁸⁴ This latter category includes items such as affidavits, wills, and powers of attorney. The Apostille Convention has been widely embraced and is now in effect in more than a hundred countries.

In outgoing cases, public documents produced in the United States that will be used in another Convention country are certified by either state or federal authorities. The clerk of every federal court has authority to issue apostilles for documents from that court, and the State Department Authentications Office issues apostilles for documents certified by federal agencies. State secretaries of state have authority to issue apostilles for documents certified by their state courts and private documents that have been notarized within the state. Listings of the competent authorities, and detailed information on how to obtain an apostille, are available on the Hague Conference and State Department websites noted above. Once an apostille is issued, authorities in all coun-

Hague Apostille Convention

Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, 33 U.S.T. 883, T.I.A.S. 10072, 527 U.N.T.S. 189, appended to Fed. R. Civ. P. 44, *reprinted in* 20 I.L.M. 1405 (1981).

The full text and current status information for the Apostille Convention is available from the Hague Conference website at <http://www.hcch.net> (under “Conventions” and “12”).

The U.S. State Department information circular on What Is an “Apostille” is available at http://travel.state.gov/law/judicial/judicial_2545.html; and the circular on Notarial and Authentication Services of U.S. Consular Officers Abroad is available at http://travel.state.gov/law/judicial/judicial_2086.html.

For assistance with legalization of U.S. documents, contact the U.S. Department of State, Bureau of Administration, Office of Authentications, 518 23rd St. N.W. SA-1, Washington DC 20520—phone: (202) 647-5002; fax: (202) 663-3636; website: <http://www.state.gov/m/a/auth/>.

tries that participate in the Convention have a treaty obligation to accept the certified document.⁸⁵

If a document produced in the United States will be used in a country that is not a party to the Apostille Convention, traditional legalization may be obtained through the State Department. This process typically requires certification up the line, beginning with the notary public or court clerk, then the secretary of state for the state where the document originated, then an authentication officer in the State Department, followed by legalization at the U.S. embassy or consulate in the country where the document will be used. Procedures for authentication by the State Department are governed by federal statutes and regulations, and there is a small fee for this service.⁸⁶

Recognizing and Enforcing Judgments

In the United States, all states have a constitutional obligation to give full faith and credit to judgments entered in other states, but judgments of foreign courts are enforced only on the basis of comity. Courts in the United States are generous in their recognition of foreign court orders, including divorce decrees, support orders, and child custody orders, when these orders have a jurisdictional basis that would be adequate under U.S. law and where the general requirements of due process were observed.⁸⁷ In some settings, the requirements for recognition of foreign judgments are defined by statutes, including the UCCJEA, the UIFSA, and the Uniform Foreign Money-Judgments Recognition Act (UFMJRA). For the United States, achieving international recognition and enforcement of state court judgments has been difficult because of the differences between jurisdictional and other rules applied in the United States and those prevailing in other nations, particularly those with civil law systems.⁸⁸ In certain specific family law contexts, such as international adoption and international child support enforcement, the United States participates in international treaties that provide for mutual recognition and enforcement of judicial decrees.

Further Reading: International Judicial Assistance

ABA Section of Antitrust Law, *OBTAINING DISCOVERY ABROAD* (2d ed. 2005).

ABA Tort Trial and Insurance Practice Section, *INTERNATIONAL LITIGATION: DEFENDING AND SUING FOREIGN PARTIES IN U.S. FEDERAL COURTS* (David J. Levy ed., 2003).

STEPHEN M. FERNELIUS, REBECCA J. COLE, & GRAIG J. ALVAREZ, *PRACTICAL GUIDE FOR CONDUCTING EXTRATERRITORIAL DISCOVERY FOR USE IN U.S. LITIGATION* (2d rev. & exp. ed. 1999).

BRUNO A. RISTAU, *INTERNATIONAL JUDICIAL ASSISTANCE* (1995).

The U.S. State Department information circular on Enforcement of Judgments is available at http://travel.state.gov/law/judicial/judicial_691.html.

Comity

Under the classic definition articulated by the Supreme Court in *Hilton v. Guyot*, comity is “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”⁸⁹ In *Hilton*, the Court indicated that a foreign judgment should be given effect in the United States when it meets basic requirements of reliability and fairness:

When [a] . . . foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.⁹⁰

For decrees concerning personal status, *Hilton* articulated a broad recognition principle: “A decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law.”⁹¹

More recent conflict-of-laws authorities in the United States have embraced the formulation of common law comity principles in the Restatement (Third) of Foreign Relations Law.⁹² Section 481 sets out a presumptive rule that “a final judgment of a court of a foreign state granting or denying recovery of a sum of money, establishing or confirming the status of a person, or determining interests in property, is conclusive between the parties, and is entitled to recognition in courts in the United States.” Section 482 defines two sets of exceptions to this rule. A court in the United States must not recognize a foreign-court judgment if it “was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law,” or if the foreign court did not have jurisdiction over the defendant in accordance with its own laws and consistent with the Restatement’s standards.⁹³ In addition, under the following circumstances a court in the United States is not required to recognize a foreign-court judgment (1) that was entered without subject matter jurisdiction; (2) when the defendant did not have notice and an opportunity to offer a defense; (3) in circumstances of fraud; (4) when the judgment is contrary to the public policy of the United States or of the state where recognition is sought; (5) when the judgment conflicts with another judgment that is entitled to recognition; or (6) if the foreign court proceeding was contrary to an agree-

ment between the parties to submit the controversy to another forum.⁹⁴ These broad general principles are regularly applied to foreign-court judgments in divorce, property, support, and custody cases.

In *Hilton*, although the Supreme Court determined that a decree entered by a French court against two New York residents satisfied the general requirements of comity, a majority of the Court concluded that it should not be enforced in the United States on reciprocity grounds, based on evidence that a U.S. decree would not have been enforceable in France.⁹⁵ Four justices dissented from this aspect of the ruling. The reciprocity requirement has continued to be problematic and controversial, and courts in the United States have largely, but not entirely, abandoned it.⁹⁶ For example, *Nichol v. Tanner*, a case seeking enforcement of a German child support and paternity judgment against a defendant in Minnesota, rejected the *Hilton* reciprocity rule, concluding that “it is not the business of the courts, whose province is the decision of individual cases, to impose rules designed to coerce other nations into giving effect to our judgments.”⁹⁷

Currency exchange rates may complicate the international recognition and enforcement of judgments. Under Restatement (Third) of Foreign Relations § 823(2), when a court gives judgment in dollars based on a foreign currency obligation, “the conversion from foreign currency to dollars is to be made at such a rate as to make the creditor whole and to avoid rewarding a debtor who was delayed in carrying out the obligation.” For a judgment based on an obligation to make periodic payments, such as a spousal or child support order, the currency conversion may need to be made separately for each payment date. Interest on past-due payments is determined by the law of the forum, including its choice of law rules.⁹⁸

Recognition under Uniform Laws

Comity principles are codified in the 1962 UFMJRA⁹⁹ and its successor, the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA).¹⁰⁰ The drafters hoped that a codification of these principles would satisfy the reciprocity concerns of foreign courts, making it more likely that state court judgments would be recognized abroad. The statute provides generally, with some exceptions, for enforcement of foreign money judgments “in the same manner as the judgment of a sister state which is entitled to full faith and credit.”¹⁰¹

Although the original UFMJRA is sometimes applied to the enforcement of foreign judgments in marital-property cases, the law excludes any “judgment for support in matrimonial or family matters.”¹⁰² The amended version of the legislation is more sweeping, excluding “a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.”¹⁰³ According to the official comments, the drafters concluded that recognition and enforcement of domestic relations judgments are more appropriately handled through comity and the provisions of specialized statutes such as the UIFSA. The UFMJRA does not include a reciprocity requirement, but some states have incorporated this consideration into their statutes.¹⁰⁴

Recognition and enforcement of a foreign country’s child custody or visitation orders is available under the UCCJEA,¹⁰⁵ provided that the foreign order must have been

Assistance with international child support enforcement is often available from state child support offices. Contact information for state agencies is available from the federal Office of Child Support Enforcement website at <http://www.acf.hhs.gov/programs/cse/> (under "State Child Support Agency Links").

entered under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA.¹⁰⁶ Recognition and enforcement of foreign spousal and child support orders can be accomplished using the UIFSA.¹⁰⁷ This act extends to support orders from several categories of foreign nations: those designated as foreign reciprocating countries under federal law, those that have established reciprocal arrangements with a particular state, those that have enacted laws or procedures that are substantially similar to UIFSA, and those where the 2007 Hague Family Maintenance Convention is in effect with respect to the United States.¹⁰⁸ For support orders from foreign nations that do not fall into any of these categories, UIFSA preserves the possibility of recognition and enforcement based on comity.¹⁰⁹ The federal child support enforcement program administered by the Department of Health and Human Services provides support enforcement services without charge for many foreign child-support orders and some foreign spousal support orders.¹¹⁰

Foreign Recognition and Enforcement of U.S. Court Orders

Other common law countries apply similar principles of comity when recognizing and enforcing foreign court orders.¹¹¹ In these countries, as in the United States, recognition and enforcement may be obtained by bringing an action for enforcement of the foreign court judgment.¹¹² In civil law countries, a foreign judgment may be recognized and enforced by registration in an exequatur proceeding.¹¹³ The rules and procedure are different in different legal systems; in some, recognition of foreign judgments may depend on proof of reciprocity.¹¹⁴ Foreign countries may refuse to recognize in personam judgments from the United States that are based on a minimum-contacts theory or on personal service within the jurisdiction (i.e., tag jurisdiction).¹¹⁵ To present a state court decree in a foreign country for recognition and enforcement, the parties or their counsel may have the decree authenticated by legalization or an apostille.¹¹⁶

Further Reading: Recognition and Enforcement of Judgments

ENFORCEMENT OF FOREIGN JUDGMENTS (Dennis Campbell ed., 1997).

ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE (Charles Platto & William G. Horton eds., 2d ed. 1993).

Hague Service Convention Contracting States (as of November 15, 2011)

Albania	Germany	Poland
Antigua and Barbuda	Greece	Portugal
Argentina	Hungary	Romania
Australia	Iceland	Russian Federation
Bahamas	India	Saint Vincent and the Grenadines
Barbados	Ireland	San Marino
Belarus	Israel	Serbia
Belgium	Italy	Seychelles
Belize	Japan	Slovakia
Bosnia and Herzegovina	Korea, Republic of	Slovenia
Botswana	Kuwait	Spain
Bulgaria	Latvia	Sri Lanka
Canada	Lithuania	Sweden
China, People's Republic of	Luxembourg	Switzerland
Croatia	Malawi	The former Yugoslav Republic of Macedonia
Cyprus	Malta	Turkey
Czech Republic	Mexico	Ukraine
Denmark	Monaco	United Kingdom of Great Britain and Northern Ireland
Egypt	Morocco	United States of America
Estonia	Netherlands	Venezuela
Finland	Norway	
France	Pakistan	

Hague Evidence Convention Contracting States (as of November 15, 2011)*(Accessions of countries marked with * had not yet been accepted by the United States.)*

Albania*	Iceland	Romania
Argentina	India	Russian Federation*
Australia	Israel	Serbia*
Barbados	Italy	Seychelles
Belarus	Korea, Republic of	Singapore
Bosnia and Herzegovina	Kuwait	Slovakia
Bulgaria	Latvia	Slovenia
China, People's Republic of	Liechtenstein	South Africa
Croatia	Lithuania	Spain
Cyprus	Luxembourg	Sri Lanka
Czech Republic	Malta*	Sweden
Denmark	Mexico	Switzerland

Hague Evidence Convention Contracting States — continued

Estonia	Monaco	The former Yugoslav Republic of Macedonia
Finland	Morocco*	Turkey
France	Netherlands	Ukraine
Germany	Norway	United Kingdom of Great Britain and Northern Ireland
Greece	Poland	United States of America
Hungary	Portugal	Venezuela

Hague Legalization (Apostille) Convention Contracting States (as of November 15, 2011)

Albania	Germany	Norway
Andorra	Greece	Oman
Antigua and Barbuda	Grenada	Panama
Argentina	Honduras	Peru
Armenia	Hungary	Poland
Australia	Iceland	Portugal
Austria	India	Romania
Azerbaijan	Ireland	Russian Federation
Bahamas	Israel	Saint Kitts and Nevis
Barbados	Italy	Saint Lucia
Belarus	Japan	Saint Vincent and the Grenadines
Belgium	Kazakhstan	Samoa
Belize	Korea, Republic of	San Marino
Bosnia and Herzegovina	Kyrgyzstan	São Tomé and Príncipe
Botswana	Latvia	Serbia
Brunei Darussalam	Lesotho	Seychelles
Bulgaria	Liberia	Slovakia
Cape Verde	Liechtenstein	Slovenia
Colombia	Lithuania	South Africa
Cook Islands	Luxembourg	Spain
Costa Rica	Malawi	Suriname
Croatia	Malta	Sweden
Cyprus	Marshall Islands	Swaziland
Czech Republic	Mauritius	Switzerland
Denmark	Mexico	The former Yugoslav Republic of Macedonia
Dominica	Moldova, Republic of	Tonga
Dominican Republic	Monaco	Trinidad and Tobago
Ecuador	Mongolia	Turkey

Hague Legalization (Apostille) Convention Contracting States — continued		
El Salvador	Montenegro	Ukraine
Estonia	Morocco	United Kingdom of Great Britain and Northern Ireland
Fiji	Namibia	United States of America
Finland	Netherlands	Uzbekistan
France	New Zealand	Vanuatu
Georgia	Niue	Venezuela

Notes

1. See *Williams v. North Carolina*, 317 U.S. 287, 298–99 (1942) (“[E]ach state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even if the other spouse is absent.”); *Williams v. North Carolina*, 325 U.S. 226, 239 (1945) (holding that domicile in the state may be challenged). Divorce jurisdiction is discussed in Chapter 3.
2. Jurisdiction regarding financial matters is covered in Chapter 4.
3. Uniform Interstate Family Support Act § 201, 9 (R) U.L.A. 72 (Supp. 2011) (UIFSA). See Chapter 7.
4. Uniform Child Custody Jurisdiction and Enforcement Act § 201(c), 9 (IA) U.L.A. 649 (1999) (UCCJEA). Jurisdiction regarding financial matters is covered in Chapter 5.
5. 495 U.S. 604, 628 (1990).
6. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 421, Reporter’s Note 5 (1987) (“Jurisdiction based on [tag jurisdiction] is no longer acceptable under international law if that is the only basis for jurisdiction and the action in question is unrelated to that state.”). See also Kevin N. Clermont & John R. B. Palmer, *Exorbitant Jurisdiction*, 58 ME. L. REV. 474 (2006).
7. *E.g.*, *Farah v. Farah*, 323 N.E.2d 361, 366 (Ill. App. Ct. 1975) (exercising long-arm jurisdiction under Illinois statute).
8. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985). This two-prong test was applied in *Phillips v. Phillips*, 826 S.W.2d 746, 748–49 (Tex. App. 1992) (upholding jurisdiction over nonresident husband living in Kenya based on contacts with wife and children in Texas).
9. 436 U.S. 84, 92 (1978).
10. *But see* *May v. Anderson*, 345 U.S. 528, 533 (1953) (holding that custody adjudication made without personal jurisdiction over respondent parent was not entitled to full faith and credit in another state). This ruling is in considerable tension with the jurisdictional and full faith and credit requirements of UCCJEA § 202 and the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2006) (PKPA), which require that states recognize and enforce custody orders without taking personal jurisdiction into account.
11. UIFSA § 201.
12. 504 U.S. 689, 703 (1992).
13. *E.g.*, *Bercovitch v. Tanburn*, 103 F. Supp. 62 (S.D.N.Y. 1952) (affirming the dismissal of an action based on the domestic relations exception where plaintiff was a Canadian citizen and defendant was a New York citizen); *Buechold v. Ortiz*, 401 F.2d 371 (9th Cir. 1968) (affirming the dismissal of a paternity and child-support action filed in federal court by German citizens against California citizens); *cf.* *Kirby v. Mellenger*, 830 F.2d 176 (11th Cir. 1987) (concluding that when “domestic relations issues are only tangentially present” to the issue in question, the district court has less discretion to refuse jurisdiction).
14. *Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 382–84 (1930); *but see* *Carrera v. Carrera*, 174 F.2d 496, 498 (D.C. Cir. 1949).

15. See *Jagiella v. Jagiella*, 647 F.2d 561, 564 (5th Cir. 1981) (affirming diversity jurisdiction in suit by French ex-wife against Georgia resident to collect arrearages of alimony and child support).
16. See, e.g., *Ackerman v. Ackerman*, 676 F.2d 898, 901 (2d Cir. 1982); see also *Matusow v. Trans-County Title Agency*, 545 F.3d 241, 246–47 (3d Cir. 2008); *Norton v. McOsker*, 407 F.3d 501, 504–05 (1st Cir. 2005).
17. E.g., *Marran v. Marran*, 376 F.3d 143, 149–51 (3d Cir. 2004) (affirming dismissal based on the Rooker-Feldman doctrine, which “bars lower federal courts from exercising jurisdiction over a case that is the functional equivalent of an appeal from a state court judgment”).
18. 42 U.S.C. §§ 11601–11611 (2006).
19. *Id.* § 11611; e.g., International Parental Kidnapping Crime Act, 18 U.S.C. § 1204 (2006) (IPKCA).
20. See *Taveras v. Taveras*, 477 F.3d 767, 772 (6th Cir. 2007), applying *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004); see also *Adra v. Clift*, 195 F. Supp. 857, 865 (D. Md. 1961).
21. *Bourbon v. Bourbon*, 687 N.Y.S.2d 426, 427 (N.Y. App. Div. 1999), remanded to 751 N.Y.S.2d 302 (N.Y. App. Div. 2002).
22. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 53 (1971). See generally GARY B. BORN & PETER B. RUTLEDGE, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 521–60 (2007); EUGENE F. SCOLES ET AL., CONFLICT OF LAWS § 24.9, at 1273–76 (4th ed. 2004); Jonathan I. Blackman, *Provisional Measures in Cross-Border Cases*, in INTERNATIONAL LITIGATION STRATEGIES AND PRACTICE 65, 71–72 (Baron Legum ed., 2005).
23. Cf. *Brown v. Brown*, 387 A.2d 1051, 1055 (R.I. 1978) (concluding that the trial court properly issued an injunction prohibiting respondent from instituting any new proceedings for divorce in another jurisdiction). But see *Verdier v. Verdier*, 22 Cal. Rptr. 93, 105 (Cal. Ct. App. 1962) (concluding that an injunction was not proper because “the issues in the two actions were not the same, and there was no former adjudication”).
 In U.S. family law, anti-suit injunctions were sometimes issued to prevent an individual domiciled in a state with strict divorce laws from going to another place to procure a divorce. Older cases are collected in E. H. Schopler, Annotation, *Injunction Against Suit in Another State or Country for Divorce or Separation*, 54 A.L.R.2d 1240 (1957 & Supp.).
24. See BORN & RUTLEDGE, *supra* note 22, at 540–43 (noting that the First, Second, Third, Sixth, and D.C. Circuits have placed stringent limits on the use of foreign anti-suit injunctions, while the Fifth, Seventh, and Ninth Circuits have applied more flexible standards).
25. See BORN & RUTLEDGE, *supra* note 22, at 522.
26. See Blackman, *supra* note 22, at 65–70. These issues are considered in Chapter 4.
27. 570 So. 2d 996, 997 (Fla. Dist. Ct. App. 1990); see also *Marriage of Kosmond*, 830 N.E.2d 596, 597 (Ill. App. Ct. 2005) (holding that trial court with personal jurisdiction over the parties had authority to freeze wife’s assets held by foreign bank, but that court abused its discretion by failing to consider whether bank’s compliance with injunction would require it to violate German law); cf. *Nasser v. Nasser*, 859 N.Y.S.2d 445, 445 (App. Div. 2008) (affirming dismissal of dispute regarding parties’ assets filed in New York, during pendency of litigation in Brazil, on basis of inconvenient forum).
28. 330 U.S. 501 (1947). See generally SCOLES, *supra* note 22, §§ 11.8–.12, at 492–502.
29. *Gulf Oil Corp.*, 330 U.S. at 508–09.
30. 454 U.S. 235 (1981).
31. Courts have deferred to the plaintiff’s choice of forum in the domestic relations context. See, e.g., *MacLeod v. MacLeod*, 383 A.2d 39, 42 (Me. 1978) (holding that the superior court erred in dismissing suit for forum non conveniens where the record did not indicate the availability of a more convenient alternate forum).
32. UCCJEA § 207(a). Under UCCJEA § 105(a), state courts treat foreign countries as states of the United States for purposes of this provision.
33. See generally Susan Van Syckel, *Strategies for Identifying Sources of Foreign Law: An Integrated Approach*, 13 TRANSNAT’L LAW. 289 (2000).
34. *Maple v. Maple*, 566 P.2d 1229, 1230 (Utah 1977); see also *Meissner v. Meissner*, 707 So. 2d 1040, 1044 (La. Ct. App. 1998) (applying presumption to Brazilian divorce judgment); *Hosain v. Malik*, 671 A.2d 988, 996–97 (Md. Ct. Spec. App. 1996) (comparing Pakistani and Maryland

- law); *De Liedekerke v. De Liedekerke*, 635 A.2d 339, 343 (D.C. 1993) (applying presumption to Belgian prenuptial agreement).
35. See generally VED P. NANDA & DAVID K. PANSIUS, LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS §§ 18:1–13 (2d ed. 2005 & Supp. 2007).
 36. See *Bodum USA, Inc. v. La Cafetiere, Inc.*, 621 F.3d 624, 628–29 (7th Cir. 2010); see also *id.* at 631–34 (Posner, J., concurring).
 37. See generally SOFIE GEEROMS, FOREIGN LAW IN CIVIL LITIGATION: A COMPARATIVE AND FUNCTIONAL ANALYSIS 41–219 (2004) (discussing the process of introducing and ascertaining foreign law); John G. Sprankling & George R. Lanyi, *Pleading and Proof of Foreign Law in American Courts*, 19 STAN. J. INT’L L. 3 (1983); John R. Schmertz, Jr., *The Establishment of Foreign and International Law in American Courts: A Procedural Overview*, 18 VA. J. INT’L L. 697 (1977). See also Jeffrey F. Ghent, Comment-Note, *Pleading and Proof of Law of Foreign Country*, 75 A.L.R.3d 177 (1977 & Supp.) (collecting examples).
 38. See, e.g., *Moustafa v. Moustafa*, 888 A.2d 1230 (Md. Ct. Spec. App. 2005) (applying MD. CODE ANN., CTS. & JUD. PROC. § 10-505, which requires notice of intent to rely on a foreign law and proof regarding the content of the foreign law).
 39. See generally BORN & RUTLEDGE, *supra* note 22, at 815–1007.
 40. One case illustrating the difficulty of service using letters rogatory is *Hollow v. Hollow*, 747 N.Y.S.2d 704, 708 (N.Y. Sup. Ct. 2002), in which the court permitted substituted service by e-mail on husband who had moved to Saudi Arabia. See also *Porres v. Porres*, 428 N.Y.S.2d 428, 431 (N.Y. Sup. Ct. 1980) (permitting substituted service on husband in Italy based on financial hardship; decided before Service Convention came into effect between Italy and the United States).
 41. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 295, 314 (1950).
 42. See *supra* notes 5–6 and accompanying text.
 43. Cf. *Marriage of Tsarbopoulos*, 104 P.3d 692, 634 (Wash. Ct. App. 2004) (vacating property division and child support orders on the conclusion that defendant lacked sufficient minimum contacts with the state). See generally BORN & RUTLEDGE, *supra* note 22, at 855–56. The majority opinion in *Goldstein v. Goldstein*, 494 S.E.2d 745, 748–49 (Ga. Ct. App. 1997), holding that personal service in Switzerland conferred personal jurisdiction on state trial court, is incorrect on this point.
 44. E.g., FED. R. CIV. P. 4(f). State rules are often based either on the former Rule 4(i) or the now-withdrawn Uniform Interstate and International Procedure Act. See generally BORN & RUTLEDGE, *supra* note 22, at 827 (citing examples); 1 ROBERT C. CASAD & WILLIAM B. RICHMAN, JURISDICTION IN CIVIL ACTIONS §§ 4–6, at 508–17 (3d ed. 1998). The notice requirement of the UCCJEA applies to domestic and international cases. See also UIFSA §§ 108 and 205 and *Marriage of Tsarbopoulos*, 104 P.3d 692 (Wash. Ct. App. 2004).
 45. See U.S. Dept. of State, Service of Legal Documents Abroad, http://travel.state.gov/law/judicial/judicial_680.html. See also Charles B. Campbell, *No Sirve: The Invalidity of Service of Process Abroad by Mail or by Private Process Server on Parties in Mexico Under the Hague Service Convention*, 19 MINN. J. INT’L L. 107 (2010) (service in Mexico).
 46. See 32 C.F.R. § 516 (service on Army personnel); 32 C.F.R. § 720.20 (service on Navy and Marine Corps personnel). Note that under these regulations a service member may decline to accept voluntary service; see, e.g., *Harris v. Harris*, 922 N.E.2d 626 (Ind. Ct. App. 2010). See generally MARK E. SULLIVAN, THE MILITARY DIVORCE HANDBOOK: A PRACTICAL GUIDE TO REPRESENTING MILITARY PERSONNEL AND THEIR FAMILIES 8–30 (2d ed. 2011).
 47. See *Volkswagenwerk AG v. Schlunk*, 486 U.S. 694, 707 (1988) (concluding that when service is effectuated on a domestic agent and is “valid and complete under both state law and the Due Process Clause” the Hague Service Convention does not apply).
 48. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, art. 1, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 [hereinafter Service Convention]; see *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court*, 482 U.S. 522, 534 n. 15 (1987). See generally RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 471 (1987); BORN & RUTLEDGE, *supra* note 22, at 815–96; NANDA & PANSIUS, *supra* note 35, §§ 2.3–.9; Marjorie A. Shields,

- When Is Compliance with Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters Required?* 18 A.L.R. FED. 2d 185 (2007 & Supp.). A list of the contracting states, and information on reservations, declarations, or notifications for each country, is available on the Hague Conference website.
49. *E.g.*, *In re Alyssa F.*, 6 Cal. Rptr. 3d 1, 5 (Cal. Ct. App. 2003) (concluding that service by first-class mail in Mexico was not adequate under state law in termination of parental rights case); *Estate of Graf Droste zu Vischering*, 782 N.W.2d 141 (Iowa 2010) (ruling that service on estate beneficiary in Germany must comply with Convention). *Cf.* *Van Den Bosch v. Weinstock*, 732 N.W.2d 636, 638–39 (Minn. Ct. App. 2007) (reviewing service in Philippines in action to modify parenting time under state procedural rules).
 50. *See, e.g.*, *Wood v. Wood*, 647 N.Y.S.2d 830, 830–31 (App. Div. 1996) (delivery of summons and complaint to wife at her residence in Germany was improper and ineffective under Convention); *Zwerling v. Zwerling*, 636 N.Y.S.2d 595, 598–600 (N.Y. Sup. Ct. 1995) (personal service in Israel ineffective under Convention); *Ward v. Ludwig*, 778 N.E.2d 650, 653 (Ohio Ct. App. 2002) (concluding that service in Germany by registered mail was improper and ineffective); *Saysavanh v. Saysavanh*, 145 P.3d 1166, 1172 (Utah Ct. App. 2006) (concluding service by mail in Mexico was ineffective).
 51. *E.g.*, *Bakala v. Bakala*, 576 S.E.2d 156, 164 (S.C. 2003) (declining to address issue under the Service Convention that was not raised in the lower court). In some cases, it appears that neither the parties nor the court were aware of the applicability of the Service Convention. *See generally* *Marriage of Tsarbopoulos*, 104 P.3d 692 (Wash. Ct. App. 2004) (failing to discuss the Service Convention where service was effectuated on defendant in Greece).
 52. Service Convention, *supra* note 48, art. 2.
 53. There is a fee for this service; information is available from the website of the DOJ contractor, Process Forwarding International, at <http://www.hague-service.net>.
 54. Article 8 allows service by diplomatic or consular agents, “without application of any compulsion.” If the state in which such service would be made has declared that it is opposed to this type of service, then Article 8 applies only to service by consular officials “upon a national of the State in which the documents originate.” U.S. consular officials are, however, prohibited from serving process or legal papers unless specifically directed to do so by the State Department. *See* 22 C.F.R. § 92.85. The rule is different for service of subpoenas; *see infra* note 71 and accompanying text. Similarly, although Article 9 of the Service Convention permits indirect service through consular and diplomatic channels, this mechanism is not effectively available for parties in the United States.
 55. *See generally* BORN & RUTLEDGE, *supra* note 22, at 869–83 (describing alternative methods of service authorized under the Service Convention). There is divided authority within the United States as to whether sending judicial documents by mail is sufficient to constitute service of process under the Federal Rules of Civil Procedure. *See id.* at 870–71, 877–80.
 56. *E.g.*, *Collins v. Collins*, 844 N.E.2d 910, 913 (Ohio Ct. App. 2006) (noting that Germany “has expressed a specific objection to service by international mail and has asserted that the Hague Convention is the exclusive method for international service of process in Germany”). *See generally* Beverly L. Jacklin, *Service of Process by Mail in International Civil Action as Permissible under the Hague Convention*, 112 A.L.R. FED. 241 (1993 & Supp.)
 57. 486 U.S. 694 (1988).
 58. *See generally* BORN & RUTLEDGE *supra* note 22, at 895–96; NANDA & PANSIUS, *supra* note 35, § 2.10.
 59. *See* 22 C.F.R. §§ 92.54, 92.66–76 (2009).
 60. Statutory authority for the State Department to transmit and receive letters rogatory is provided in 28 U.S.C. § 1781 (2006), with regulations published in 22 C.F.R. pt. 92.
 61. *See* *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court*, 482 U.S. 522, 549–51 (1987) (Blackmun, J., concurring in part and dissenting in part).
 62. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 442, Reporter’s Notes 1, 4–9 (1987).
 63. *See generally* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 473 (1987); BORN & RUTLEDGE, *supra* note 22, at 907–94; NANDA & PANSIUS, *supra* note 35, ch. 17.

64. *Société Nationale Industrielle Aérospatiale*, 482 U.S. at 539–40.
65. See generally RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 473 (1987); BORN & RUTLEDGE, *supra* note 22, at 980–81. Cases holding that plaintiffs should begin with the Evidence Convention include *Umana v. SCM S.p.A.*, 737 N.Y.S.2d 556 (N.Y. App. Div. 2002), and *Husa v. Laboratories Servier SA*, 740 A.2d 1092 (N.J. Super. Ct. App. Div. 1999).
66. See generally ABA SECTION OF ANTITRUST LAW, OBTAINING DISCOVERY ABROAD (2d ed. 2005) (describing procedures in Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Switzerland, and the United Kingdom); see also ABA TORT TRIAL & INSURANCE PRACTICE SECTION, INTERNATIONAL LITIGATION: DEFENDING AND SUING FOREIGN PARTIES IN U.S. FEDERAL COURTS (David J. Levy ed., 2003); STEPHEN M. FERNELIUS ET AL., PRACTICAL GUIDE FOR CONDUCTING EXTRATERRITORIAL DISCOVERY FOR USE IN U.S. LITIGATION (2d rev. & exp. ed. 1999).
67. FED. R. CIV. P. 28(b); see also FED. R. CIV. P. 45(b)(2).
68. *E.g.*, *Boatswain v. Boatswain*, 778 N.Y.S.2d 850, 853–54 (N.Y. Sup. Ct. 2004) (approving open commission for deposition in Canada).
69. 22 U.S.C. § 4215 (2006); 22 C.F.R. §§ 92.1–92.75 (2009); see also, *e.g.*, *Moezie v. Moezie*, 192 A.2d 808, 811 (D.C. 1963) (addressing authority of American consul to provide notarial service in divorce case).
70. See 22 C.F.R. § 92.55 (2009).
71. See 22 C.F.R. §§ 92.86, 92.88 (describing consular responsibility for serving subpoenas on national or resident of the United States who is in a foreign country). See generally NANDA & PANSIUS, *supra* note 35, § 17:54.
72. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Oct. 7, 1972, 23 U.S.T. 2555, 847 U.N.T.S. 231 [hereinafter Evidence Convention]. Information on ratifications, accessions, and acceptances of accessions is available on the Hague Conference website at <http://www.hcch.net>. At this writing, the United States had not yet accepted the accessions of Albania, Malta, Morocco, the Russian Federation, and Serbia.
73. Evidence Convention, *supra* note 72, art. 1 (“[O]ther judicial act’ does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.” *Id.* See generally NANDA & PANSIUS, *supra* note 35, §§ 17:14–19.
74. Evidence Convention, *supra* note 72, art. 10.
75. For details of these declarations, see the country-specific information on the State Department judicial assistance web pages or the Hague Conference website at <http://www.hcch.net>.
76. See BORN & RUTLEDGE, *supra* note 22, at 966–68.
77. See *supra* notes 59–60 and accompanying text; see generally RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 473 (1987). Although the Inter-American Convention on Letters Rogatory and its Additional Protocol (IACAP) also covers requests to obtain evidence, the United States has made a reservation to this aspect of the treaty.
78. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 474 (1987); see generally NANDA & PANSIUS, *supra* note 35, §§ 17:45–52.
79. 28 U.S.C. § 1782 (2006). See generally *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246–47 (2004) (holding that statute does not require a threshold showing that the information sought would be discoverable in the foreign proceeding).
80. *E.g.*, *In re* Letter of Request from Amtsgericht Ingolstadt, Fed. Republic of Ger., 82 F.3d 590 (4th Cir. 1996); *In re* Letter Rogatory from the Nedenes Dist. Court, Nor., 216 F.R.D. 277 (S.D.N.Y. 2003).
81. Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, Oct. 15, 1981, 33 U.S.T. 883, 522 U.N.T.S. 189 [hereinafter Apostille Convention].
82. A model form for the certificate was annexed to the Convention; under Article 4, the certificate must be placed on the document itself or on an allonge attached to the document.
83. Under Article 2, “Each contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory.” Apostille Convention art. 2. See Peter Pfund, *Legalization of Documents for Use Abroad*, in THE INTERNATIONAL LAWYER’S DESKBOOK 297, 299–300 (Lucinda A. Low et al. eds., 2d ed. 2002).

84. Apostille Convention, *supra* note 81, art. 1.
85. If a U.S. apostille is not accepted, there may be recourse through the Office of Treaty Affairs of the State Department. *See* Pfund, *supra* note 83, at 301.
86. *See* 22 U.S.C. § 2651a; 22 C.F.R. § 131.1 (2009). *See generally* Pfund, *supra* note 83, at 298–99.
87. *See generally* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 484–86 (1987).
88. *See generally* BORN & RUTLEDGE, *supra* note 22, at 1012, 1016–18.
89. 159 U.S. 113, 164 (1895).
90. *Id.* at 205–06.
91. *Id.* at 167.
92. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 481–88 (1987); *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (1971).
93. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 421(1) provides that the courts of a state may exercise jurisdiction with respect to a person or thing “if the relationship of the state to the person or thing is such as to make the exercise of jurisdiction reasonable.” Under § 421(2), exercise of jurisdiction will generally be reasonable if the person “is present in the territory of the state, other than transitorily,” if the person is domiciled in, resident in, or a national of the state, if the person consents to jurisdiction, or if the person carries on business in the state.
94. *See generally id.*; Courtland H. Peterson, *Foreign Country Judgments and the Second Restatement of Conflict of Laws*, 72 COLUM. L. REV. 220 (1972).
95. *Hilton*, 159 U.S. at 228; *cf. Ritchie v. McMullen*, 159 U.S. 235, 242–43 (1895) (recognizing Canadian judgment based on reciprocity).
96. *See generally* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 481 cmt. d & Reporter’s Note 1 (1987); BORN & RUTLEDGE, *supra* note 22, at 1026–34.
97. 256 N.W.2d 796, 801 (Minn. 1976).
98. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 823 cmt. e (1987). *See also* *Hixson v. Sarkesian*, 123 P.3d 1072 (Alaska 2005) (computing support obligation of father who was paid in Swiss francs).
99. Uniform Foreign Money-Judgments Recognition Act, 13(2) U.L.A. 43 (1962 & Supp. 2009) (UFMJRA).
100. Uniform Foreign-Country Money Judgments Recognition Act, 13(2) U.L.A. 9 (Supp. 2009) (UFCMJRA). At of the time of this writing, the UFCMJRA had been adopted in 17 states: California, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, and Washington. The original 1962 UFMJRA was still in effect in another group of jurisdictions, including Alaska, Connecticut, the District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, Missouri, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Texas, the U.S. Virgin Islands, and Virginia. Current information is available from the Uniform Law Commission website at <http://www.nccusl.org>.
101. UFMJRA § 3. The exceptions, defined in UFMJRA § 4, are similar to those outlined in RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 482. The UFMJRA does not require reciprocity as a condition to the enforcement of foreign court judgments. *See* UFMJRA § 4 n. 2. Note that the UFMJRA and the UFCMJRA do not apply to nonmonetary judgments such as a foreign divorce decree. *See* *Sanchez v. Palau*, 317 S.W. 3d 780 (Tex. App. 2010).
102. UFMJRA § 1(2).
103. UFCMJRA § 3(b)(3). Some courts concluded that the earlier language should be read to exclude all domestic relations judgments. *See, e.g., Wolff v. Wolff*, 389 A.2d 413, 418 (Md. Ct. Spec. App. 1978).
104. *See* BORN & RUTLEDGE, *supra* note 22, at 1032–33 (citing statutes).
105. UCCJEA, 9 (1A) U.L.A. 649 (1999). As of this writing, the UCCJEA had been enacted in every state except Massachusetts. Current information is available on the Uniform Law Commission website at <http://www.nccusl.org>.
106. UCCJEA § 105(b). *See* Chapter 5.
107. UIFSA, 9 (1B) U.L.A. 159 (2005 & Supp. 2011). UIFSA was originally adopted in 1992, with

significant amendments in 1996, 2001, and 2008. Citations in this book are to the 2008 revision. UIFSA has been enacted in some form in every state. Current information is available on the Uniform Law Commission website at <http://www.nccusl.org>.

108. UIFSA §§ 102(5), 105.
109. UIFSA § 104(a).
110. Child support enforcement is discussed in Chapter 7.
111. These issues are considered separately in each of the following chapters.
112. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 481, Reporter's Note 6 (1987).
113. For example, on the procedure in France, see PETER HERZOG & MARTHA WESER, CIVIL PROCEDURE IN FRANCE 598–600 (Hans Smit ed., 1967), describing when an exequatur is necessary and explaining treatment of U.S. divorce judgments. Since 2006, French courts have significantly eased the recognition process for foreign judgments in matrimonial and other matters. See Alain Cornec & Julie Losson, *French Supreme Court Restates Rules on Jurisdiction, Recognition, and Enforcement of Foreign Decisions in Matrimonial Matters: A New Chance for Old Cases*, 44 FAM. L.Q. 83 (2010). On the German law, see Kurt Sier, *Private International Law*, in INTRODUCTION TO GERMAN LAW 354 (Mathias Reimann & Joachim Zekoll eds., 2d ed. 2005), describing the process of exequatur for non-European foreign decrees.
114. See generally ENFORCEMENT OF FOREIGN JUDGMENTS (Dennis Campbell ed., 1997); ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE (Charles Platt & William G. Horton eds., 2d ed. 1993).
115. See *supra* note 6 and accompanying text.
116. See *supra* notes 81–86 and accompanying text.

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