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Chapter

57. **Enforcement** of Judgments

II. Law and Procedure

D. Recognition and **Enforcement** of **Foreign Judgments**

References

§ 57:22. **Federal common law regarding recognition and enforcement of foreign judgments**

West's Key Number Digest

West's Key Number Digest, [Judgment k855\(1\)](#)

Despite the applicability of state law to the question of recognition and **enforcement** of a **foreign judgment**, federal courts routinely commence their analysis by reference to the seminal U.S. Supreme Court case of *Hilton v. Guyot*.^[1] That case defined **comity** as the basis for recognition of **foreign** judgments as follows:

Comity, in the legal sense, is neither a matter of absolute obligation on the one hand, nor a mere courtesy and good will upon the other. But it 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.^[2]

That definition of **comity** as the basis for the recognition and **enforcement** of **foreign judgments** has been defined more recently as follows:

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.^[3]

In *Hilton* the issue was the enforceability in the United States of a French court judgment issued against a U.S. defendant. The Court held that the specific requirements for enforcement by virtue of the comity doctrine were as follows:

[W]here 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 this country upon the judgment, be tried afresh.[4]

After an extensive survey of the law in “civilized nations,”[5] the Court in *Hilton* concluded that in the majority of countries, “the judgment rendered in a foreign country is allowed the same effect only as the courts of that [foreign] country allow to the judgments of the country in which the judgment in question is sought to be executed.”[6] This limitation, the requirement of reciprocity, ultimately was the deciding issue in *Hilton*. However, many federal and state courts reject the reciprocity requirement at present.[7]

Otherwise, the comity analysis set forth in *Hilton* provides the bedrock upon which the modern law has developed. The laws of the states basically incorporate in various manners the elements articulated by the Court, i.e., whether there was a “full and fair trial,” whether the rendering court had competence and jurisdiction, whether the proceedings were “regular,” whether there was due notice and a voluntary appearance, whether the system of justice was “impartial,” and whether there was “fraud in procuring the judgment.” The Second Circuit’s modern articulation of the basic rule is that it will “extend **comity** whenever the **foreign** court had proper jurisdiction and **enforcement** does not prejudice the rights of United States citizens or violate domestic public policy.”[8]

This said, there are two significant exceptions to the **comity** doctrine. **Comity** does not oblige a U.S. court to **enforce a foreign judgment** where that judgment is based on either the tax or penal laws of the **foreign** country.[9] Even so, a U.S. court is more likely to **enforce** a judgment based upon a **foreign** penal law that has been reduced to a civil judgment than it would to apply the penal law of a **foreign** country.[10]

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[FN1] *Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed. 95, 2007 A.M.C. 2028 (1895).

[FN2] [Hilton v. Guyot](#), 159 U.S. 113, 163-164, 16 S. Ct. 139, 143-144, 40 L. Ed. 95, 2007 A.M.C. 2028 (1895).

[FN3] [Somportex Limited v. Philadelphia Chewing Gum Corp.](#), 453 F.2d 435, 440, 13 A.L.R. Fed. 194 (3d Cir. 1971).

[FN4] [Hilton v. Guyot](#), 159 U.S. 113, 202-203, 16 S. Ct. 139, 158-159, 40 L. Ed. 95, 2007 A.M.C. 2028 (1895).

[FN5] [Hilton v. Guyot](#), 159 U.S. 113, 206-207, 16 S. Ct. 139, 160, 40 L. Ed. 95, 2007 A.M.C. 2028 (1895).

[FN6] [Hilton v. Guyot](#), 159 U.S. 113, 227, 16 S. Ct. 139, 168, 40 L. Ed. 95, 2007 A.M.C. 2028 (1895).

[FN7] [Somportex Limited v. Philadelphia Chewing Gum Corp.](#), 453 F.2d 435, 440 n.8, 13 A.L.R. Fed. 194 (3d Cir. 1971) (rejecting reciprocity requirement); [Johnston v. Compagnie Generale Transatlantique](#), 242 N.Y. 381, 152 N.E. 121, 46 A.L.R. 435 (1926) (holding that New York courts are not bound by Supreme Court decision as to effect given to judgment of **foreign** court); [Nicol v. Tanner](#), 310 Minn. 68, 256 N.W.2d 796, 801 (1976) (declining to follow Hilton holding and ruling that reciprocity was not prerequisite to **enforcement of foreign judgment** in Minnesota); [Toronto-Dominion Bank v. Hall](#), 367 F. Supp. 1009, 1012-1214 (E.D. Ark. 1973) (Arkansas law does not require reciprocity). But see [Bata v. Bata](#), 39 Del. Ch. 258, 163 A.2d 493, 505 (1960) (holding that reciprocity rule was based upon desire to protect U.S. nationals and was limited to cases in which it was invoked by U.S. citizen). See also Nadelmann, [Reprisals Against American Judgments?](#), 65 Harv. L. Rev. 1184 (1952) (arguing that reciprocity requirement adopted in Hilton was responsible for reciprocity requirements adopted by foreign states); [McCord v. Jet Spray Intern. Corp.](#), 874 F. Supp. 436 (D. Mass. 1994) (reciprocity requirement is no longer an element of the federal law of enforcement of federal judgments).

[FN8] [Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.](#), 825 F.2d 709, 1987 A.M.C. 2945 (2d Cir. 1987). See also [Ackermann v. Levine](#), 788 F.2d 830 (2d Cir.1986); [Cunard S.S. Co. Ltd. v. Salen Reefer Services AB](#), 773 F.2d 452, Bankr. L. Rep. (CCH) P 70762, 1986 A.M.C. 163, 2 Fed. R. Serv. 3d 1288 (2d Cir. 1985). But see [In re Treco](#), 240 F.3d 148, 157, 37 Bankr. Ct. Dec. (CRR) 125 (2d Cir. 2001) (“[t]he principle of comity has never meant a categorical deference to foreign proceedings”); [In re Rosacometta, S.r.l.](#), 336 B.R. 557, 564, 45 Bankr. Ct. Dec. (CRR) 242 (Bankr. S.D. Fla. 2005), subsequently aff'd, 244 Fed. Appx. 286 (11th Cir. 2007) (Comity does not, however, override the other statutory factors.).

[FN9] See [Her Majesty Queen in Right of Province of British Columbia v. Gilbertson](#), 597 F.2d 1161 (9th Cir. 1979), citing [Planche v. Fletcher](#), 99 Eng. Rep. 164, 165 (1779) (“One nation does not take notice of the revenue laws of another.” (Lord Mansfield, J.)) and [Banco Nacional de Cuba v. Sabbatino](#), 376 U.S. 398, 448, 84 S. Ct. 923, 951, 11 L. Ed. 2d 804 (1964) (“[O]ur courts customarily refuse to **enforce** the revenue

and penal laws of a **foreign** state, since no country has an obligation to further the governmental interests of a **foreign** sovereign.”) (White, J., dissenting). See also [Chase Manhattan Bank, N.A. v. Hoffman](#), 665 F. Supp. 73, 75 (D. Mass. 1987) (denying defendant's motion to dismiss plaintiff's action to **enforce foreign judgment** where judgment was remedial in nature, and not fine or penalty, noting established principle that state will not **enforce foreign penal judgment**).

[FN10] See, e.g., [Republic of Philippines v. Westinghouse Elec. Corp.](#), 821 F. Supp. 292 (D.N.J. 1993) (“[w]e recognize that the reduction of the penalty to a civil judgment is a significant change in its status ... Thus, a New Jersey court might enforce a penal judgment from a foreign country even if the court would decline to assess the penalty at trial.”), citing [City of Philadelphia v. Austin](#), 86 N.J. 55, 429 A.2d 568 (1981).

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