

# The Enforcement of Foreign Judgments in France Under the *Nouveau Code de Procédure Civile*

## I. INTRODUCTION

In certain cases French courts will enforce civil judgments rendered by foreign courts.<sup>1</sup> To be enforced, a foreign judgment is first examined in a sum-

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1. The scope of this Comment is limited to the enforcement of foreign, civil judgments. Generally, the discussion is directed toward the enforcement of money-judgments. However, the principal sources of French law relied upon indicate that the general principles applying to foreign judgments are not limited to questions of enforcement, or to judgments awarding monetary damages. Bernard, *L'Exequatur des Jugements Étrangers*, [1977] GAZETTE DU PALAIS [GAZ. PAL.] II 426-31 (Sept. 15, 1977) [hereinafter cited as Bernard]; Y. LOUSSOUARN & P. BOUREL, DROIT INTERNATIONAL PRIVÉ 612-39 (1978) [hereinafter cited as LOUSSOUARN]; P. MAYER, DROIT INTERNATIONAL PRIVÉ 257-330 (1977) [hereinafter cited as MAYER]. Thus, these principles are also applicable to the recognition of foreign judgments and to foreign status, particularly divorce, judgments and equity decrees.

The enforcement and the recognition of foreign judgments are often discussed together. *E.g.*, COUNCIL OF EUROPE, THE PRACTICAL GUIDE TO THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDICIAL DECISIONS IN CIVIL AND COMMERCIAL LAW (1975) [hereinafter cited as PRACTICAL GUIDE]. In French law, a foreign judgment automatically has a probative value (*force probante*). *See, e.g.*, LOUSSOUARN, *supra*, at 632-33. *See also* notes 138-43 and accompanying text, *infra*. When a foreign judgment is declared enforceable, then it prospectively has *res judicata* (*chose jugée*) effect. *See, e.g.*, LOUSSOUARN, *supra*, at 630-31. Thus, recognition of foreign judgments is generally a matter of two degrees, the lesser degree being awarded independently of an enforcement proceeding and the higher degree resulting from an enforcement proceeding. *See id.* at 630-36; MAYER, *supra*, at 257-59, 273-74, 289-311. However, foreign judgments in matters of status and certain declaratory judgments which meet the requirements for enforcement are recognized *de plein droit*, or *de plano*, meaning that they are authoritative for all practical purposes without an enforcement proceeding but they may be revised, confirmed or declared void. *See* Judgment of Feb. 28, 1860, Cass. civ., [1860] Dalloz Périodique [D.P.] I 57, [1860] Sirey, *Jurisprudence* [S. Jur.] I 210; Judgment of May 9, 1900, Cass. civ., [1905] D.P. I 101 note L.S., [1901] S. Jur. I 185 note E.A., 27 J. DR. INT'L 613 (1900). Compare P. HERZOG, CIVIL PROCEDURE IN FRANCE 596-99 (1967) [hereinafter cited as HERZOG] with MAYER, *supra*, at 289-96, and LOUSSOUARN, *supra*, at 630-36. This approach is justified because such judgments may often be revised by the court which issued them, *see* MAYER, *supra*, at 273-74, 290-91, and they ordinarily do not require execution. *Id.* at 289-92. This rule enables French citizens who have received a foreign divorce to remarry without having followed the enforcement procedure. *Id.* at 294-95.

However, foreign judgments which are recognized *de plein droit* may be considered in enforcement proceedings under certain circumstances. *See* notes 148-53 and accompanying text, *infra*. In that case, an interested person may seek to have any legal effect in France denied to the foreign judgment by an *action en inopposabilité*. *See, e.g.*, Judgment of Jan. 22, 1951, Cass. civ., [1951] *Juris-Classeur Périodique* [J.C.P.] II 6151 note Sarraute et Tager, 40 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ [R.C.D.I.P.] 167 note Francescakis (1951). Or an interested person may seek to have the judgment declared enforceable and given conclusive *res judicata* effect in France by an *action en opposabilité*. *See, e.g.*, Judgment of Mar. 10, 1967, Cour d'appel, Paris, 94 J.

mary, *exequatur* proceeding.<sup>2</sup> *Exequatur* refers to both the procedure and the writ of execution, which are used when a foreign judgment is enforced.<sup>3</sup> Unless a treaty provides otherwise,<sup>4</sup> *exequatur* is granted if a foreign judgment meets several, specific conditions.<sup>5</sup> Taken together, these conditions determine whether *exequatur* should be granted, but *exequatur* generally is denied when the foreign judgment is perceived as offensive to French law.<sup>6</sup>

One source of law affecting the conditions of *exequatur* is the *Nouveau Code de Procédure Civile (Nouveau Code)*.<sup>7</sup> The *Nouveau Code* does not change the basic approach to *exequatur* cases taken by the French courts.<sup>8</sup> However, the *Nouveau*

DR. INT'L 643 (1967), 57 R.C.D.I.P. 317 note Loussouarn (1968). Compare MAYER, *supra*, at 295-96, with HERZOG, *supra*, at 597-99.

For a discussion of the standing requirement necessary for a person to bring an enforcement action see § IV.B.4 *infra*. For an example of the non-enforceability, on public policy grounds, of a foreign equity decree issued in connection with a foreign divorce see note 316 and accompanying text, *infra*. For a discussion of the enforcement of foreign divorce decrees in France, generally, see § V.C.2 *infra*.

2. *E.g.*, LOUSSOUARN, *supra* note 1, at 615.

3. *Id.* at 614-15. M. KATZ & K. BREWSTER, INTERNATIONAL TRANSACTIONS AND RELATIONS 442-43 (1960) [hereinafter cited as KATZ & BREWSTER]; H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 797 (1976) [hereinafter cited as STEINER & VAGTS]. See F. MOREAU, EFFETS EN FRANCE DES JUGEMENTS EN MATIÈRE CIVILES RENDUS PAR LES TRIBUNAUX ÉTRANGERS 38 (1883) [hereinafter cited as MOREAU].

4. Bernard, *supra* note 1, at 426-28. See § VII *infra*.

5. Bernard, *supra* note 1, at 427-28. Five conditions were enumerated by the *Cour de cassation* in the *Munzer* decision. Judgment of Jan. 7, 1964, Cass. civ. I re, [1964] Bulletin des arrêts de la Cour de cassation [Bull. Civ.] I 11, 91 J. DR. INT'L 302 note Goldman (1964). Bernard indicates that an equally important requirement is that the judgment be presently executory. Bernard, *supra* note 1, at 428. This requirement has been given more significance by the Judgment of Jan. 19, 1976, Cour d'appel, Paris, [1976] GAZ. PAL. I 371 (May 28-29, 1976), 66 R.C.D.I.P. 126 note P. Lagarde (1977). See § V.F *infra*. The first five conditions are derived from separate judicial decisions, leading to and including the Judgment of Jan. 7, 1964. *E.g.*, MAYER, *supra* note 1, at 261. Other writers have used different enumerations or versions of these conditions but without changing their substantive effect. *E.g.*, LOUSSOUARN, *supra* note 1, at 621. See note 155 *infra*. This Comment is structured to more closely parallel the principles stated by Bernard. Accordingly, the requirement that the judgment be presently executory is treated as a sixth condition of *exequatur*. See notes 154-59 and accompanying text, *infra*.

6. In fact, a foreign judgment should be granted *exequatur* unless some characteristic of the foreign judgment seems to require that *exequatur* be denied. See, *e.g.*, MAYER, *supra* note 1, at 257-60, 309-11. See also notes 108, 325 and text accompanying notes 283-91, *infra*. A denial of *exequatur* is then attributed to one or more of the conditions. See, *e.g.*, MAYER, *supra* note 1, at 257-64, 309-11. Some conditions are cited more often than others in *exequatur* cases and some conditions pose greater practical problems to transnational litigants than others. See generally § V *infra*. The conditions themselves are merely succinct statements of rules which are applied to bar the enforcement of foreign judgments. Note that the conditions have been given slightly different formulations by different commentators. See note 5 *supra*.

7. NOUVEAU CODE DE PROCÉDURE CIVILE [N. C. PR. CIV.], effective Jan. 1, 1976, decree No. 75-1123 of Dec. 5, 1975, [1975] Journal Officiel de la République Française [J.O.] 12521 (Dec. 9, 1975).

8. *E.g.*, LOUSSOUARN, *supra* note 1, at 615. Compare CODE DE PROCÉDURE CIVILE [C. PR. CIV.] art. 546 with N.C. PR. CIV. art. 509. The CODE DE PROCÉDURE CIVILE was superseded in 1976 by the NOUVEAU CODE DE PROCÉDURE CIVILE. See note 7 *supra*.

*Code* does provide new standards for determining the jurisdiction of courts and the regularity of trial procedures.<sup>9</sup> Questions of jurisdiction and procedure are important considerations in determining whether a foreign judgment will be granted *exequatur*.<sup>10</sup> Consequently, the enactment of the *Nouveau Code* is a significant event in the development of French law with respect to the enforcement of foreign judgments.<sup>11</sup>

Because specific, objective conditions govern *exequatur* cases, French law now reputedly follows a broad, foreign judgment enforcement policy.<sup>12</sup> Additionally, France is a party to many international agreements which mandate the reciprocal enforcement of civil judgments.<sup>13</sup> If no agreement applies, French courts will enforce foreign judgments without regard to reciprocity.<sup>14</sup> Even foreign default judgments can be enforced in France in some cases.<sup>15</sup> However, many foreign judgments are considered suspect by French courts and denied enforcement. Foreign judgments tainted by forum shopping are suspect,<sup>16</sup> as are foreign judgments rendered in cases within the jurisdiction of French courts.<sup>17</sup> Because the principles of civil jurisdiction in French law are expansive,<sup>18</sup> this creates a large exception to the general enforcement policy.

9. The *Nouveau Code* is a primary source of French law with respect to the competence of courts and the regularity of procedures. Compare R. DAVID, FRENCH LAW 153-57 (1972) [hereinafter cited as DAVID] with A. VON MEHREN & J. GORDLEY, THE CIVIL LAW SYSTEM 51-53 (1977) [hereinafter cited as VON MEHREN & GORDLEY].

10. The French law of procedure is a reference for determining the regularity of foreign procedures in *exequatur* cases. E.g., LOUSSOUARN, *supra* note 1, at 628. See § V.B *infra*. Similarly, the rules of jurisdiction in internal matters are used to determine the jurisdiction of courts in international matters. E.g., Gaudemet-Tallon, *La Compétence Internationale à l'Épreuve du Nouveau Code de Procédure Civile: Aménagement ou Bouleversement?* 66 R.C.D.I.P. 1,3 (1977) [hereinafter cited as Gaudemet-Tallon]. See § V.A *infra*.

11. The *Nouveau Code* is important with respect to the conditions of *exequatur* which are concerned with jurisdiction and procedure. See note 10 *supra*. However, the *Nouveau Code* does not drastically alter the rules of procedure or competence which were previously in force. See, e.g., LOUSSOUARN, *supra* note 1, at 615. Consequently, the effect of the *Nouveau Code* on *exequatur* cases should not be exaggerated. The failure of the *Nouveau Code* to specifically prescribe rules of international competence, indicates that it has not directly affected the traditional approach to international competence taken by the French courts. See, e.g., Gaudemet-Tallon, *supra* note 10, at 3-5, 44-45. However, since the *Nouveau Code* is now the most authoritative text for the French procedural law relevant to *exequatur* cases, see note 9 *supra*, its provisions frequently will be cited. See note 123 *infra*.

12. See Comment, *The Reciprocity Rule and Enforcement of Foreign Judgments*, 16 COLUM. J. TRANSNAT'L L. 327, 345-46 (1977) [hereinafter cited as *Reciprocity Rule*]. Compare Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 NOTRE DAME LAW. 734 (1978) [hereinafter cited as Zaphiriou], with, e.g.; MAYER, *supra* note 1, at 256-64.

13. See § VII *infra*.

14. MAYER, *supra* note 1, at 261 n.4. See, e.g., PRACTICAL GUIDE, *supra* note 1, at 56-57. See notes 93-94, 377-78 and accompanying text, *infra*.

15. See § V.B.2 *infra*.

16. See notes 307-11 and accompanying text, *infra*.

17. See notes 184-89 and accompanying text, *infra*.

18. See, e.g., deVries & Lowenfeld, *Jurisdiction in Personal Actions-A Comparison of Civil Law Views*, 44 IOWA L. REV. 306, 316-17 (1959) [hereinafter cited as deVries & Lowenfeld]. Article 14

Foreign judgments also are accepted by French courts as valid evidence of an obligation.<sup>19</sup> Consequently, garnishment of a judgment debtor's assets in France is an appropriate provisional remedy, pending a final determination of the enforceability of a foreign judgment. Also, a foreign judgment can be used as evidence in a separate action in the French courts, whenever that procedure is preferable to seeking enforcement of the judgment itself.<sup>20</sup>

Historically, however, French law has been hostile to the enforcement of foreign judgments.<sup>21</sup> Current French practice still reflects a degree of, apparently nationalistic, disdain towards foreign judgments.<sup>22</sup> Recent international events seem to have made the French courts more willing to enforce foreign judgments. The attitude of other national legal systems and the development of interdependent, transnational organizations have encouraged a reexamination of French doctrine.<sup>23</sup> For example, one source of difficulty in the enforcement of foreign judgments has been that there are different concepts of civil jurisdiction in different nations.<sup>24</sup> International organizations such as the European Economic Community partially have resolved these jurisdictional problems.<sup>25</sup>

This Comment will discuss the current French law of *exequatur* after examining the international and historical influences affecting the enforcement of foreign judgments. First, the doctrine of comity and the conflict of laws principles which are important in this area will be discussed. Second, the history of French practice with respect to the enforcement of foreign judgments will be examined. Third, the preliminary considerations involved in enforcing a foreign judgment in France will be explained. Fourth, the author will discuss the six conditions of *exequatur* according to the general principles (*droit commun*) of French law. Fifth, the procedures followed in seeking *exequatur* will be outlined. Sixth, the effect of international agreements on *exequatur* proceedings will be discussed. Seventh, the author will conclude with a summary of French

of the *Code Civil* has such a broad reach that it may subject persons with no connection to France to the jurisdiction of French courts. *Id.* See notes 199-204 and accompanying text, *infra*.

19. *E.g.*, LOUSSOUARN, *supra* note 1, at 632-33.

20. *E.g.*, HERZOG, *supra* note 1, at 588. See notes 142-43 and accompanying text, *infra*.

21. *E.g.*, Nadelmann, *French Courts Recognize Foreign Money-Judgments: One Down and More to Go*, 13 AM. J. COMP. L. 72, 73 (1964) [hereinafter cited as Nadelmann, *French Courts*]. See notes 79-84 and accompanying text, *infra*.

22. *See, e.g.*, MAYER, *supra* note 1, at 260. The attitude of French jurisprudence towards foreign judgments is said to be one of mistrust (*méfiance*). *Id.*

23. *See id.* at 261. Compare STEINER & VAGTS, *supra* note 3, at 797-801, with Zaphiriou, *supra* note 12, at 738.

24. *E.g.*, Mann, *The Doctrine of Jurisdiction in International Law*, 111 RECUEIL DES COURS 9, 74-79 (1964) [hereinafter cited as Mann].

25. *See* Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered into force Jan. 1, 1958). The treaty provides that the member states will negotiate agreements for the simplification of the enforcement of foreign judgments. *Id.* art. 220. *See* note 56 *infra*.

practice and some observations on the doctrine of comity which has evolved in France.

## II. THE EFFECT OF PRINCIPLES OF COMITY AND CONFLICT OF LAWS ON THE ENFORCEMENT OF FOREIGN JUDGMENTS

### A. *Comity and the Enforcement of Foreign Judgments*

The doctrines of sovereignty and reciprocity have been influential in the area of foreign judgment enforcement. On the one hand, the principle of sovereignty seems to require that a foreign court cannot issue an order which would be effective within the territory of another sovereign.<sup>26</sup> On the other hand, a national legal system must be willing to enforce another system's judgments if it expects to have the same privilege reciprocally accorded to the judgments of its own courts.<sup>27</sup> Consequently, the principle that a nation *ought* to extend certain *non-obligatory courtesies* to other nations, known as comity, has been applied in the area of foreign judgments.<sup>28</sup>

The highest degree of comity which one nation could allow would be to enforce all foreign judgments in its territory, as the judgments would have been enforced in the nation where they were rendered.<sup>29</sup> Such a policy would be unrealistic if followed absolutely, because the enforcing system could not abandon its sovereign responsibility for determining legal consequences

26. See, e.g., Yntema, *The Comity Doctrine*, 65 MICH. L. REV. 1, 20-26 (1966) [hereinafter cited as Yntema]; MOREAU, *supra* note 3, at 21; F. MAJOROS, *LE DROIT INTERNATIONAL PRIVÉ* 92 (1975).

27. See MAYER, *supra* note 1, at 261; KATZ & BREWSTER, *supra* note 3, at 462-66. See generally, e.g., *Reciprocity Rule*, *supra* note 12. This was the rationale applied by the U.S. Supreme Court in the principal U.S. decision with respect to the enforcement of foreign judgments. *Hilton v. Guyot*, 159 U.S. 113 (1895). Although the Court held, in a 5-4 decision, that the reciprocal enforcement of U.S. judgments in the country where a foreign judgment was rendered was a necessary condition to the enforcement of the judgments of that country's courts in the United States, the reciprocity rule is no longer generally binding on U.S. courts as a result of the Erie doctrine. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). See *Svenska Handelsbanken v. Carlson*, 258 F. Supp. 448, 450 (D.Ma. 1966). See also, e.g., Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L. J. 291, 296-306 (1963) [hereinafter cited as Peterson]; *Reciprocity Rule*, *supra* note 12, at 344.

28. The term comity is useful as a shorthand expression for summarizing the considerations which control the enforcement of foreign judgments. This is the meaning intended for the term in this Comment. Recently, the term has been used in this sense. See, e.g., AMERICAN LAW INSTITUTE, *RESTATEMENT OF THE LAW, SECOND: JUDGMENTS* (Tentative Draft No. 5) 11 (1978) [hereinafter cited as *TENTATIVE DRAFT*]; Zaphiriou, *supra* note 12, at 737-38. There is an abundant literature on "comity" which attests to the imprecise nature of the term. See, e.g., Yntema, *supra* note 26; *Reciprocity Rule*, *supra* note 12, at 329-31; A. EHRENZWEIG, *CONFLICT OF LAWS* 161 (1962) [hereinafter cited as EHRENZWEIG].

29. See note 28 *supra*. Such a policy would constitute an exception to the "strict right of territorial sovereignty" which could be made for one nation by another on the grounds of "utility by custom or treaty." Yntema, *supra* note 26, at 24. An absolute enforcement policy is not required by the concept of comity. See *id.* Cf. EHRENZWEIG, *supra* note 28, at 161 (the growth of nationalism turned an attitude of international courtesy into "mere comity," leaving each state free to scrutinize the findings of foreign courts).

within its territory. While some foreign judgments might be enforced without controversy, others would warrant scrutiny. To the extent that a legal system will enforce foreign judgments on a non-discriminatory basis, however, it is honoring the principle of comity.<sup>30</sup>

Thus, comity doctrine attempts to identify abstract principles which can be used to determine the enforceability of foreign judgments.<sup>31</sup> Through an objective application of these principles, the enforcing legal system can separate enforceable from non-enforceable foreign judgments in a non-discriminatory way. The conditions of *exequatur* in French law are an expression of comity doctrine. As objective principles have developed, the doctrine of reciprocity has become less useful in the area of foreign judgment enforcement.<sup>32</sup> Instead of reciprocity between nations which are willing to enforce the judgments of each other's courts, there is now a body of generally accepted comity principles shared by several nations.<sup>33</sup> The development of this consensus among nations, with respect to the mutual enforcement of judgments, has been accomplished through treaty law,<sup>34</sup> legislation,<sup>35</sup> draft proposals<sup>36</sup> and jurisprudence.<sup>37</sup> While a discussion of this consensus is beyond the scope of this Comment, it is apparent that French law is a significant part of it. In France, comity doctrine has evolved primarily from treaties and jurisprudence.<sup>38</sup>

30. Compare, e.g., TENTATIVE DRAFT, *supra* note 28, at 11, with Zaphiriou, *supra* note 12, at 737-38, 767.

31. See note 30 *supra*.

32. See *Reciprocity Rule*, *supra* note 12.

33. *Id.* See note 30 *supra*. The conditions governing the enforcement of foreign judgments in several other countries are similar but not identical to those in France. See, e.g., AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW, SECOND: CONFLICT OF LAWS 298-303 (1971); Bertram-Nothnagel, *Enforcement of Foreign Judgments and Arbitral Awards in West Germany*, 17 VA. J. INT'L L. 385 (1977); Clare, *Enforcement of Foreign Judgments in Spain*, 9 INT'L LAW. 509 (1975) [hereinafter cited as Clare]. See generally Zaphiriou, *supra* note 12. See also § V *infra*.

34. See § VII *infra*.

35. E.g., Foreign Judgments (Reciprocal Enforcement) Act, 1933, 23 Geo. 5, c.13; Uniform Foreign Money-Judgments Recognition Act, 13 U.L. ANN. 269 (1977 Supp.) (enacted in Alaska, California, Colorado, Illinois, Maryland, Massachusetts, Michigan, New York, Oklahoma, Oregon and Washington) [hereinafter cited as Uniform Recognition Act].

36. E.g., The Hague Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Apr. 26, 1966, reprinted in 5 INT'L LEGAL MATERIALS 636 (1966); Draft Convention on the Reciprocal Recognition of Judgments in Civil Matters, initialed Oct. 26, 1976, United States - United Kingdom, reprinted in 16 INT'L LEGAL MATERIALS 71 (1977) (*Ad Referendum* text); Model Act Respecting the Recognition and Enforcement of Foreign Money Judgments (THE INTERNATIONAL LAW ASSOCIATION, REPORT OF THE FIFTY-FIRST CONFERENCE xvii (1964)).

37. E.g., Judgment of Jan. 7, 1964. Cass. civ. 1re, [1964] Bull. Civ. I 11, 91 J. DR. INT'L 302 (1964), cited in note 5, *supra*; Somportex Ltd. v. Philadelphia Chewung Gum Corp., 453 F.2d 435 (3d Cir. 1971), cert. denied, 405 U.S. 1017 (1972); Judgment of May 8, 1968, 50 Bundesgerichtshof in Zivilsachen [BGHZ] 100 (W. Ger.).

38. There are few provisions in the *Code Civil* or other legislation addressed to the enforcement of foreign judgments. See note 8 *supra*; note 69 *infra*; note 123 *infra*. Consequently, the law has

### B. *Conflict of Laws and the Enforcement of Foreign Judgments*

Conflict of laws, a term which is virtually synonymous with private international law,<sup>39</sup> has three main divisions. These are choice of law, jurisdiction and the enforcement of foreign judgments.<sup>40</sup> To a degree, the enforcement of foreign judgments is merely the application of choice of law rules to foreign judgments.<sup>41</sup> Thus, while application of the correct choice of law principles is one of the conditions of *exequatur* in French law, it is a condition which also incorporates, or summarizes, the other conditions.

Jurisdiction, the second main branch in the conflict of laws, has a more specific effect on the enforcement of foreign judgments. A basic issue in the conflict of laws is determining which jurisdiction has authority to prescribe, adjudicate, or enforce a rule of law in a given situation.<sup>42</sup> In a foreign judgment question, the principal issue is often that of jurisdiction to adjudicate.<sup>43</sup> Where a court has jurisdiction over the parties and the subject matter before it, the judgment which it renders ordinarily will be entitled to comity in other jurisdictions.<sup>44</sup> However, different legal systems have different bases of

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been derived primarily from court decisions. *E.g.*, MAYER, *supra* note 1, at 260-61. However, France has entered into many treaties affecting the enforcement of foreign judgments. *See* notes 86-91 and accompanying text, *infra*. *See generally* § VII *infra*. The terms of these treaties also serve as a source of comity doctrine. *Compare* N. LEECH, C. OLIVER & J. SWEENEY, *THE INTERNATIONAL LEGAL SYSTEM* 1184-85 (1973) [hereinafter cited as LEECH, OLIVER & SWEENEY] *with* Mann, *supra* note 24, at 73-76, and Yntema, *supra* note 26. The treaties effect the enforcement of the judgments of the treaty partner's courts directly and they also serve to establish rules generally applicable in the foreign judgments field. *Id.* *See, e.g.*, Convention on the Reciprocal Enforcement of Civil Judgments, Jan. 18, 1934, France - United Kingdom, [1936] J.O. 6812 (Jun. 30, 1936), 171 L.N.T.S. 183 [hereinafter cited as Convention with Britain].

39. Private international law (*droit international privé*) is the French term for the subject matter generally referred to as conflict of laws in the United States. *See, e.g.*, LOUSSOUARN, *supra* note 1, at 10; STEINER & VAGTS, *supra* note 3, at 91; H. GOODRICH & E. SCOLES, *CONFLICT OF LAWS* 5-6 (1964). There is a difference conceptually, and in terminology, between the points of view taken by the law of different countries with respect to the conflict of laws. *Id.* Consequently, the structure of French conflicts law does not parallel that of U.S. conflicts law, although both take generally similar approaches to the same problems. *See, e.g.*, LOUSSOUARN, *supra* note 1, at 5-8; EHRENZWEIG, *supra* note 28, at 1.

40. *E.g.*, STEINER & VAGTS, *supra* note 3, at 91; EHRENZWEIG, *supra* note 28, at 1-3. In French law, the components of private international law have a different terminology. Conflict of laws (*conflit de lois*) refers to choice of law. Conflicts of jurisdiction (*conflits de juridiction*) refers to both jurisdiction and the enforcement of foreign judgments. Nationality and the treatment of aliens (*la condition des étrangers*) are also included in the subject matter. *See* LOUSSOUARN, *supra* note 1, at 5-21. The terminology and organization of the subject matter used by Mayer is slightly different. *Compare* LOUSSOUARN, *id.*, *with* MAYER, *supra* note 1, at 1-36.

41. *See, e.g.*, MAYER, *supra* note 1, at 277-82.

42. *E.g.*, EHRENZWEIG, *supra* note 28, at 6-9. *See* Mann, *supra* note 24, at 17-22, 73-76, 127-29.

43. *See, e.g.*, EHRENZWEIG, *supra* note 28, at 160; Mann, *supra* note 24, at 73-76. *See also* § V.A.1 *infra*.

44. *See* notes 26-30 and accompanying text, *supra*. Such judgments may not always be enforceable, as comity is used here to mean only that one sovereign will pay others the courtesy of testing foreign judgments against objective principles. *Id.* *See also* TENTATIVE DRAFT, *supra* note 28, at 18, 48.

jurisdiction as a reference.<sup>45</sup> Consequently, enforcing courts may view the jurisdictional propriety of judgment-rendering courts as suspect, even if the rendering court clearly had jurisdiction under its own law. This principle of comity is referred to as the requirement that the judgment-rendering court be competent.<sup>46</sup> Competence, or jurisdiction to adjudicate, is the first condition of *exequatur* in French law<sup>47</sup> and it is the condition which will receive the most discussion in this Comment.

### C. Comparative Bases of Jurisdiction

Civil jurisdiction in France is based primarily on the nationality of the parties.<sup>48</sup> In other nations different factors are more important. In addition to nationality, the basic concepts of civil jurisdiction are consent, domicile, presence, residence and significant contacts.<sup>49</sup> French law honors the principle of residence, as well as nationality, in determining the competence of courts.<sup>50</sup> In contrast, Anglo-American law prefers the principle of presence,<sup>51</sup> while German law takes account of domicile, residence and the presence of personal property.<sup>52</sup> Thus, an American judgment based on the mere presence of the parties in the forum, or a German judgment based on the presence of the defendant's property in Germany, is not likely to be enforced in France.<sup>53</sup> On the other hand, the principles of consent and significant contacts are recognized in several systems.<sup>54</sup> Thus, non-French judgments based on jurisdiction by consent or due to significant contacts with the forum may be enforceable in France unless such judgments contravene a more important jurisdictional principle in French law.

As the problem of conflicting bases of civil jurisdiction and the problem of

45. *E.g.*, Mann, *supra* note 24, at 73-81; STEINER & VAGTS, *supra* note 3, at 729-55. *See* notes 48-54 and accompanying text, *infra*.

46. *E.g.*, HERZOG, *supra* note 1, at 170-74, 589-90. *See* Smit, *The Terms Jurisdiction and Competence in Comparative Law*, 10 AM. J. COMP. L. 164 (1961).

47. *E.g.*, MAYER, *supra* note 1, at 263-73.

48. *Id.* *See* deVries & Lowenfeld, *supra* note 18, at 317; STEINER & VAGTS, *supra* note 3, at 751-53.

49. *E.g.*, STEINER & VAGTS, *supra* note 3, at 731-54; Mann, *supra* note 24, at 73-81.

50. *See* notes 215-16 and accompanying text, *infra*.

51. *E.g.*, STEINER & VAGTS, *supra* note 3, at 731-51; Mann, *supra* note 24, at 76-79.

52. *E.g.*, deVries & Lowenfeld, *supra* note 18, at 330-32; STEINER & VAGTS, *supra* note 3, at 753-54.

53. *See* MAYER, *supra* note 1, at 264-70. Because such jurisdictional bases are unknown under French law, they ordinarily would not be sufficient for a French court to consider a foreign court competent. *Id.* *But cf.* Judgment of Feb. 4, 1958, Cour d'appel, Paris, [1958] J. C.P. II 10612 note Francescakis, 47 R.C.D.I.P. 389 note H.B.(1958), 85 J. DR. INT'L 1016 note Ponsard (1958) (*exequatur* granted to a Cuban divorce decree where jurisdiction was based on the wife's residence in Cuba, although French law considered that only Austrian courts (the marital domicile) were fit to take jurisdiction). *See generally* § V.A *infra*.

54. Compare STEINER & VAGTS, *supra* note 3, at 731, with Mann, *supra* note 24, at 73-81, and deVries & Lowenfeld, *supra* note 18.



foreign judgments are so closely related, they are often addressed together.<sup>55</sup> An important case in point is the European Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention).<sup>56</sup> Under the Brussels Convention, France and its European Community partners have agreed to resolve their jurisdictional conflicts and to enforce foreign judgments accordingly. Where such international agreements are inapplicable, conflicting jurisdictional bases will lead to difficulties in *exequatur* proceedings.<sup>57</sup> The final determination of the competence of foreign, judgment-rendering courts will depend on the general principles (*droit commun*) of French law governing jurisdiction, choice of law and comity.<sup>58</sup>

### III. THE DEVELOPMENT OF MODERN COMITY DOCTRINE IN FRANCE

#### A. Introduction

The mechanism of *exequatur* allows the enforcement of the foreign judgment itself.<sup>59</sup> This procedure is interesting as an expression of comity, as some legal systems which purportedly enforce foreign judgments liberally, *i.e.*, the English and American systems, do so through an action on the judgment.<sup>60</sup> In the latter case, it is the judgment resulting from the action on the foreign judgment which is enforced, not the foreign judgment itself. *Exequatur* was used in French law prior to the *Code Civil* and it has been adopted in other civil law countries.<sup>61</sup> Despite the appearance of a high degree of comity in the French

55. *E.g.*, EHRENZWEIG, *supra* note 28, at 35. *See* Mann, *supra* note 24, at 73-76.

56. Sept. 27, 1968, [1973] J.O. 676 (Jan. 17, 1973), 15 *Official Journal of the European Communities* (No. L. 299) 32 (1972) (entered into force Feb. 1, 1973) [hereinafter cited as Brussels Convention]. *See* § VII.B *infra*.

57. *Compare* MAYER, *supra* note 1, at 326, with, *e.g.*, PRACTICAL GUIDE, *supra* note 1, at 56-57.

58. *Id.* *See* notes 26-31 and accompanying text, *supra*.

59. *E.g.*, KATZ & BREWSTER, *supra* note 3, at 442-43.

60. *See, e.g.*, Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129 (1935); von Mehren, *Enforcement of Foreign Judgments in the United States*, 17 VA. J. INT'L L. 401, 402 (1977). However, the enforcement of foreign judgments under Anglo-American law is becoming more similar to the *exequatur* system by adopting judgment registration procedures and the like. *See* Zaphiriou, *supra* note 12, at 747-51; Uniform Recognition Act, 13 U.L. ANN. 269 (1977 Supp.). For a French view comparing the "anglo-saxon" action on the judgment to *exequatur* see MAYER, *supra* note 1, at 298-99. Since the power of execution and the authority of *res judicata* result from the French judgment awarding *exequatur*, rather than the foreign judgment upon which *exequatur* is granted, *exequatur* is generally similar, in substance, to an action on the judgment. *Id.*

61. *See* MOREAU, *supra* note 3, at 35; KATZ & BREWSTER, *supra* note 3, at 442-43. *See also, e.g.*, Clare, *supra* note 33. The influence of French law in the formation of other legal systems, both before and after the codifications, is significant. *Compare, e.g.*, J. DAWSON, THE ORACLES OF THE LAW 263 (1968) [hereinafter cited as DAWSON] with, *e.g.*, J. MERRYMAN & D. CLARK, COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS 254-56 (1978) [hereinafter cited as MERRYMAN & CLARK]. The use of *exequatur* in France probably influenced the adoption of this system in other countries. *See id.*

system of *exequatur*, French law has reputedly lacked comity with respect to the judgments of foreign courts.<sup>62</sup> This paradoxical aspect of the French approach to the enforcement of foreign judgments can be better understood through a historical review of the relevant law.

Prior to the *Code Civil*,<sup>63</sup> French law forbade the execution of foreign judgments in French territory.<sup>64</sup> This rule apparently originated in a Royal Ordinance of 1629,<sup>65</sup> during the middle of the age of Richelieu.<sup>66</sup> The Ordinance initially may have accounted for the reputation which French law has achieved for comity in this respect. The rule of non-execution of foreign judgments results in the relitigation of transnational and migratory disputes.<sup>67</sup> Such a rule also seems appropriate for the development of a strong national system of courts. As much of the legal energies of the French Revolution were directed at the overthrow of the Royal Courts,<sup>68</sup> it is not surprising that a provision of the *Code Civil* mentions the execution of foreign judgments.

Article 2123 of the *Code Civil* of 1804 states that a judgment lien arises in favor of the judgment creditor from judgments and "from judicial decisions rendered in foreign countries and declared executory by a French tribunal."<sup>69</sup> This Article implicitly repealed the non-execution rule of the Ordinance by referring to foreign judgments being "declared executory." Thus, the basic principle that a foreign court's judgment could be enforced as if it were the judgment of a French court was established. The language of the *Code* is not helpful with respect to the next, obvious question, *i.e.*, whether foreign judgments were to be declared executory with or without an investigation of the merits in the preceding litigation.

62. *E.g.*, MAYER, *supra* note 1, at 260-61. See *Hilton v. Guyot*, 159 U.S. 113, 215-18 (1895). See also, *e.g.*, Nadelmann, *French Courts*, *supra* note 21; Nadelmann, *Recognition of Foreign Money Judgments in France*, 5 AM. J. COMP. L. 248 (1956) [hereinafter cited as Nadelmann, *Recognition*].

63. The term *Code Civil* is used consistently in this Comment for the *Code Napoléon* and its subsequent modifications. In fact, the provisions of the *Code Civil* relevant to the enforcement of foreign judgments have not been modified. Compare, *e.g.*, LOUSSOUARN, *supra* note 1, at 612-16, with, *e.g.*, MOREAU, *supra* note 3, at 38-39.

64. *E.g.*, MOREAU, *supra* note 3, at 1-37. This rule was strictly applied to foreign judgments rendered against French nationals. *Id.* The extreme formulation of the rule, barring the enforcement of all foreign judgments, *see* note 65 *infra*, was a criticized aberration. MOREAU, *supra* note 3, at 1-37. On the contrary, the practice of the *Ancien Régime* could be considered liberal, since judgments rendered by foreign courts against their own citizens were regularly enforced in France. MAYER, *supra* note 1, at 260. This is a curious piece of information which helps to explain later developments in the law, *see* notes 184-89 and accompanying text, *infra*, although its implications are beyond the scope of this Comment. However, the strict rule that no foreign judgment could be enforced in France was followed by some courts during the pre-revolutionary period. MOREAU, *supra* note 3, at 23-37.

65. Ordinance of Jun. 15, 1629, art. 121, cited in Nadelmann, *Recognition*, *supra* note 63, at 248. See MOREAU, *supra* note 3, at 23.

66. *See, e.g.*, DAWSON, *supra* note 61, at 325.

67. *See, e.g.*, *Hilton v. Guyot*, 159 U.S. 113 (1895), at 229-34 (dissenting opinion); MAYER, *supra* note 1, at 260-62; Peterson, *supra* note 27, at 291-307.

68. *See, e.g.*, DAWSON, *supra* note 61, at 362-76.

69. C. CIV. art. 2123. Author's translation.

In 1819, *Holker v. Parker*<sup>70</sup> settled this question in accordance with the pre-Code disposition preferred by the French courts. In *Holker*, a successful plaintiff sought to have an American money judgment declared executory. The judgment creditor argued that showing the propriety of the jurisdictional basis of the foreign court and the regularity of the procedures followed in the foreign trial would be enough to determine whether the judgment should be executed.<sup>71</sup> The court rejected this contention and insisted on a full review of the merits of the underlying claim. Thus, the requirement of relitigating claims already tried in foreign countries was continued from the *Ancien Régime* to the *Code Civil*. The policy of the Ordinance of 1629 remained in force so that the principle of comity was established only in form, not in fact.

Although the rule of *exequatur* became French law with the *Code Civil*, that rule was subject to the restriction that the merits leading to the foreign judgment had to be reviewed by a French court.<sup>72</sup> This paradoxical rule is referred to as the principle of *révision au fond*.<sup>73</sup> Under this rule, French law adopted a policy of full comity, by enforcing foreign judgments, and of no comity, by leaving every issue settled in a foreign trial open to relitigation. However, the basis for modern comity doctrine was articulated in the judgment creditor's unsuccessful argument in *Holker*.<sup>74</sup> Conclusive effect could be accorded to foreign judgments if clear standards were recognized which would preserve the sovereignty of the enforcing system and prevent injustice in individual cases.<sup>75</sup> Accordingly, the propriety of the foreign court's jurisdictional basis and procedures would be primary considerations. In retrospect, the *révision au fond* period which followed *Holker* may be viewed as a transition from the comity doctrine of the *Ancien Régime* to modern law.

### B. The *Révision au Fond* Period

The doctrine that foreign judgments are reviewable on the merits in France persisted into the 1960's. In the nineteenth century, a number of decisions repudiated the doctrine of *révision au fond* and it seemed to be losing favor.<sup>76</sup> However, this trend did not continue, perhaps due to the difficulty of deter-

70. Judgment of Apr. 19, 1819, Cass. civ., [1819] S. Jur. I. 288.

71. *Id.* The French case is discussed by the U.S. Supreme Court in *Hilton v. Guyot*, 159 U.S. 113, 215-17 (1895). Curiously, if it were not for the decision of the *Cour de cassation* in *Holker v. Parker*, Judgment of Apr. 19, 1819, Cass. Civ., [1819] S. Jur. I. 288, the Supreme Court would have decided *Hilton v. Guyot* differently. See Nadelmann, *Recognition*, *supra* note 62, at 254.

72. *E.g.*, LOUSSOUARN, *supra* note 1, at 619-21. See MOREAU, *supra* note 3, at 73-89.

73. *E.g.*, LOUSSOUARN, *supra* note 1, at 619-21.

74. Compare note 71 *supra* with Judgment of Jan. 7, 1964, Cass. civ. 1re, cited in note 5 *supra*, and Judgment of Oct. 21, 1955, Cour d'appel, Paris (Ch. 1re), [1956] Dalloz-Sirey, *Jurisprudence* [D.S. Jur.] 61, 44 R.C.D.I.P. 769 (1955).

75. Compare *Hilton v. Guyot*, 159 U.S. 113 (1895), and MOREAU, *supra* note 3, at 73-89, with LOUSSOUARN, *supra* note 1, at 619-21.

76. *E.g.*, Judgment of Feb. 18, 1860, Cass. civ., cited in note 1 *supra*. See, *e.g.*, Nadelmann, *French Courts*, *supra* note 1, at 72-74.

mining an appropriate objective test which could be applied to the face of the judgment and still provide an adequate guarantee of justice. Although not applied in every case, the doctrine that the foreign judgment was reviewable on its merits continued to be law.<sup>77</sup> Still, commentators persistently argued that once a foreign judgment had met a jurisdictional test, *inter alia*, it should be enforceable in France without an examination of the issues which already had been litigated before the foreign court.<sup>78</sup>

The requirement of relitigating, before French courts, matters previously tried abroad was criticized in other countries.<sup>79</sup> The adoption of reciprocity rules in judgment-enforcement matters by other countries during this period has been associated with the position of the French courts.<sup>80</sup> The Supreme Court of Spain made the following statement when a judgment rendered by a French court was presented for enforcement in Spain:

French jurisprudence is contrary to the recognition of foreign judgments, since according to it, the Court to which the judgment is presented has the right as a general rule to determine not only the propriety of the decision from the quadruple point of view of procedure, judicial and legislative jurisdiction, and conformity with public order but (it determines) also with regard to substance (all of which) implies a rigid system of review as to form and substance, or stated otherwise, of absolute non-execution.<sup>81</sup>

The Spanish Court applied a reciprocity rule which barred enforcement of the French judgment.<sup>82</sup> This view exaggerates, perhaps, the attitude of the French courts.<sup>83</sup> Although the French courts were reluctant to enforce foreign judgments, foreign judgments were enforced in France when they appeared to comport with French judicial standards.<sup>84</sup>

The imposition of reciprocity requirements in other countries affected French judgments adversely and caused the French courts to exercise the *révision* doctrine with restraint.<sup>85</sup> In this period, France also began to enter international agreements involving the reciprocal enforcement of judgments. The first modern international convention of this nature was concluded by France and Switzerland on June 15, 1869.<sup>86</sup> Other bilateral agreements followed with

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77. *E.g.*, MAYER, *supra* note 1, at 260-61.

78. *Id.* See Judgment of Oct. 21, 1955, Cour d'appel, Paris (Ch. 1re), *cited in* note 74 *supra*.

79. *E.g.*, MAYER, *supra* note 1, at 261.

80. *Id.*

81. Decree of Mar. 24, 1935, [1935] ARANZADI *Reportorio de Jurisprudencia* 268, *cited in* Clare, *supra* note 33, at 512.

82. *See id.*

83. *See* Nadelmann, *Recognition*, *supra* note 62, at 250.

84. *Id.* *See* MOREAU, *supra* note 3, at 84-90.

85. *See, e.g.*, MAYER, *supra* note 1, at 260-61.

86. [1869] J.O. Nov. 2-3, 1869, 139 Parry's T.S. 329 [hereinafter cited as Convention with Switzerland]. *See* note 379 *infra*; notes 423-24 and accompanying text, *infra*.

Belgium in 1899,<sup>87</sup> with Italy in 1930,<sup>88</sup> with the United Kingdom in 1934<sup>89</sup> and with Austria in 1966.<sup>90</sup> Multilateral conventions on various matters, including covenants regarding the reciprocal enforcement of judgments, were also entered into by France.<sup>91</sup>

The agreements articulated formal, objective tests for application to judicial decisions rendered in the other parties' courts.<sup>92</sup> Thus, rules for general application to such matters were derived through treaties negotiated on a country-by-country basis. As a result, the requirement that foreign judgments be reviewed on the merits was limited in practice. France never formally adopted a reciprocity requirement to govern the enforcement of the judgments of the courts of nations with which it had not concluded an agreement.<sup>93</sup> Nations which were unwilling or uninterested in settling this issue by treaty, *e.g.*, the United States,<sup>94</sup> were allowed to have their courts' judgments enforced in France subject to the rule of *révision*.

### C. *The Modern Contrôle Period*

With the growing transnational interdependence of the 1950's and 1960's, the doctrine of *révision* was abandoned. In the period from 1952 to 1964, French jurisprudence was consistently critical of the doctrine of *révision au fond*.<sup>95</sup> In this period, the European Economic Community (EEC) was formed by the Treaty of Rome.<sup>96</sup> The European Coal and Steel Community<sup>97</sup> and the

87. Jul. 8, 1899, J.O. Aug. 1, 1900, 187 Parry's T.S. 378 [hereinafter cited as Convention with Belgium].

88. Jun. 3, 1930, [1933] J.O. 11846 (Nov. 26, 1933), 153 L.N.T.S. 135 [hereinafter cited as Convention with Italy].

89. Convention with Britain, *supra* note 38.

90. Jul. 15, 1966, [1967] J.O. 8068 (Aug. 11, 1967), 604 U.N.T.S. 265 [hereinafter cited as Convention with Austria].

91. *E.g.*, Convention Concerning Navigation on the Rhine (Mannheim), Oct. 17, 1868 (rev. Nov. 20, 1963), 138 Parry's T.S. 167. *See id.* arts. 34-36, 40.

92. *E.g.*, Convention with Britain, *supra* note 38, arts. 3-5.

93. *See, e.g.*, Nadelmann, *Recognition*, *supra* note 62, at 251.

94. The United States apparently found it difficult to enter international agreements in this area due to its federal system. *See* Nadelmann, *Reprisals Against American Judgments*, 65 HARV. L. REV. 1184, 1190-91 (1952). If the United States ratifies the Draft Convention on the Reciprocal Recognition and Enforcement of Judgments with the United Kingdom, note 36 *supra*, the convention will be the first judgments agreement to which the United States is a party. Zaphiriou, *supra* note 12, at 736. *See, e.g.*, Smit, *The Proposed United States-United Kingdom Convention on Recognition and Enforcement of Judgments: A Prototype for the Future?* 17 VA. J. INT'L L. 443 (1977).

95. *See, e.g.*, MAYER, *supra* note 1, at 260-64. *See also* note 78 *supra*.

96. Note 25 *supra*.

97. Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, [1953] J.O. 8778 (Sept. 5, 1953), 261 U.N.T.S. 140, 41 R.C.D.I.P. 526 (1952).

European Atomic Energy Community<sup>98</sup> were also formed. In joining these Communities, France agreed to respect the judgments of its treaty partners.<sup>99</sup> The EEC approach to judgment enforcement problems led to the Brussels Convention.<sup>100</sup> This convention now receives much of the attention devoted to foreign judgment enforcement in France.<sup>101</sup>

Under the influence of these events, the *révision* doctrine lost its vitality. In effect, the doctrine is no longer law.<sup>102</sup> In *Charr v. Hasim Ulasahim*, the *Cour d'appel* of Paris renounced the doctrine and soundly criticized it in comparative law terms.<sup>103</sup> This decision received attention in France and in other countries, leading to speculation that the doctrine was being abandoned.<sup>104</sup> As court decisions are not binding in subsequent cases in French law, it was not immediately clear whether the renunciation of the doctrine was final. However, any doubts about the doctrine's residual vitality were erased in 1964 by the *Cour de cassation* in *Munzer v. Dame Jacoby-Munzer*.<sup>105</sup> In *Munzer* the court enumerated the principles of law which should govern in future, foreign judgment enforcement cases. This decision virtually prevented further application of the doctrine of *révision au fond* by the French courts. To date, the doctrine has not been revived. Thus, the repeal of the *Ancien Régime's* Ordinance was apparently accomplished between 1952 and 1964 through *jurisprudence constante*.<sup>106</sup>

98. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, [1958] J.O. 1234, 1260 (Apr. 25, 1958), 298 U.N.T.S. 167.

99. See Treaty Establishing the European Economic Community, *supra* note 25, art. 220; Treaty Establishing the European Coal and Steel Community, *supra* note 97, art. 92; Treaty Establishing the European Atomic Energy Community, *supra* note 98, art. 164. For a discussion of the general role of these communities in fostering European integration see E. STEIN & P. HAY, LAWS AND INSTITUTIONS IN THE ATLANTIC AREA 331-40 (1967).

100. Note 56 *supra*. See Herzog, *The Common Market Convention on Jurisdiction and the Enforcement of Judgments: An Interim Update*, 17 VA. J. INT'L L. 417, 419-20 (1977).

101. *E.g.*, Bernard, *supra* note 1, at 428-29; LOUSSOUARN, *supra* note 1, at 637-39. See § VII.B *infra*.

102. Compare MAYER, *supra* note 1, at 261-64, with STEINER & VAGTS, *supra* note 3, at 800-01. France does not follow the rule of *stare decisis*. Consequently, judicial decisions are not a source of French law, strictly speaking. *E.g.*, R. DAVID & H. DEVRIES, THE FRENCH LEGAL SYSTEM 113-21 (1958). However, the citation to precedents and the gradual accretion of judicial decisions into settled law is a part of the French law making process. *Id.* This process, known as *jurisprudence constante*, terminated the use of the *révision* doctrine. Compare *id.* and DAWSON, *supra* note 61, at 337, 400-14, with MAYER, *supra* note 1, at 261-64.

103. Judgment of Oct. 21, 1955, *Cour d'appel*, Paris (Ch. 1re), cited in note 78, *supra*.

104. *E.g.*, Nadelmann, *Recognition*, *supra* note 62, at 248-50. See note 102 *supra*. Since this decision was rendered by the Paris Court of Appeals, it had more influence on French law than would have been the case with another subordinate court's decision. See, *e.g.*, DAVID, *supra* note 9, at 186.

105. Judgment of Jan. 7, 1964, Cass. civ. 1re, cited in note 5, *supra*. See MAYER, *supra* note 1, at 261.

106. See note 102 *supra*.

In the place of *révision*, the French courts now apply the doctrine of *contrôle* in foreign judgment enforcement matters.<sup>107</sup> The *contrôle* doctrine requires that certain procedures be rigidly followed when a foreign judgment is presented for *exequatur*.<sup>108</sup> The court then examines the judgment, rather than the claim upon which the judgment was issued, to determine if it conforms with several, specific conditions.<sup>109</sup> The examination is similar to that used by the courts of other countries in foreign judgment enforcement matters.<sup>110</sup> In addition, the procedure is similar to the examination specified in relevant international agreements and uniform acts.<sup>111</sup> French courts now enforce foreign judgments after a procedural investigation in which the judgment is tested against rigorous, but generally accepted, standards. Generally, claims tried before foreign courts do not need to be relitigated to be enforced in France.<sup>112</sup>

In terms of comity, the *contrôle* doctrine is still unsatisfactory in some respects. Because the principles governing the investigation of the foreign judgment are broad, *exequatur* proceedings may be as detailed as if the merits of the dispute were being relitigated.<sup>113</sup> In some respects the merits remain within the reach of the French judge.<sup>114</sup> Some of the governing principles may require the application of French rules to essentially foreign facts.<sup>115</sup> Further, certain aspects of the applicable tests have not been clearly defined.<sup>116</sup> A judgment creditor cannot always be certain of the effect which his judgment will be accorded in France. Despite these difficulties, current French practice receives less criticism.<sup>117</sup> Now, the foreign judgment, itself, is the matter in question and not the litigation which preceded the foreign judgment.

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107. *E.g.*, LOUSSOUARN, *supra* note 1, at 619.

108. MAYER, *supra* note 1, at 309. *Contrôle* requires the French judge to ascertain whether each condition of *exequatur* has been met by the foreign judgment. *Id.* Even where no irregularity in the judgment is apparent, if there is any doubt *exequatur* will be denied. *Id.* In this respect, the French judge in an *exequatur* proceeding is considered the "guardian of French sovereignty." *Id.*

109. *Id.* See Bernard, *supra* note 1, at 426-28; STEINER & VAGTS, *supra* note 3, at 800-04.

110. See note 33 *supra*.

111. See Uniform Recognition Act, 13 U.L. ANN. 269 (1977 Supp.), *supra* note 35; Convention with Britain, *supra* note 38. See also Bernard, *supra* note 1, at 428-31.

112. *E.g.*, LOUSSOUARN, *supra* note 1, at 618-21. See MAYER, *supra* note 1, at 309-11. However, in some cases the merits of the underlying dispute are still open to reconsideration by the French judge. *Id.* at 275. This may be the case where the competence of the foreign court depends on whether the action is characterized as being in tort or in contract, or on some other basis. See text accompanying note 247 *infra*. Similarly, determining whether French choice of law rules should have been applied by the judgment-rendering court, depends on whether the result reached in the foreign trial offends French standards of justice. See text accompanying note 291 *infra*.

113. See, *e.g.*, MAYER, *supra* note 1, at 309.

114. See note 112 *supra*.

115. See § V.C *infra*.

116. See notes 167-70 and accompanying text, *infra*.

117. See, *e.g.*, Nadelmann, *French Courts*, *supra* note 21; STEINER & VAGTS, *supra* note 3, at 797-803.

#### IV. THE ENFORCEMENT OF FOREIGN JUDGMENTS IN FRANCE: PRELIMINARY CONSIDERATIONS

##### A. *The Enforcement of Judgments in France*

French law initially distinguishes between foreign judgments and the judgments of French courts. After a French court renders a civil judgment, the clerk (*greffier*) places an executory formula upon it.<sup>118</sup> The formula commands the *huissiers*<sup>119</sup> in all the judicial districts in France to satisfy the judgment creditor's award from any property the judgment debtor may have in those districts.<sup>120</sup> The "executory formula" is a command in the name of the French people which operates without any territorial limits through all of France.<sup>121</sup> No intermediate steps are required to execute a French judgment in another part of France.<sup>122</sup>

To have a foreign judgment enforced in France, the foreign judgment must be declared executory by a French court.<sup>123</sup> This is accomplished through the *exequatur* procedure which attaches the quality of execution to the foreign judgment.<sup>124</sup> Once granted *exequatur*, the foreign judgment is executory as if it were a French judgment.<sup>125</sup>

118. *E.g.*, HERZOG, *supra* note 1, at 98-99, 559. See N. C. PR. CIV. arts. 454, 465, 726-29.

119. HERZOG, *supra* note 1, at 92-99, 559. A *huissier* is an important court officer whose duties include process service and the execution of judicial orders. A *huissiers's* function corresponds to that of a sheriff or marshall in the United States. *Id.*

120. *Id.* at 49, 287, 559. See generally N. C. PR. CIV. arts. 502, 506, 507, 648-50.

121. HERZOG, *supra* note 1, at 49, 559.

122. *Id.* at 49, 92-99, 559. However, a judgment must be served on the party to whom it is directed before it is enforced. *Id.* at 385. See N. C. PR. CIV. art. 503. Prior to the *Code Civil*, a supplementary procedure called *pareatis* was required in order to execute a judgment from one French court in another part of France. See HERZOG, *supra* note 1, at 49. See also MOREAU, *supra* note 3, at 21-37; MAYER, *supra* note 1, at 289.

123. Article 509 is the only provision of the *Nouveau Code* specifically addressing foreign judgments. Article 509 provides that foreign judgments are executory in France in the manner provided by law. N. C. PR. CIV. art. 509. See C. CIV. art. 2123. See also notes 38 and 69 *supra*.

124. See, *e.g.*, KATZ & BREWSTER, note 3, at 442; MAYER, *supra* note 1, at 307-08.

125. *E.g.*, LOUSSOUARN, *supra* note 1, at 630-31; MAYER, *supra* note 1, at 307. See note 376 and accompanying text, *infra*.

There is a current controversy in French law as to whether the judgments of Andorran courts are French, rather than foreign, and, thus, entitled to be executed in France without *exequatur*. The *Tribunal de Béziers* has ruled that such judgments are foreign because, unlike French judgments, they are not pronounced in the name of the French people. Judgment of Nov. 28, 1977, Trib. gr. inst., Béziers, [1978] GAZ. PAL. I 216 note Loumagne. See N. C. PR. CIV. art. 454. The *Cour de cassation* has found that Andorran judgments are equivalent to French judgments because they are derived from the same sovereign, one of Andorra's co-sovereigns being the French Chief of State. See [1978] ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL [A.F.D.I.] 1068-69. This controversy is unresolved since the decisions of the *Cour de cassation* are not binding on the lesser French courts in future cases. See, *e.g.*, MERRYMAN & CLARK, *supra* note 61, at 604; note 102 *supra*.

One interesting aspect of this controversy is the implication that the doctrine of sovereignty is still debated in connection with foreign judgments. See notes 26 and 108 *supra*. Compare MOREAU, *supra* note 3, at 73-90, with LOUSSOUARN, *supra* note 1, at 614-18, and HERZOG, *supra* note 1, at



*Exequatur* is an apparently simple procedure, which gives effect to a broad, foreign judgment enforcement policy. However, an *exequatur* procedure may involve much detail. The complex rules which apply in *exequatur* cases indicate that French law remains reluctant to accord enforcement to foreign judgments.

## B. Preliminary Conditions to *Exequatur*

### 1. Three Forms of *Exequatur* Procedure

The principles applied in *exequatur* cases should be analyzed in three sections. One should first distinguish between *exequatur* granted in accordance with general principles (*droit commun*) of law and *exequatur* granted in accordance with the terms of an international convention. The latter category should be further divided into those cases where *exequatur* is granted in accordance with European Community law, *i.e.*, following the terms of the Brussels Convention, and those cases where another international convention governs.<sup>126</sup>

There are significant procedural differences among *exequatur* cases presented in these three forms. However, the applicable terms of international agreements are similar to the general principles (*droit commun*) of law in *exequatur* cases.<sup>127</sup> For this reason, and because the judgments of the courts of the United States are not covered by an international agreement, this Comment will discuss *exequatur* in accordance with the *droit commun* in greater detail than *exequatur* in accordance with treaty law. Some of the preliminary considerations in judgment enforcement situations discussed below may be inapplicable where a treaty controls.<sup>128</sup>

### 2. Alteration of Foreign Judgments

Current doctrine requires that the foreign judgment must stand on its own. In the *révision au fond* period, a judge at an *exequatur* proceeding could alter the terms of a foreign judgment.<sup>129</sup> Such alterations were consistent with *révision* doctrine. Today, changing the terms of a foreign judgment is forbidden.<sup>130</sup>

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588-89. Another interesting aspect of this controversy is that opposite positions have been taken by courts from the territories of the *pays de droit écrit* and the *pays de droit coutume*. The former area developed a body of law based on the written Roman law and the latter evolved its law from custom, principally the custom of Paris. See generally DAWSON, *supra* note 62, at 263-373. This controversy suggests that certain doctrinal differences between these regions may persist to this day, with respect to fundamental concepts such as sovereignty, in France.

126. See Bernard, *supra* note 1, at 426.

127. *Id.* at 428-30. See, e.g., Convention with Britain, *supra* note 38, arts. 3-5; Brussels Convention, *supra* note 56, arts. 2-5, 27-28.

128. The enforcement of foreign judgments under treaty law differs most from *exequatur* under the *droit commun* with respect to the procedure which is followed by the applicant. See § VII *infra*.

129. Bernard, *supra* note 1, at 427.

130. *Id.*

However, alterations in the terms of a foreign judgment which are considered to be incidental to the judgment or to its enforcement may be granted in an *exequatur* proceeding.<sup>131</sup> Thus, it is proper for the judgment creditor to request that money damages awarded in a foreign currency be converted into *francs*.<sup>132</sup> Requests such as this should be made in the petition (*assignation*) for *exequatur*.<sup>133</sup> Interest payments are also awarded in *exequatur* proceedings.<sup>134</sup> Any interest which was due according to the judgment's terms at the time that *exequatur* is granted is awarded automatically.<sup>135</sup> Additional interest then accrues at a rate provided for by statute.<sup>136</sup> This rate doubles one month after *exequatur* is granted, if the award has not been paid.<sup>137</sup> Requests involving the structuring of provisional remedies may be allowed in an *exequatur* proceeding.<sup>138</sup> This factor is important, as provisional remedies, such as garnishment (*saisie-arrêt*),<sup>139</sup> are available on a foreign judgment before *exequatur* is granted.<sup>140</sup> Demands which substantially increase or decrease the award of the foreign court will not be considered in an *exequatur* proceeding.<sup>141</sup> Where this is a concern, the judgment creditor could choose to avoid the *exequatur* procedure altogether. Instead, a civil action may be brought before a French court on the merits of the dispute previously tried abroad.<sup>142</sup> In that case, the foreign judgment may be introduced for its evidentiary value and the matter can be relitigated as if the *révision* doctrine were still in effect.<sup>143</sup>

### 3. Decisions Susceptible to *Exequatur*

Foreign decisions susceptible to *exequatur* include all judgments rendered in matters which are considered civil or commercial in French law.<sup>144</sup> Even judgments in cases where the foreign court's jurisdictional basis is not civil or commercial may be granted *exequatur* in France. This is due to the civil law

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131. *Id.*

132. *Id.*

133. *Id.* See § VI.A *infra*.

134. *But cf.* MAYER, *supra* note 1, at 305 (Mayer indicates that French law is divided on this issue).

135. *See id.* at 302-07; N. C. PR. CIV. art. 38.

136. *See* MAYER, *supra* note 1, at 302-07; Law of Jul. 5, 1972, [1972] J.O. 7181, 7182 (Jul. 9, 1972), [1972] Dalloz-Sirey, *Législation* [D.S.L.] 362.

137. Law of Jul. 5, 1972, [1972] J.O. 7181, 7182 (Jul 9, 1972), [1972] D.S.L. 362.

138. Bernard, *supra* note 1, at 427.

139. *E.g.*, HERZOG, *supra* note 1, at 574-76.

140. *Id.* at 588. *See* Yates, *Substantive Law Aspects of Enforcement of Foreign Judgments Between Foreigners in France: The Competence Question*, 9 INT'L LAW. 251, 252-53 (1975) [hereinafter cited as Yates].

141. MAYER, *supra* note 1, at 303-05.

142. *Id.* at 308.

143. *Id.*

144. Bernard, *supra* note 1, at 426.

practice of allowing an award for civil damages in some criminal cases.<sup>145</sup> Thus, a judgment of a German court, awarding civil damages in a criminal case, could be granted *exequatur* in France. Similarly, a decision rendered by a foreign administrative or religious authority may be granted *exequatur* in France under certain circumstances.<sup>146</sup> Provisional and uncontested decisions and default judgments may be granted *exequatur*, as well as judgments in which appeals have been exhausted or judgments which follow an adversary proceeding.<sup>147</sup>

#### 4. Standing

The party requesting *exequatur* must have a recognizable interest in the foreign judgment.<sup>148</sup> This interest must be established if it is not apparent; otherwise, *exequatur* will be denied in accordance with a general principle of law.<sup>149</sup> This standing requirement prevents the use of *exequatur* proceedings for collateral purposes.

An unusual situation may arise following a foreign divorce. Divorces rendered by a foreign court ordinarily have no need of *exequatur* unless some coercion, or execution on the goods of a party, is required.<sup>150</sup> However, where one of the parties remarries in France, it may be desirable to have the foreign divorce decree granted *exequatur* in France. In such a case, a party would have standing to seek *exequatur* as that would eliminate the risk that the foreign divorce could be challenged later, perhaps resulting in the nullification of the subsequent marriage.<sup>151</sup> This is due to the *res judicata* (*chose jugée*) effect which *exequatur* gives to a foreign judgment.<sup>152</sup> The standing of a spouse to seek *exequatur* of his or her deceased ex-spouse's foreign divorce has also been recognized.<sup>153</sup>

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145. See, e.g., HERZOG, *supra* note 1, at 138, 588-89; MERRYMAN & CLARK, *supra* note 61, at 734-40. See also Convention with Britain, *supra* note 38, art. 2, §2. However, an award of punitive damages in a civil case may not be accorded *exequatur* in France. See MAYER, *supra* note 1, at 258.

146. Bernard, *supra* note 1, at 426.

147. *Id.*

148. *Id.*

149. See note 1 *supra*.

150. See, e.g., Bernard, *supra* note 1, at 426; LOUSSOUARN, *supra* note 1, at 632-36. Foreign judgments in matters of personal status are automatically *res judicata* (*chose jugée*) in France, unless and until they are overturned in a declaratory judgment proceeding. See note 1 *supra*. Consequently, such judgments ordinarily have no need of *exequatur* and the requisite interest to bring an *exequatur* action would not be presumed. *Id.* See also HERZOG, *supra* note 1, at 597-600.

151. See Bernard, *supra* note 1, at 426-27.

152. See note 1 *supra*.

153. Judgment of Jan. 8, 1974, Cass. civ. 1re, 101 J. DR. INT'L 601 (1974). See Bernard, *supra* note 1, at 427.

## V. THE CONDITIONS OF EXEQUATUR IN THE DROIT COMMUN

*Exequatur* is granted only after a French court verifies that the foreign judgment meets six conditions. One, the foreign court which rendered the decision must have been competent in accordance with French law.<sup>154</sup> Two, a regular procedure, in accordance with French law applicable to international matters, must have been followed by the foreign court in reaching its decision.<sup>155</sup> Three, the law applied by the foreign court must have been appropriate, in accordance with the French choice of law rules.<sup>156</sup> Four, the foreign judgment must not be tainted by fraud.<sup>157</sup> Five, the foreign judgment must not conflict with substantive French law.<sup>158</sup> Six, the foreign judgment must be enforceable in the jurisdiction where it was rendered.<sup>159</sup> The judgment creditor, or the party seeking *exequatur*, has the burden of proof in establishing each of these six conditions.<sup>160</sup> In certain cases, it is not clear what test determines whether a condition has been met.<sup>161</sup> Each of these conditions will be examined before the mechanical aspects of the *exequatur* procedure are discussed.

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154. *E.g.*, LOUSSOUARN, *supra* note 1, at 622-26. *See* § V.A *infra*. The condition that the foreign court have been competent is essentially a requirement that it have had jurisdiction over the matter litigated. *Id.* Competence in French law is not exactly synonymous with jurisdiction as the latter term is used in American law. *See, e.g.*, HERZOG, *supra* note 1, at 170-72. However, competence refers to the adjudicatory authority of courts which corresponds to the concept of judicial jurisdiction. *Id.*

155. *E.g.*, MAYER, *supra* note 1, at 273-75. *See* § V.B *infra*. Some commentators have combined this condition with the requirement that the foreign judgment must not conflict with *ordre public*. *E.g.*, LOUSSOUARN, *supra* note 1, at 621. *Ordre public* is similar in meaning to public policy. DAVID, *supra* note 9, at 201-05. The concept of *ordre public* prevents the application of a law which is unjust, has an unjust result or is contrary to fundamental policies. *Id.* Compare MAYER, *supra* note 1, at 275-77, with PRACTICAL GUIDE, *supra* note 1, at 58, and STEINER & VAGTS, *supra* note 3, at 803. The use of improper procedures in a foreign court could be considered a violation of French public policy when a judgment from that court is presented for *exequatur* in France. *See* LOUSSOUARN, *supra* note 1, at 621. However, a foreign judgment which is offensive to *ordre public* in a procedural sense will be treated in connection with a separate condition of *exequatur*. *See* note 5 *supra*. Compare LOUSSOUARN, *supra* note 1, at 621-29, with MAYER, *supra* note 1, at 260-80, and Bernard, *supra* note 1, at 427-28.

156. *E.g.*, Bernard, *supra* note 1, at 428. *See* § V.C *infra*.

157. *E.g.*, MAYER, *supra* note 1, at 282-88. *See* § V.D *infra*.

158. *See* § V.E *infra*. Bernard formulates this condition as "*conformité à l'ordre public international*." Bernard, *supra* note 1, at 428. Aside from procedural matters pertaining to the second condition of *exequatur*, *see* note 155 *supra*, this condition applies to foreign judgments which are contrary to other judgments already recognized in France, to specific French laws or to fundamental or established policy interests. *See* MAYER, *supra* note 1, at 275-77; LOUSSOUARN, *supra* note 1, at 627-29; PRACTICAL GUIDE, *supra* note 1, at 58. Thus, the condition is more precisely stated as a requirement that the judgment not conflict with substantive French law.

159. Bernard, *supra* note 1, at 428. *See* § V.F *infra*. *See also* note 5 *supra*.

160. Bernard, *supra* note 1, at 428.

161. *See, e.g.*, von Mehren & Trautmann, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601, 1612-14 (1968); Bernard, *supra* note 1, at 427; Yates, *supra* note 140, at 251. *See also* note 170 and accompanying text, *infra*. The principal problem is with respect to the determination of international competence. *See* MAYER, *supra* note 1, at 264-70. *See generally* Gaudemet-Tallon, *supra* note 10.

### A. *The First Condition of Exequatur: The Competence of the Foreign Court*

#### 1. The French Approach to the Question of Competence

The most basic standard governing the enforcement of foreign judgments is rooted in jurisdiction.<sup>162</sup> When it is appropriate for a court to exercise jurisdiction over a matter, that court is said to be competent.<sup>163</sup> Competence of the foreign court is required by French law as the first condition of *exequatur*. However, the standards of competence are not simple. The rule of comity could be stated simply: a judgment, rendered by a court of competent jurisdiction, ought to be accorded enforcement wherever it is presented.<sup>164</sup> However, there are two difficulties with such a statement. First, competent jurisdiction is not a unitary concept. Jurisdiction includes several related concepts such as venue, subject matter jurisdiction, jurisdiction over the person and territorial jurisdiction.<sup>165</sup> Second, jurisdiction is a subject connected with both national and international law.<sup>166</sup> Jurisdiction cannot be discussed as if it were within the bounds of any one legal system.<sup>167</sup> Thus, there are several, varying standards of competent jurisdiction to apply in foreign judgment enforcement cases. From an international law perspective, a test of whether the jurisdictional basis of the judgment-rendering court meets customary international standards would be appropriate.<sup>168</sup> From a national law perspective, the test could include either the jurisdictional standards of the judgment-rendering court or the standards of the enforcing court. In the latter case, the standards of the enforcing court could be imposed on the judgment-rendering court by a projection of the jurisdictional rules of the enforcing court. In fact, this last alternative is the approach which is preferred in French law. However, each of

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162. E.g., EHRENZWEIG, *supra* note 28, at 160-61; Mann, *supra* note 24, at 73-76. See notes 39-47 and accompanying text, *supra*.

163. See HERZOG, *supra* note 1, at 172.

164. See, e.g., EHRENZWEIG, *supra* note 28, at 160-61; § II.B *supra*.

165. E.g., STEINER & VAGTS, *supra* note 3, at 731-55.

166. See Mann, *supra* note 24, at 23, 52-53.

167. *Id.* A fundamental problem in this discussion is whether jurisdiction is, or should be considered as, an incident of French law, foreign law or international law. See *id.* The discussion by Mann is useful in this respect because it expresses the point of view of international law. *Id.* at 21-22, 52-53. Such a viewpoint seems appropriate because France is committed constitutionally to honor international law. Compare LEECH, OLIVER & SWEENEY, *supra* note 38, at 12, 35-36, with W. FRIEDMANN, O. LISSITZYN & R. PUGH, INTERNATIONAL LAW 104-05 (1969). However, international law does not control the French law of jurisdiction in *exequatur* cases. See MAYER, *supra* note 1, at 264-70. The interplay of international and domestic law may help to explain the uncertainty surrounding international jurisdiction in French law. *Id.* See Gaudemet-Tallon, *supra* note 10. See also note 170 *infra*.

168. See LEECH, OLIVER & SWEENEY, *supra* note 38, at 109-11. The international standards which would apply to a state's exercise of jurisdiction in civil cases are generally permissive. *Id.* These standards would not require French courts to adopt any specific viewpoint in an ordinary *exequatur* case. See *id.*

these approaches<sup>169</sup> appears to be sanctioned in French law's resolution of the competence question.<sup>170</sup>

Despite these difficulties, valid generalizations can be made with regard to jurisdictional bases in judgment enforcement matters. In French practice, situations can be identified where the jurisdictional basis of the judgment-rendering court is either likely to be acceptable or unacceptable in an *exequatur* proceeding.

The French legal system values nationality.<sup>171</sup> French citizenship of a litigant can result in a presumption of exclusive jurisdiction in the French courts over the matter litigated abroad.<sup>172</sup> Such a presumption rejects the jurisdictional basis of all foreign courts and prevents the enforcement of such judgments in France.<sup>173</sup> Thus, under the rubric of competence, French law reserves a broad exception to its foreign judgment enforcement policy. However, this reservation is not applied arbitrarily. Non-French litigants can determine whether foreign judgments are likely to survive the competence test in an *exequatur* proceeding if they are familiar with the French law which governs jurisdiction. The primary sources of that law are found in Articles 14 and 15 of the *Code Civil* and Articles 42 through 48 of the *Nouveau Code*.

The competence test will be approached first in terms of nationality. Where neither of the parties to the underlying dispute is a French citizen, the competence test is generally free of nationality problems. If a party is a French citizen and no international agreement or choice of forum clause identifies the

169. See, e.g., LOUSSOUARN, *supra* note 1, at 622-26; Gaudemet-Tallon, *supra* note 10, at 3-5.

170. MAYER, *supra* note 1, at 264-73. When French courts would have been competent to try the matter litigated in the foreign, judgment-rendering court, French law requires that primarily domestic rules apply. *Id.* at 264-65, 270-73. These rules are referred to as the rules of *compétence internationale directe*. *Id.* at 264. In all other *exequatur* cases, rules of *compétence internationale indirecte* apply. *Id.* See notes 184-243 and accompanying text, *infra*.

The rules of *compétence internationale indirecte* are not definitively settled under current French law. MAYER, *supra* note 1, at 265. Three competing systems are employed, alternatively and simultaneously, to determine competence in such situations. *Id.* One system verifies the competence of the foreign court by application of the foreign court's own jurisdictional law. *Id.* at 265-66. See Judgment of Feb. 4, 1958, Cour d'appel, Paris, *cited in* note 53 *supra*. A second system verifies the competence of the foreign court by projecting French, domestic jurisdictional rules (*régles française de compétence internationale directe*) to the foreign forum. MAYER, *supra* note 1, at 266-68. This approach, akin to a legal fiction, is justified because it localizes the litigation, prior to the enforcement of a judgment in France, in accordance with French conceptions. *Id.* See Judgment of Jun. 18, 1964, Cour d'appel, Paris, 91 J. DR. INT'L 810 note Bredin (1964), 56 R.C.D.I.P. 340 note Deprez (1967); Judgment of Oct. 22, 1970, Cour d'appel, Paris, 60 R.C.D.I.P. 541 note Couchez (1971), 99 J. DR. INT'L 77 (1972); Judgment of May 9, 1900, Cass. civ. 1re, *cited in* note 1 *supra*. The third system verifies the competence of the foreign court by applying special rules which are developed for *exequatur* cases, but which are not dependent on either the French or the foreign, domestic jurisdictional rules. MAYER, *supra* note 1, at 268-70. This approach is the modern, significant contacts method of resolving jurisdictional conflicts. *Id.* See notes 240-43 *infra*.

171. E.g., deVries & Lowenfeld, *supra* note 18, at 316-18.

172. MAYER, *supra* note 1, at 271-72.

173. *Id.*

jurisdictionally proper forum, nationality problems will dominate the competence determination.<sup>174</sup> If a party is French and an international agreement is relevant, then the competence test is resolved in accordance with the terms of the international agreement.<sup>175</sup> If a French party waives his right to trial in the French courts in a choice of forum clause, the choice of forum clause will resolve the competence question, if it meets the standards embodied in the *Nouveau Code*.<sup>176</sup>

Where no party is a French citizen, certain subsidiary questions will settle the competence issue. Whether the matter involves a transaction or event which took place or had any effect in France will be important.<sup>177</sup> The determining factor may be the domicile of a party,<sup>178</sup> a choice of forum clause<sup>179</sup> or a clause attributing domicile in a contract.<sup>180</sup> Whether the judgment was rendered in contract or in tort, or whether the underlying claim constitutes a cause of action recognized in French law, may be important factors in determining competence.<sup>181</sup>

The most sensible approach to this condition of *exequatur* is to identify those cases where French jurisdiction is considered to be exclusive and those where French jurisdiction is not exclusive. Where a party is a French citizen, and in certain other cases involving French elements, French jurisdiction will often be exclusive.<sup>182</sup> In such cases, a foreign judgment will not be granted *exequatur*.<sup>183</sup>

## 2. Exclusive Jurisdiction in French Courts

A foreign judgment will not be enforceable in France if French law views the litigated matter as exclusively within the jurisdiction of French courts.<sup>184</sup> Generally, there are four situations in which French jurisdiction is exclusive.<sup>185</sup> One is where the defendant is a French citizen who has not clearly waived his right to a trial before French courts.<sup>186</sup> Another is where the defendant is a permanent resident of France, even though not a citizen, and

174. *Id.*

175. *Id.* See § VII *infra*.

176. N. C. PR. CIV. art. 48. Text at note 213 *infra*. See, e.g., PRACTICAL GUIDE, *supra* note 1, at 57.

177. See notes 228-31 and accompanying text, *infra*.

178. See N. C. PR. CIV. art. 42.

179. See N. C. PR. CIV. art. 48.

180. *Id.* See HERZOG, *supra* note 1, at 202-03.

181. See N. C. PR. CIV. art. 46. See generally HERZOG, *supra* note 1, at 187-98.

182. See, e.g., PRACTICAL GUIDE, *supra* note 1, at 57.

183. *Id.*

184. E.g., MAYER, *supra* note 1, at 270-71.

185. PRACTICAL GUIDE, *supra* note 1, at 57. The reach of exclusive French jurisdiction in civil matters is not clearly defined. See MAYER, *supra* note 1, at 270-73. French jurisdiction is exclusive over French citizens and domiciliaries and in such other cases where it is required by the needs of the system of justice ("les impératifs d'une bonne administration de la justice"). *Id.*

186. PRACTICAL GUIDE, *supra* note 1, at 57. See MAYER, *supra* note 1, at 271-72.

where he has not accepted the jurisdiction of a foreign court.<sup>187</sup> A third situation exists where a choice of forum clause, or the like, controls and confers jurisdiction on the French courts.<sup>188</sup> Fourth, where a special situation arises involving real property in France, a French patent or the like, or an employment or insurance contract, the matter will be viewed as exclusively within French jurisdiction.<sup>189</sup>

These areas of exclusive jurisdiction are derived from a generally nationalistic approach to jurisdiction.<sup>190</sup> French law views questions of jurisdiction differently, depending on whether the matter is external or internal to France.<sup>191</sup> In internal matters, French law is not strongly concerned with jurisdiction. Generally, a defendant should be sued at his domicile.<sup>192</sup> Venue rules establish this principle and also provide for alternative *fora* in certain cases.<sup>193</sup> However, it apparently makes little difference which French court hears a case, because every judge renders justice in the name of the French people.<sup>194</sup>

In external matters, French law is more concerned with nationality than with domicile and is more concerned with the plaintiff than with the defendant.<sup>195</sup> The *Code Civil* provides two rules for such cases; one applies to French citizens and the other applies to aliens.<sup>196</sup> In both cases, the rule guarantees a plaintiff's access to a French forum.<sup>197</sup> Since this guarantee is found in the *Code Civil*, the French view the right to a civil trial before a French court as an important right.<sup>198</sup> Hence, French law concludes that French jurisdiction is exclusive in certain cases.

The provisions of French law which affect civil jurisdiction in external matters, are Articles 14 and 15 of the *Code Civil*:

*Article 14.* An alien, though not residing in France, can be cited before the French courts, for the performance of obligations contracted by him in France with a Frenchman; he can be brought before French courts for obligations contracted by him in a foreign country toward Frenchmen.

187. PRACTICAL GUIDE, *supra* note 1, at 57. See MAYER, *supra* note 1, at 272.

188. PRACTICAL GUIDE, *supra* note 1, at 57.

189. *Id.* See MAYER, *supra* note 1, at 272-73.

190. *E.g.*, deVries & Lowenfeld, *supra* note 18, at 317.

191. *Id.* See PRACTICAL GUIDE, *supra* note 1, at 57; MAYER, *supra* note 1, at 264-70.

192. *E.g.*, deVries & Lowenfeld, *supra* note 18, at 316-17.

193. N. C. PR. CIV. arts. 42-48. See notes 235-36 and accompanying text, *infra*. See also HERZOG, *supra* note 1, at 174-76, 186-90; Gaudemet-Tallon, *supra* note 10.

194. deVries & Lowenfeld, *supra* note 18, at 316. See N. C. PR. CIV. art. 454.

195. deVries & Lowenfeld, *supra* note 18, at 317.

196. *Id.* See C. CIV. arts. 14, 15. Text at note 199 *infra*.

197. deVries & Lowenfeld, *supra* note 18, at 317.

198. See *id.*; LOUSSOUARN, *supra* note 1, at 579-84; MERRYMAN & CLARK, *supra* note 61, at 833-45.



*Article 15.* A Frenchman can be brought before a court of France for obligations contracted by him in a foreign country even with an alien.<sup>199</sup>

These articles are intended to be complementary.<sup>200</sup> Article 14 makes French courts available to French citizens for all suits against foreigners.<sup>201</sup> Article 15 gives foreigners access to French courts for suits against French citizens.<sup>202</sup> The language in the second clause of Article 14 is extreme. Read literally, the article makes French courts competent over cases with no French elements other than the citizenship of an obligee. Fortunately, Article 14 jurisdiction is employed with restraint in France.<sup>203</sup> However, when a French citizen is able to demonstrate his right to a French forum under either of these articles, French law presumes that the jurisdiction of the French courts is exclusive.<sup>204</sup> A foreign court will be considered competent in such a case, only if a treaty so provides<sup>205</sup> or if the French citizen has waived his right to litigate in a French forum.<sup>206</sup> Such a waiver can result from an express agreement or may be implied from the French citizen's voluntary use of the foreign forum.<sup>207</sup>

Recent decisions show no relaxation of this nationalistic approach. One court denied *exequatur* to a foreign default judgment, stating: "*Exequatur* ought to be accorded to the decisions of all foreign jurisdictions rendered by a competent court . . . . The incompetence of the foreign tribunal obliges the French judge to refuse the *exequatur* . . . this [is the case] when a default judgment issues against a French defendant whose legal representative made no appearance in the proceeding."<sup>208</sup> Apparently, *exequatur* was denied due to the competence condition; in turn, competence was denied due to the French nationality of the defendant.<sup>209</sup> If the defendant had entered an appearance, he might have waived his right to litigate the matter exclusively in the French courts. Another court addressed the subject of the vitality of Article 15: "When a foreign law gives competence to a foreign tribunal . . . it does not mean that the terms of Article 15 of the *Code Civil* are put aside . . . . In fact, the *Cour de cassation* decrees that . . . only [by] the terms of an international convention [is the effect] of Article 15 of the *Code Civil* [avoided]."<sup>210</sup>

199. As translated in deVries & Lowenfeld, *supra* note 18, at 317.

200. *E.g.*, MAYER, *supra* note 1, at 229-33.

201. *Id.*

202. *Id.*

203. *See, e.g.*, LOUSSOUARN, *supra* note 1, at 581-84.

204. *Id.* at 562-90.

205. *See, e.g.*, HERZOG, *supra* note 1, at 186, 210-12.

206. *E.g.*, MAYER, *supra* note 1, at 233-35. *See* STEINER & VAGTS, *supra* note 3, at 752.

207. *E.g.*, MAYER, *supra* note 1, at 233-35. *See, e.g.*, HERZOG, *supra* note 1, at 183-86, 202-03.

208. Judgment of Apr. 22, 1976, Trib. gr. inst., Paris, 66 R.C.D.I.P. 324 note Droz (1977), [1977] A.F.D.I. 984.

209. *See id.*

210. Judgment of May 5, 1976, Cass. civ. 1re, [1976] Bull. Civ. I 126, 66 R.C.D.I.P. 137 note Huet (1977).

Waiver of the exclusive jurisdiction of French courts is possible, and advisable for the foreigner who deals extensively with French nationals and corporations.<sup>211</sup> Although waiver is sometimes implied, it should be unambiguous. The courts are reluctant to imply a waiver in doubtful cases.<sup>212</sup> Article 48 of the *Nouveau Code* addresses the matter of jurisdictional waivers in choice of forum clauses, as follows:

*Article 48:* Any clause which directly or indirectly alters the rules of territorial competence is deemed ineffective unless it has been agreed to between the parties, all of whom have contracted in the capacity of businessmen (*commerçants*), and unless it has been specified in a very apparent manner by the party against whom it was raised.<sup>213</sup>

Thus, a foreign litigant cannot rely on a choice of forum clause to establish the competence of a non-French court where an adhesion contract or a non-commercial agreement is concerned.<sup>214</sup>

Similar results follow when the defendant is not a French citizen but is "permanently resident" in France. The foreigner domiciled in France is given the treatment due a French national under established principles of law.<sup>215</sup> The "permanent resident," like any citizen, is given the benefit of "exclusive" French jurisdiction unless he has accepted the jurisdiction of the foreign court.<sup>216</sup> Through these jurisdictional mechanisms, French justice protects French citizens and residents, and provides a rationale for refusing to enforce foreign judgments rendered against them.<sup>217</sup>

### 3. Cases in Which French Jurisdiction is Not Exclusive

In transnational situations, jurisdiction is usually concurrent rather than exclusive.<sup>218</sup> Due to Articles 14 and 15 of the *Code Civil*, this statement is less correct when French elements are involved. However, there are situations

211. See HERZOG, *supra* note 1, at 202-03, 589-90.

212. Compare, e.g., Judgment of Jan. 21, 1975, Cass. civ. 1re, [1975] Bull. Civ. I 21, [1976] A.F.D.I. 885, and Judgment of May 5, 1976, Cass. civ. 1re, cited in note 210 *supra*, with Judgment of Mar. 6, 1975, Trib. gr. inst., Paris, 64 R.C.D.I.P. 512 (1975), [1976] A.F.D.I. 884, and Judgment of May 20, 1976, Trib. gr. inst., Paris, 66 R.C.D.I.P. 137 note Huet (1977), [1977] A.F.D.I. 983.

213. N. C. PR. CIV. art. 48. Author's translation.

214. See Law of Jul. 13, 1930, [1930] J.O. 8003 (Jul. 18, 1930), [1930] J.C.P. No. 745, art. 2. These restrictions on choice of forum clauses in certain cases result from public policy considerations with respect to one-sided, particularly insurance, contracts. Compare HERZOG, *supra* note 1, at 195-97, with VON MEHREN & GORDLEY, *supra* note 9, at 793-97.

215. See PRACTICAL GUIDE, *supra* note 1, at 57; MAYER, *supra* note 1, at 272-73. See also N. C. PR. CIV. art. 42, at text accompanying note 235 *infra*. But see text accompanying note 237 *infra*.

216. MAYER, *supra* note 1, at 272-73.

217. See *id.* at 270-73.

218. See, e.g., Mann, *supra* note 24, at 10.

where French law concedes that a French jurisdictional basis is concurrent with that of another nation's courts.<sup>219</sup> In other cases there are no French elements and, hence, no French interest in exercising jurisdictional competence over the facts litigated abroad.

In any case where French jurisdiction is not exclusive, the competence test in an *exequatur* proceeding is whether the foreign court was "internationally competent according to the French rules of international jurisdiction."<sup>220</sup> These rules are generally an international projection of the rules which govern domestic jurisdiction in France.<sup>221</sup> However, some French jurisprudence supports the view that in a case without French elements, the competence of a foreign court should be determined in accordance with the relevant foreign law.<sup>222</sup> Most of the case law simply links the normal French jurisdictional rules to the rule used when reviewing the competence of foreign courts in *exequatur* cases.<sup>223</sup> Under the latter approach, the foreign court is considered to have *compétence indirecte* if it would have had jurisdiction (*compétence directe*) under domestic French law.<sup>224</sup>

The jurisdictional test is not entirely clear in this respect.<sup>225</sup> Situations where the foreign judge is competent can be distinguished in the case law but the rule applied is not consistently stated. Jurisdiction derived from the municipal law of the country rendering the judgment is not alone sufficient.<sup>226</sup> However, in many situations a foreign court's jurisdictional basis will be considered competent in French law.<sup>227</sup> Practical problems can be anticipated by referring to the French law of venue.

Venue rules are used to determine which judicial district in France is appropriate for civil actions.<sup>228</sup> When neither plaintiff nor defendant is a French national, the French courts refer to the venue rules to determine international jurisdiction.<sup>229</sup> France follows the principle *actor sequitur forum rei*; thus, suit is normally brought at the defendant's domicile.<sup>230</sup> Separate rules establish venue in matters involving corporations, in tort matters and over resident non-domiciliaries.<sup>231</sup>

The principal venue rules are established in the *Nouveau Code*. As the *Nouveau*

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219. See, e.g., MAYER, *supra* note 1, at 272-73.

220. PRACTICAL GUIDE, *supra* note 1, at 57.

221. *Id.* See note 170 *supra*.

222. PRACTICAL GUIDE, *supra* note 1, at 57. See note 170 *supra*. See also Judgment of Feb. 4, 1958, Cour d'appel, Paris, [1958] J.C.P. II 10612 note Francescakis, cited in note 53 *supra*.

223. MAYER, *supra* note 1, at 266-68.

224. *Id.* See note 170 *supra*.

225. See notes 167-70 and accompanying text, *supra*.

226. *Id.* See, e.g., STEINER & VAGTS, *supra* note 3, at 801-02.

227. See notes 240-43 and accompanying text, *infra*.

228. See HERZOG, *supra* note 1, at 174.

229. E.g., STEINER & VAGTS, *supra* note 3, at 752-53.

230. *Id.*

231. See N. C. PR. CIV. arts. 42-48.

*Code* has only been in force since 1976, few comments have been made concerning its international impact.<sup>232</sup> However, its venue provisions are similar to those of its predecessor, the *Code de Procédure Civile*.<sup>233</sup>

In addition to Article 48,<sup>234</sup> which concerns choice of forum clauses, there are two other important venue rules in the *Nouveau Code*. These are Articles 42 and 46:

*Article 42:* Except for cases governed by contrary dispositions, the territorially competent jurisdiction is that of the place where the defendant lives.

If there are several defendants, the plaintiff may choose the jurisdiction of the place where any one of them lives.<sup>235</sup>

*Article 46:* The plaintiff may take hold of (*saisir*) at his choice, besides the jurisdiction where the defendant lives:

- in a matter of contract, the jurisdiction of the place where delivery of the object of the contract was to be effective or of the place where the service was to be performed;
- in a delictual matter, the jurisdiction of the place of the tortious act or that of the place where the damage [caused thereby] is sustained;
- in a mixed matter, the jurisdiction of the place where the real property is situated;
- in a matter of support or of contribution to the dependents of marriage, the jurisdiction of the place where the creditor lives.<sup>236</sup>

In some cases, French courts will be competent because the defendant is resident in France or because a contract performed in France is involved. If these are the only French elements involved, French courts consider their jurisdictional basis "permissive."<sup>237</sup> In these instances, the jurisdictional basis of a foreign court will be accepted if it satisfies the French venue standards.<sup>238</sup> When there is no basis for French jurisdiction in the underlying controversy, a similar test which is more liberal to foreign jurisdictional concepts is applied.

232. See MAYER, *supra* note 1, at 264-73. *But cf.* Gaudemet-Tallon, *supra* note 10 (although this article is a broad investigation of the effects of the *Nouveau Code* on the law of international jurisdiction, it is largely speculative).

233. See C. PR. CIV. art. 59. See generally Gaudemet-Tallon, *supra* note 10, at 22-34. See also note 8 *supra*.

234. Text at note 213, *supra*.

235. N. C. PR. CIV. art. 42. Author's translation.

236. N. C. PR. CIV. art. 46. Author's translation.

237. See, e.g., MAYER, *supra* note 1, at 268-73.

238. See *id.*

In such cases a French court will apply French jurisdictional standards rather than allow a foreign court's assumption of jurisdiction to be left unquestioned.<sup>239</sup> This requires the French courts to project the standards embodied in Articles 42 through 48 of the *Nouveau Code*, *inter alia*, to the matter litigated before a foreign court.

Judicial construction of these standards has been reasonable in such cases. A French court ruled that "a foreign court could hardly be required, under penalty of refusal to give *exequatur* to its decision, to apply provisions of the municipal law of France."<sup>240</sup> The modern approach to competence problems in France, as elsewhere, is to apply a "sufficient contacts" rule.<sup>241</sup> Thus, in *Sté Sotalor v. D. N. Ernst GmbH et cie*,<sup>242</sup> the court ruled that "it suffices for a foreign court to be recognized as competent, that the litigation be connected in a sufficient manner to the country in whose [courts] suit was filed . . . that the choice of courts is neither arbitrary, nor artificial, nor fraudulent . . ." as long as the French courts are not exclusively competent in the matter.<sup>243</sup>

At this time, the jurisdictional test used in an *exequatur* proceeding cannot be stated more precisely. In transnational insurance and labor contracts cases, jurisdiction is determined by specific provisions of law.<sup>244</sup> In many other cases, international agreements control.<sup>245</sup> In the typical transnational civil case, the French courts simply project their venue rules onto foreign courts.<sup>246</sup>

One effect of the jurisdictional test is to place the merits of a dispute within reach of the *juge de l'exequatur*.<sup>247</sup> The venue rules establish different jurisdictional principles for different matters of substantive law. Thus, principles of law which characterize an action as delictual or contractual may determine competence. This allows the merits of the question to be reviewed in certain cases despite the prohibition of *révision*.

Once having met the condition of competence, the transnational litigant still bears the burden of proving that a non-French judgment meets several other standards. These other standards often present similar difficulties. In some cases, the analysis required parallels that used for the competence question.<sup>248</sup>

239. *See id.*

240. Judgment of Nov. 10, 1971, Cour d'appel, Paris, 100 J. DR. INT'L 239 (1973), 25 REVUE TRIMESTRIELLE DU DROIT COMMERCIAL 239 (1972). *See* Yates, *supra* note 140, at 255-57.

241. *See* Yates, *supra* note 140, at 257-58; TENTATIVE DRAFT, *supra* note 28, at 62. *See also* note 170 *supra*.

242. Judgment of Jan. 29, 1975, Cour d'appel, Dijon, [1975] GAZ. PAL. II 692, 103 J. DR. INT'L 146 note Holleaux (1976).

243. *Id.*

244. *See* note 214 *supra*. *See also*, e.g., [1976] A.F.D.I. 884-85.

245. *See* § VII *infra*. *See also* note 91 and accompanying text, *supra*.

246. *See*, e.g., PRACTICAL GUIDE, *supra* note 1, at 57. *See also*, Gaudemet-Tallon, *supra* note 10.

247. *See*, e.g., Yates, *supra* note 140, at 253-57.

248. *See*, e.g., § V.C *infra*.

## B. *The Requirement that the Foreign Court have Followed "Regular Procedures"*

### 1. General Application of the Condition

A fundamental requirement for the recognition of a foreign judgment in France is that it has been granted following "regular" procedures.<sup>249</sup> As with the competence condition, there are two or three, possibly divergent, determinants of the procedural regularity of a foreign court. The test may be based on French standards or on the standards of the judgment-rendering court. Alternatively, it may be based on principles of international law. However, serious difficulties do not seem to be associated with this requirement.<sup>250</sup> The formulation of the rule is that the procedures must be regular in accordance with "the French law applicable to international matters."<sup>251</sup> This condition is of particular importance when foreign default judgments are presented for *exequatur*.<sup>252</sup>

The French courts have construed this condition liberally towards the procedures followed in most foreign courts.<sup>253</sup> Only a few abuses are of great concern in *exequatur* cases. The rights of the defense to notification and representation are important. These are the principal procedural requirements of the French rules of *ordre public* in international matters.<sup>254</sup> In addition, it is required that the means of proof used in the foreign trial be consistent with this *ordre public*.<sup>255</sup>

In a recent case involving an Italian default judgment, a French court commented, noting that regular procedures had been followed by the judgment-rendering court, as follows:

Once the French *juge de l'exequatur* has been assured of the competence of the foreign jurisdiction which rendered the decision of which *exequatur* is solicited, he is to make sure, respectively, of certain rules of procedure and of form [followed] in arriving at the decision. Among these rules are included those with respect to the rights of the defense and the *exequatur* will be accorded if these rules

249. Bernard, *supra* note 1, at 428. See note 155 *supra*.

250. See, e.g., MAYER, *supra* note 1, at 273-75. Currently, the prevailing view is that the regularity of procedures depends on the law of the foreign forum. *Id.* Consequently, foreign procedures are respected as long as they do not offend French *ordre public*, see note 155 *supra*, and the rights of the defense are respected. See, Judgment of Oct. 4, 1967, Cass. civ. 1re, [1968] D. S. Jur. 95 note Mezger, 57 R.C.D.I.P. 98 note Lagarde (1968), [1968] J.C.P. II 15634 note Sialelli, 96 J. DR. INT'L 102 note Goldman (1969).

251. See note 250 *supra*.

252. See, e.g., Bernard, *supra* note 1, at 428. See generally, e.g., Judgment of Oct. 17, 1972, Cass. civ. 1re, 62 R.C.D.I.P. 556 note Francescakis (1973), 1972 GAZ. PAL. II 10.

253. See note 250 *supra*.

254. See, e.g., LOUSSOUARN, *supra* note 1, at 628.

255. *Id.* See Judgment of Jan. 22, 1951, Cass. civ. 1re, [1951] J.C.P. II 6151 note Sarraute et Tager, 40 R.C.D.I.P. 167 note Francescakis (1951).

have been respected and [this is the case] when the Italian law provides that the legal representative "who withdrew without being replaced in the course of the proceedings was retained in the proceeding to assure its adversary character. . . ." It is also the case when the notification of the foreign decision fails to include [a reference] to the appeal procedure, which is required for a French decision, but the [notification] follows the law of the country where the judgment was rendered; this does not mean that it was not regular, or that it violates the rights of the defense hence blocking execution of the judgment in France.<sup>256</sup>

The importance of notice in French procedure should be recognized. A French court will refuse to hear a case or to enforce a foreign judgment where the defendant was not given proper notice.<sup>257</sup> French notice requirements are similar to American requirements. Notice need not actually be given. It is sufficient if the means used to give notice have a high probability of actually notifying the defendant.<sup>258</sup> Generally, the rules of notice are embodied in Articles 640 through 694 of the *Nouveau Code*.<sup>259</sup> A judgment, whether from a foreign or French court, is not enforceable in France until after it has been served.<sup>260</sup> Thus, in an *exequatur* proceeding, the original complaint, the judgment itself and any other important documents relevant to the foreign proceedings must be shown to have been served satisfactorily.<sup>261</sup>

France is a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (Hague Service Convention),<sup>262</sup> which addresses this subject in detail. The Hague Service Convention is the only formal international agreement affecting the enforcement of foreign judgments, to which both the United States and France are parties.<sup>263</sup> Judgments rendered in the United States should not be denied *exequatur* in France for procedural reasons if the terms of this Convention are followed.<sup>264</sup>

256. [1978] A.F.D.I. 1053, quoting from the Judgment of May 18, 1977, Cour d'appel, Metz, [1977] *Revue Alsace-Lorraine* 127. Author's translation.

257. *E.g.*, Bernard, *supra* note 1, at 426-27. See HERZOG, *supra* note 1, at 367-68. See also N. C. PR. CIV. arts. 503, 651-64, 675-88.

258. See N. C. PR. CIV. art. 655; HERZOG, *supra* note 1, at 367-68.

259. N. C. PR. CIV. arts. 640-94.

260. Bernard, *supra* note 1, at 426-27; HERZOG, *supra* note 1, at 567. See also N. C. PR. CIV. art. 503.

261. See Bernard, *supra* note 1, at 426-27.

262. Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 [hereinafter cited as Hague Service Convention]. Articles 15 and 16 are reprinted in note 264, *infra*.

263. See HERZOG, *supra* note 1, at 611; Smit, *The Proposed United States-United Kingdom Convention on Recognition and Enforcement of Judgments: A Prototype for the Future?* 17 VA. J. INT'L L. 443 (1977) [hereinafter cited as Smit].

264. Hague Service Convention, *supra* note 262. See arts. 15-16:

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad

## 2. Application of the Condition to Default Judgments

The *juge de l'exequatur* will view a foreign default judgment against a French citizen in jurisdictional terms first.<sup>265</sup> The issue of primary importance will be the deprivation of the defendant's right to a trial by a French court under Article 15 of the *Code Civil*, even where notification formalities equal to French standards were followed.<sup>266</sup> The French citizen's right to a trial before French courts is considered to survive the entry of a foreign default judgment if the jurisdictional status of the dispute is viewed as concurrent or exclusively French.<sup>267</sup> However, *exequatur* will be granted to a foreign default judgment if

for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that —

(a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled —

(a) the document was transmitted by one of the methods provided for in this Convention,

(b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

### Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled —

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

(b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This article shall not apply to judgments concerning status or capacity of persons.

265. Compare Judgment of Apr. 22, 1976, Trib. gr. inst., Paris, 66 R.C.D.I.P. 325 note Droz (1977), [1977] A.F.D.I. 984, cited in note 208 *supra*, with Judgment of May 20, 1976, Trib. gr. inst., Paris, 66 R.C.D.I.P. 137 note Huet (1977), [1977] A.F.D.I. 983, cited in note 212 *supra*.

266. *Id.* See note 198 and accompanying text, *supra*.

267. See MAYER, *supra* note 1, at 272.



the French defendant's actions can later be shown to have been purely dilatory rather than an intentional reservation of the right to a trial before a French court.<sup>268</sup> Similarly, the default judgment will be granted *exequatur*, after its procedural regularity has been examined, if the French defendant has unambiguously waived his right to a trial in France.<sup>269</sup>

If the competence question can be resolved in favor of a foreign default judgment, detailed attention to the requirements of process service and the opportunity to be heard is advisable. This attention will counter the suspicions that generally are raised with respect to default judgments.<sup>270</sup> Before *exequatur* will be granted, the judgment creditor is required to show that proofs were actually entered on the claim at the foreign trial.<sup>271</sup> Thus, an unsupported foreign default judgment may not be enforced in France. Questions of process service should be answered by referring to the mechanical rules found in the *Nouveau Code* or in relevant international agreements.<sup>272</sup>

### C. *The Condition that the Foreign Court have Applied French Choice of Law Rules*

#### 1. General Application of the Condition.

Since the abandonment of the *révision* doctrine, the most criticized comity principle in French law is the requirement that the foreign court must have applied French choice of law rules in reaching its decision.<sup>273</sup> While this condition has generated critical comment, it causes few problems in practice. The requirement is not applied in *exequatur* proceedings if the same outcome would have been reached if the foreign court had applied French choice of law rules.<sup>274</sup>

French choice of law rules are not unusual in comparison with the choice of law rules used in other systems, unless French citizens are parties to the dispute.<sup>275</sup> The applicable substantive law will usually be French law if French elements are involved.<sup>276</sup> Thus, problems arise in this area when French

268. See note 265 *supra*.

269. *Id.* See MAYER, *supra* note 1, at 271-72.

270. See, e.g., LOUSSOUARN, *supra* note 1, at 628-29; HERZOG, *supra* note 6, at 259-63. See also N. C. PR. CIV. arts. 467-79.

271. Bernard, *supra* note 1, at 427. See notes 364-65 and accompanying text, *infra*.

272. Compare Agreement Concerning Co-operation in Litigation, Feb. 2, 1922, France-United Kingdom, [1922] J.O. Jun. 20, 1922, 10 L.N.T.S. 448, art. 3 with Hague Service Convention, *supra* note 262, arts. 15-16 and N. C. PR. CIV. arts. 648-94.

273. E.g., STEINER & VAGTS, *supra* note 3, at 803.

274. E.g., PRACTICAL GUIDE, *supra* note 1, at 58.

275. See, e.g., STEINER & VAGTS, *supra* note 3, at 90-100.

276. In general, the body of conflicts law used in France has a common heritage with the conflicts laws of the United States and other countries. See, e.g., EHRENZWEIG, *supra* note 28, at 160-61. For a discussion of the influence of Story and Beale on French conflicts law see LOUSSOUARN, *supra* note 1, at 168, or for a discussion of the "*doctrine nord-américaine*" concerning the application of the "proper law" compare *id.* at 171-74 with MAYER, *supra* note 1, at 89.

citizenship or domicile or activities in France are involved in the case. The effect of the choice of law condition parallels the effect of the competence condition in such situations.<sup>277</sup> In a suit containing French elements, the litigant should be aware that he will have difficulties seeking enforcement of a foreign judgment in France. The foreign judgment will be subject primarily to challenges to the jurisdictional basis of the judgment-rendering court, which may be reinforced by challenges to the choice of law principles applied by the judgment-rendering court.<sup>278</sup>

In the discussion of comity, we noted that jurisdiction, the enforcement of foreign judgments and choice of law compose the three main branches of private international law.<sup>279</sup> Apparently, the French approach to the enforcement of foreign judgments is to weigh the judgment against several rules of private international law at once. A lengthy discussion of the choice of law condition alone is unnecessary as, in practice, that condition is not often conclusive in *exequatur* cases.<sup>280</sup>

Occasionally, this is the case with respect to migratory divorce judgments.<sup>281</sup> Migratory divorces are also denied *exequatur* on the grounds of jurisdictional competence, procedural regularity, fraud and conflict with substantive French law.<sup>282</sup>

## 2. Application to Foreign Divorces

French courts are aware of the availability of quick divorces in such jurisdictions as Mexico and Nevada.<sup>283</sup> If a divorce-rendering jurisdiction is the true domicile of at least one spouse, the divorce decree can be enforced in France.<sup>284</sup> However, the French courts will be suspicious of divorces emanating from known divorce havens. Where it appears that the domicile of

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However, individual situations may lead to different conflicts rules. Generally, French law is liberal with respect to the application of foreign conflicts rules, except in cases where the competence of French law is exclusive. MAYER, *supra* note 1, at 281. French law is considered exclusively competent, due to Article 3 of the *Code Civil*, in matters of status or capacity of French citizens or where "*lois de police*" are concerned. *Id.* at 92-93, 281. (A similar rule is imposed by the German Civil Code. *See id.* at 93.) A *loi de police* is not well defined. Such laws are those which are necessary for the political, social or economic organization of the country or those which tend to guarantee economic or social interests. *Id.* at 96-97. Such laws can usually be identified only on a case by case basis. *Id.* On this basis, the application of the French minimum wage laws would be considered exclusive where work performed in France was concerned. *Id.* at 281. This analysis indicates that French law is not apt to be considered exclusively competent in a conflicts sense, unless French citizens are involved in the matter at issue. *See id.* at 89-103.

277. *See* notes 237-46 and accompanying text, *supra*.

278. *See, e.g.*, LOUSSOUARN, *supra* note 1, at 622-27; MAYER, *supra* note 1, at 264-73, 277-82.

279. *See* notes 39-41 and accompanying text, *supra*.

280. *See, e.g.*, MAYER, *supra* note 1, at 277-82; LOUSSOUARN, *supra* note 1, at 626-27.

281. *See, e.g.*, HERZOG, *supra* note 1, at 599-600.

282. *Id.*

283. *Id.* *See* MAYER, *supra* note 1, at 283.

284. HERZOG, *supra* note 1, at 599-600.

the parties in that jurisdiction is a sham, the French courts will strain to deny *exequatur* to the divorce in France.<sup>285</sup> The denial may be based on the choice of law condition. In such cases, the *juge de l'exequatur* will rule that the domiciliary law of the parties, applicable in accordance with French choice of law rules, was not applied.<sup>286</sup>

This condition will not always prevent a foreign divorce or other judgment from being accorded *exequatur*. If the foreign court's decision was the same as that which a French court would reach under French choice of law rules, *exequatur* can be granted.<sup>287</sup> Where either the law or the result would be the same under the French choice of law rules, the applicable principle is called *la notion d'équivalence*.<sup>288</sup> This principle could govern in a case where French citizens received a foreign divorce. French choice of law principles would require that French law be applied in a divorce action where both parties are citizens.<sup>289</sup> Even if the foreign court did not apply French law, it might grant the divorce upon grounds recognized in France. In such a case, *exequatur* would be appropriate for the foreign divorce.<sup>290</sup>

This condition of *exequatur* is another device enabling the *juge de l'exequatur* to reach the merits of the dispute litigated in the foreign court. This condition is applied when the foreign judgment appears to be improper and no other condition of *exequatur* is appropriate to bar enforcement in France. The principle of scrutinizing apparently improper foreign decisions is referred to as *dénaturation*.<sup>291</sup> *Dénaturation* exposes suspect foreign judgments to an examination similar to *révision*.<sup>292</sup> In such cases, the *juge de l'exequatur* applies the law to the facts of the foreign dispute in accordance with French rules.<sup>293</sup> Although this principle is law, it is criticized and it has not been applied in recent cases.<sup>294</sup>

#### D. The Condition that the Foreign Judgment Not Be Tainted by Fraud

The absence of fraud is a customary requirement for the enforcement of foreign judgments. This condition is included in the comity doctrine of many nations and in internationally accepted standards.<sup>295</sup> Under French law, the

285. *Id.* See MAYER, *supra* note 1, at 281.

286. See HERZOG, *supra* note 1, at 599-600.

287. PRACTICAL GUIDE, *supra* note 1, at 58.

288. See MAYER, *supra* note 1, at 278.

289. *Id.* at 411.

290. *Id.* at 278-81. See, e.g., Judgment of Feb. 4, 1958, Cour d'appel, Paris, [1958] J.C.P. II 10612 note Francescakis, 47 R.C.D.I.P. 389 note H.B. (1958), 85 J. DR. INT'L 1016 note Ponsard (1958).

291. See, e.g., PRACTICAL GUIDE, *supra* note 1, at 58. See Judgment of Dec. 13, 1967, Cour d'appel, Poitiers, 58 R.C.D.I.P. 94 note P.L. (1969).

292. See, e.g., MAYER, *supra* note 1, at 279-82.

293. See PRACTICAL GUIDE, *supra* note 1, at 58.

294. Compare STEINER & VAGTS, *supra* note 3, at 803, with MAYER, *supra* note 1, at 279-82.

295. See, e.g., Zaphiriou, *supra* note 12, at 743, 757. See also notes 33-37 and accompanying text, *supra*.

condition is somewhat different in that it proscribes only "fraud on the law."<sup>296</sup> In fact, the condition, as applied in *exequatur* proceedings, is concerned only with fraud on French law rather than fraud on foreign law.<sup>297</sup> Fraud on the law occurs when the parties to a suit changed their nationality, domicile or residence for the purpose of changing the applicable law in the pending litigation.<sup>298</sup> This is another aspect of French law which is unfavorable to changes of domicile antecedent to litigation.<sup>299</sup> When French law would not have applied to the suit anyway, no fraud on French law occurs.<sup>300</sup> However, the presentation of the resulting foreign judgment for *exequatur* may be considered as a fraud on French law in some cases.<sup>301</sup> On occasion, this rule has prevented the granting of *exequatur* to American migratory divorces.<sup>302</sup> Unfortunately, the concept of fraud on the law is not clearly defined.

Recent jurisprudence indicates that the fraud condition is not often cited when *exequatur* is denied. Some commentators view this condition as redundant to other conditions of *exequatur*.<sup>303</sup> Both the courts and the commentators agree that it is fraud on French law, not foreign law, which matters in *exequatur* cases.<sup>304</sup> However, some commentators view a fraud on foreign law as working a fraud on French law when the foreign judgment is presented for *exequatur*.<sup>305</sup> For example, a change of domicile which works a fraud on New York law is of no concern to French law until a judgment tainted by that fraud is presented for *exequatur*. At that time, the fraud on New York law becomes a matter of concern for French law, as according *exequatur* to the New York judgment would work a fraud on French law. This branch of the fraud doctrine is termed *fraud au jugement*.<sup>306</sup>

French law views changes of nationality or of domicile antecedent to litigation unfavorably in connection with the competence condition,<sup>307</sup> the choice of law condition<sup>308</sup> and the fraud condition. The term used in French law for the

296. *E.g.*, LOUSSOUARN, *supra* note 1, at 629.

297. *See, e.g.*, HERZOG, *supra* note 1, at 592-93.

298. *Id.*

299. *See* notes 283-86 and accompanying text, *supra*.

300. *See* MAYER, *supra* note 1, at 140-47, 282-84.

301. *Id.* at 284-88.

302. *See* Judgment of May 14, 1962, Trib. gr. inst., Seine, 90 J. DR. INT'L 110 note Bredin (1963), *aff'd* Jun. 18, 1964, Cour d'appel, Paris, 91 J. DR. INT'L 810 note Bredin (1964), 56 R.C.D.I.P. 340 note Deprez (1967). *See also* MAYER, *supra* note 1, at 287.

303. *See, e.g.*, MAYER, *supra* note 1, at 280-81, 283; HERZOG, *supra* note 1, at 592-93. *See also* note 6 *supra*; note 325 and accompanying text, *infra*.

304. *See, e.g.*, MAYER, *supra* note 1, at 282-88.

305. *Id.* at 284-85.

306. *Id.* at 287-88.

307. *Id.* at 265-66. *See* HERZOG, *supra* note 1, at 599. *Cf.* Judgment of Nov. 28, 1956, Trib. pr. inst., Seine, 84 J. DR. INT'L 148 (1957) (*exequatur* denied to Nevada divorce on jurisdictional grounds).

308. *See, e.g.*, HERZOG, *supra* note 1, at 599.

process of changing domicile antecedent to litigation is *le forum shopping*.<sup>309</sup> When a *juge de l'exequatur* detects that a foreign judgment is tainted by forum shopping, even though no legal system's rules have been contravened, he will often refuse to grant *exequatur*.<sup>310</sup> The denial of *exequatur* in such circumstances may be attributed to the competence or to the choice of law condition, but in some cases both of those may be doctrinally inconvenient. In such a case, the judge may deny *exequatur* claiming that the presentation of the tainted foreign judgment is a fraud on French law.<sup>311</sup>

#### E. *The Condition of Conforming with Substantive Law*

If a foreign judgment conflicts with substantive French law at the time that *exequatur* is requested, *exequatur* will be denied.<sup>312</sup> This condition of *exequatur* requires the foreign judgment to conform with *ordre public*.<sup>313</sup> *Ordre public* is a doctrine which, although not synonymous with public policy, refers to similar concepts.<sup>314</sup> This condition is essentially a requirement that *exequatur* not give effect to actions which are unlawful or inconsistent with internal law.

In concrete terms, *exequatur* cannot be granted to a foreign judgment based on a claim which is contrary to a matter that has become *chose jugée (res judicata)* in France.<sup>315</sup> Similarly, a foreign divorce decree ordering an ex-spouse not to remarry violates the policy of freedom to marry and cannot be given effect by *exequatur*.<sup>316</sup> In some cases, equity decrees restricting business practices may conflict with French competition policies and are, thus, unenforceable.<sup>317</sup> As these examples indicate, this condition tests the foreign judgment's effect against French decisional and legislative law. Where the result is not consistent with existing French law, *exequatur* will not be allowed.

The condition of non-conflict with French law is substantive. Although it is a substantive law test, the effect of enforcing the judgment in France is the issue and the merits of the underlying dispute are not questioned. Unlike other conditions of *exequatur*, the relevant time period for the application of this con-

309. See MAYER, *supra* note 1, at 140-42, 283-88.

310. *Id.*

311. *Id.* at 287-88. See note 6 *supra*; note 325 *infra*.

312. See note 158 *supra*; note 325 *infra*.

313. E.g., MAYER, *supra* note 1, at 275-77. See PRACTICAL GUIDE, *supra* note 1, at 58; LOUSSOUARN, *supra* note 1, at 627-29. HERZOG, *supra* note 1, at 592-93.

314. See, e.g., KATZ & BREWSTER, *supra* note 3, at 480-84; DAVID, *supra* note 9, at 201-05. Cf. Convention with Britain, *supra* note 38, art. 3, § I(C) (compare English and French texts).

315. See PRACTICAL GUIDE, *supra* note 1, at 58; LOUSSOUARN, *supra* note 1, at 629; HERZOG, *supra* note 1, at 592-93; Judgment of Mar. 23, 1936. Cass. civ. 1re, [1936] S. Jur. I. 175, 32 R.C.D.I.P. 198 (1937).

316. See Judgment of May 14, 1956, Trib. pr. inst., Seine, 84 J. DR. INT'L 146 (1957).

317. Compare MERRYMAN & CLARK, *supra*, note 61, at 891-92, with MAYER, *supra* note 1, at 275, and LOUSSOUARN, *supra* note 1, at 334-61, 627-29. Cf. note 325 *infra* (foreign nationalization decrees not providing equitable compensation are not effective in France).

dition is the time at which *exequatur* is requested.<sup>318</sup> Thus, it is not relevant whether a contrary French law or decision was in effect at the time of the foreign proceeding. If the contrary judgment has been successfully attacked or the contrary law repealed, then the foreign judgment will not be denied *exequatur* for non-satisfaction of this condition.<sup>319</sup>

The *ordre public* condition of *exequatur* has received recent attention. Prior to 1972, Article 342 of the *Code Civil* prohibited an award of alimony to a child unless the paternity of the obligor had been legally established.<sup>320</sup> The law of January 3, 1972, modified this rule, stating an "action of subsidy" could be brought against one whose responsibility for paternity could not be proven.<sup>321</sup> The right to receive a support award without proof of paternity was expressly denied to litigants with support suits pending on January 3, 1972.<sup>322</sup> However, foreign judgments resulting from similar suits may be accorded *exequatur*. In these cases, the courts reasoned that the change in French *ordre public* was all that was needed to make the foreign support decrees acceptable under French law at the time that *exequatur* was requested.<sup>323</sup>

The effect of the *ordre public* condition has been restricted by judicial construction. For example, the *Tribunal de grande instance* of Paris has held that the *ordre public* requirement has a "diminished effect" when rights "regularly acquired abroad" are sought to be enforced in France.<sup>324</sup> Thus, the courts will consider whether *exequatur* would permit the judgment creditor to acquire rights in France which are contrary to *ordre public* or whether the rights were legitimately acquired abroad. In the latter case, the *juge de l'exequatur* will view the case as if he were determining the competence of the foreign court or the soundness of its choice of law.<sup>325</sup> The effect of the foreign decision on French

318. Bernard, *supra* note 1, at 428.

319. See, e.g., Judgment of Jul. 15, 1975, Cass. civ. 1re, [1975] Bull. Civ. I 199; Judgment of Mar. 25, 1975, Cour d'appel, Lyon, 102 J. DR. INT'L 848 note Ph. K. (1975), [1976] A.F.D.I. 886-87.

320. C. CIV. art. 342, Petits Codes Dalloz, C. CIV. 167 (68e ed. 1968-69).

321. Law of Jan. 3, 1972, [1972] J.O. 145 (Jan. 5, 1972), [1972] D.S.L. 52.

322. See *id.* art. 12.

323. See Judgment of Mar. 25, 1975, Cour d'appel, Lyon, 102 J. DR. INT'L 848 note Ph. K. (1975), cited in note 319 *supra*; Judgment of Jul. 9, 1975, Cass. civ. 1re, [1975] Bull. Civ. I 197, [1976] A.F.D.I. 887. See also notes 237-46 and accompanying text, *supra*.

324. Judgment of Apr. 17, 1953, Cass. civ. 1re, 42 R.C.D.I.P. 412 note Batiffol (1953), 80 J. DR. INT'L 860 note Plaisant (1953), [1953] J.C.P. II 7863 note Buchet. See note 325 *infra*.

325. When a French judge is presented with a question involving the effects in France of private rights derived from a foreign law, he determines if the opposition (*antinomie*) between the foreign and the French law is so striking that the application of the foreign law in France would be intolerable. LOUSSOUARN, *supra* note 1, at 359. The *ordre public* rule has been applied in this sense to deny legal effect to foreign nationalizations giving inequitable compensation. E.g., Judgment of Apr. 23, 1969, Cass. civ. 1re, [1969] GAZ. PAL. I 276 note Blondeau, [1969] D.S. Jur. 341, [1969] J.C.P. II 1589, 58 R.C.D.I.P. 717 note Schaeffer (1969), 96 J. DR. INT'L 912 note P. Chardenon (1969). See LOUSSOUARN, *supra* note 1, at 339, 355-58. In the more typical case the rights acquired in a foreign country will not be so offensive to French justice that they cannot have an effect in France. See note 324 *supra*; HERZOG, *supra* note 1, at 592.

sensibilities will influence the outcome as it does in applying other conditions of *exequatur*.<sup>326</sup>

#### F. *The Condition that the Judgment Be Executory in the Jurisdiction Where Rendered*

Unlike the other five conditions, this requirement was not specified by the *Cour de cassation* in *Munzer*.<sup>327</sup> However, the requirement that the judgment be presently executory where it was issued is recognized in the case law as an essential condition of *exequatur*.<sup>328</sup> In the proofs required for *exequatur*, a document is required from the clerk of the judgment-rendering court, stating that

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This rule applies to both foreign judgments and the application of foreign laws, but rights established by foreign judgments are more readily accepted than are rights which have not been previously adjudicated. See HERZOG, *supra* note 1, at 592; LOUSSOUARN, *supra* note 1, at 334-61, 627-29. Consequently, in the typical foreign judgments case, the *ordre public* condition will be concomitant to the competence and choice of law conditions. See note 6 and notes 273-78 and accompanying text, *supra*. Cf. LOUSSOUARN, *supra* note 1, at 622-27 (the application of a choice of law condition to *exequatur* cases substitutes for a more rigorous application of the *ordre public* condition and the choice of law condition (*compétence législative*) parallels the competence condition (*compétence judiciaire*)). Thus, a judge is likely to analyze an *exequatur* case, where the foreign judgment awards rights which normally could not have been acquired under French law directly, in three sections: one, reviewing the competence of the foreign court which awarded such rights, see note 154 *supra*; two, determining if the contrary French law should have been applied under French choice of law principles and, if so, whether the outcome is so shocking that the application of French law must be required, see notes 291-94 and accompanying text, *supra*; and, three, determining if the effect of foreign law is so fundamentally contrary to French law that it cannot be allowed a legal effect anyway. See note 108 and accompanying text, *supra*.

An example of this analysis could arise from a polygamous marriage. If a man wanted to marry a second spouse in France, and both were of a nationality which permitted polygamous marriage, the marriage could still not take place in France because it would be too offensive to *ordre public*. See MAYER, *supra* note 1, at 394. However, if a polygamous marriage had been performed abroad, it would be recognized in France, *id.*, because the effect of the rule of *ordre public* is diminished when rights legitimately acquired abroad are in issue. See LOUSSOUARN, *supra* note 1, at 355-59. If a foreign judgment, based on the fact of the polygamous marriage, were presented for *exequatur* in France, the judgment might be enforced because it represents rights already adjudicated abroad. However, before granting *exequatur* the judge would determine if the foreign court was competent and applied the proper law. If the suit had no French elements, the foreign court was competent and the foreign law allowing polygamy was applicable, then these conditions would not prevent *exequatur*. However, the effect of the judgment in France could still be so offensive to *ordre public* that *exequatur* would be denied. See *id.* at 275-76. In the case of a decree awarding support to a second spouse, *ordre public* would not be so offended and *exequatur* would be granted. See *id.* at 410-11. On the other hand, a decree ordering the second spouse to inhabit the conjugal domicile would be extremely offensive to *ordre public* and denied *exequatur*. See *id.* See also LOUSSOUARN, *supra* note 1, at 342-43, 355-57.

326. See MAYER, *supra* note 1, at 275. See also notes 254-55, 291-94, 310-11 and accompanying text, *supra*. With respect to French sensibilities, the *Cour de cassation* has stated that the meaning of *ordre public* depends in part on the prevailing opinion in France at the time. Judgment of Mar. 22, 1944, Cass. civ., [1944] Dalloz Critique, *Jurisprudence* [D.C. JUR.] 145 note Lerebours-Pigeonnière, [1945] S. Jur. I 77 note Niboyet.

327. See note 5 *supra*.

328. Compare Bernard, *supra* note 1, at 428, with MAYER, *supra* note 1, at 273-74. See, e.g., Judgment of Dec. 7, 1971, Cass. civ. I re, [1972] J.C.P. II 17068 note Lagarde.

the judgment is executory in that jurisdiction at that time.<sup>329</sup> Thus, as with the *ordre public* requirement, the relevant point in time is when *exequatur* is requested. While not all commentators refer to this requirement as a "condition of *exequatur*," it is clear that this is necessary before *exequatur* is granted.<sup>330</sup>

This rule is not of great significance. Ordinarily, it does not apply to foreign judgments which are subject to appeal unless enforcement has been stayed by the judgment-rendering court.<sup>331</sup> As a separate matter, French judges generally stay *exequatur* proceedings while foreign judgments are being appealed.<sup>332</sup> However, the rule may be significant where insolvency proceedings have been commenced against the judgment debtor or where a similar event arises which bars the taking of the judgment debtor's assets in the jurisdiction where the judgment was rendered.<sup>332</sup>

A recent case demonstrates the effect which this condition can have, even where an international agreement governs the enforcement of foreign judgments. In *Davis ès qualité v. Intercine*, a money-judgment had been issued in good order by the Queen's Bench.<sup>333</sup> The judgment was presented for *exequatur* in France in accordance with the terms of the agreement between France and the United Kingdom of January 18, 1934.<sup>334</sup> This treaty provides for a simplified *exequatur* procedure in France for most British civil judgments. With few exceptions, the treaty makes British judgments readily enforceable in France.<sup>335</sup> Accordingly, the *Tribunal de grande instance* of Paris granted *exequatur*.<sup>336</sup>

However, subsequent to the entry of judgment in England and prior to requesting *exequatur*, the judgment debtor had become insolvent. The judgment debtor had previously given one of his creditors a "floating charge" on his assets.<sup>337</sup> Under English law, the floating charge "crystallized" upon his insolvency.<sup>338</sup> This gave the prior creditor a preferred claim to the debtor's assets and stayed execution of the judgment against the debtor in England.<sup>339</sup>

329. Bernard, *supra* note 1, at 427. See § VI.B *infra*.

330. Compare Bernard, *supra* note 1, at 428, with MAYER, *supra* note 1, at 273-74. See also HERZOG, *supra* note 1, at 593.

331. See Bernard, *supra* note 1, at 428. See also MAYER, *supra* note 1, at 273-74. Cf. Judgment of Nov. 17, 1974, Cass. civ. 1re, 102 J. DR. INT'L 99 note A.P. (1975) (*exequatur* is not barred, simply because the foreign authorities have refused to execute the judgment, as long as the judgment remains executory under foreign law).

332. HERZOG, *supra* note 1, at 593.

333. Judgment of Jan. 19, 1976, Cour d'appel, Paris, [1976] GAZ. PAL. 371 (May 28-29, 1976), 66 R.C.D.I.P. 126 note Lagarde (1977).

334. Convention with Britain, note 38 *supra*.

335. *Id.* arts. 2-5.

336. See 66 R.C.D.I.P. 126 note Lagarde (1977).

337. *Id.* For a discussion of the "floating charge" of English law in a similar context see Collins, *Floating Charges, Receivers and Managers and the Conflict of Laws*, 27 INT'L & COMP. L. Q. 691 (1978).

338. See 66 R.C.D.I.P. 126 note Lagarde (1977).

339. *Id.*



As French law has no comparable provision for a floating charge, the *juge de l'exequatur* had not considered it as barring enforcement of the judgment in France.<sup>340</sup>

The *Cour d'appel* of Paris viewed the issue differently. The Paris court viewed the requirement that the judgment be executory in the jurisdiction which rendered it as superseding the treaty obligation.<sup>341</sup> *Davis* has effectively made this requirement a condition of *exequatur*. *Davis* also serves as a caveat regarding the effect of an international agreement upon judgment enforcement practices. Where the agreement does not explicitly control in a given situation, the French courts will prefer their general principles of law (*droit commun*).<sup>342</sup>

## VI. THE PROCEDURE FOR EXEQUATUR

### A. Initiating the Request for Exequatur

*Exequatur* applications are considered by the *tribunal de grande instance* of each district in France.<sup>343</sup> These courts are the principal courts of general, original jurisdiction.<sup>344</sup> Since 1972, there has been at least one judge on each Tribunal's bench who is responsible for considering *exequatur* applications.<sup>345</sup> This judge, known as the *juge de l'exequatur*, routinely determines whether arbitral awards and foreign judgments are fit for judicial execution.<sup>346</sup> Once an *exequatur* decision is made at the *tribunal* level, it may be appealed to the appropriate *cour d'appel* in the same manner as other lower court decisions.<sup>347</sup> However, the part of the *tribunal's* decision which is considered as a finding of fact will be subject to a restricted appeal.<sup>348</sup>

Application for *exequatur* is made in a petition, known as an *assignation*.<sup>349</sup> Within the *assignation*, the domicile and the nationality of all parties must be stated clearly.<sup>350</sup> The provisions of general procedural law apply to *exequatur*

340. *Id.*

341. *Id.* This is the reasoning given in the reports of the case. *Id.* However, the treaty requires that judgments must be "capable of being executed in the country of the original court" to be enforced under the treaty's terms. Convention with Britain, note 38 *supra*, art. 5, § a.

342. See note 341 *supra*.

343. HERZOG, *supra* note 1, at 593; Bernard, *supra* note 1, at 427. But see notes 419-22 and accompanying text, *infra*.

344. HERZOG, *supra* note 1, at 139. See N. C. PR. CIV. art. 51.

345. See Law of Jul. 5, 1972, [1972] J.O. 7181 (Jul. 9, 1972), [1972] D.S.L. 362.

346. *Id.* See, e.g., MAYER, *supra* note 1, at 301-02, 310; LOUSSOUARN, *supra* note 1, at 617-18. See also N. C. PR. CIV. art. 509.

347. HERZOG, *supra* note 1, at 595.

348. Compare LOUSSOUARN, *supra* note 1, at 318-20, with HERZOG, *supra* note 1, at 376-77, 427-40. Appeal of the whole *exequatur* decision to the *cour d'appel* will normally be allowed, while a *pourvoi* to the *Cour de cassation* is unavailable to appeal findings of fact. See MAYER, *supra* note 1, at 305-06.

349. Bernard, *supra* note 1, at 426-27. See N. C. PR. CIV. arts. 54-56.

350. Bernard, *supra* note 1, at 427. See N. C. PR. CIV. arts. 56, 648.

proceedings.<sup>351</sup> This means that several items of basic information must be stated in the *assignation*.<sup>352</sup> In addition to nationality and domicile, the names, capacities and ages of each party must be stated or the *assignation* will be dismissed.<sup>353</sup> The reason for this emphasis is the importance which attaches to nationality and domicile in the majority of *exequatur* cases. Nationality and domicile are significant factors in determining the competence of the foreign court and in resolving the conflict of laws issues.<sup>354</sup>

The *assignation* should also recite, in substance, the decree entered by the foreign court.<sup>355</sup> Exactly reproducing the foreign judgment in the *assignation* is not necessary.<sup>356</sup> However, a copy of the judgment must be produced later.<sup>357</sup> Thus, it is an advisable precaution to repeat the judgment carefully in the *assignation*. "Regrettable omissions" in the *assignation* might present a problem after *exequatur* is granted, as the *assignation* is the basis for the executory command upon which the *huissier* enforces the foreign judgment.<sup>358</sup>

#### B. Required Documents

After the *assignation* has been properly served,<sup>359</sup> the judgment creditor is required to produce six documents to support his claim for *exequatur*.<sup>360</sup> First, a complete copy of the judgment, decree or decision of the foreign court, and a French language translation of its contents by an approved translator must be provided. Generally, the copy must bear the seal (*apostille*)<sup>361</sup> of the competent, certifying authority of the judgment-rendering state, as provided in the Hague Convention of October 5, 1961.<sup>362</sup>

In addition, a certification that the judgment is presently executory by the clerk of the judgment-rendering court must be submitted. The certification should be as close in time to the *assignation* of *exequatur* as possible. The formalistic language which normally appears under the signature of the clerk on judgments, commanding their execution, is not a sufficient certification. The

351. MAYER, *supra* note 1, at 305-06.

352. Bernard, *supra* note 1, at 427. See N. C. PR. CIV. arts. 56, 648.

353. Bernard, *supra* note 1, at 427.

354. *Id.* See notes 172-78, 275-78 and accompanying text, *supra*.

355. Bernard, *supra* note 1, at 427.

356. *Id.* See HERZOG, *supra* note 1, at 594.

357. Bernard, *supra* note 1, at 427. See note 361 and accompanying text, *infra*.

358. Bernard, *supra* note 1, at 427. See LOUSSOUARN, *supra* note 1, at 630. The extent of the obligation to execute a foreign judgment after *exequatur*, is determined by the order (*dispositif*) of the foreign court. *Id.* Cf. N. C. PR. CIV. art. 452 (the pronouncement of judgment may be limited to the *dispositif*). See also notes 123-25 and accompanying text, *supra*.

359. See notes 257-61 and accompanying text, *supra*.

360. Bernard, *supra* note 1, at 427.

361. *Id.* See generally HERZOG, *supra* note 1, at 627-30.

362. Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents, Oct. 5, 1961, 527 U.N.T.S. 189.

*juge de l'exequatur* will require a separate, particularized certification by the clerk, with an official seal.<sup>363</sup>

In the case of default judgments, proof that the defendant was properly served and that the procedures respected his rights must accompany the claim for *exequatur*. Generally, it is necessary to show that proofs against the defaulting defendant were adduced into evidence and that these proofs provided the basis for the entry of judgment.<sup>364</sup> A default judgment based on unsupported allegations may not be granted *exequatur*.<sup>365</sup>

In addition, proof of service of the foreign judgment on the unsuccessful party<sup>366</sup> and proof of the domicile of the parties<sup>367</sup> must be provided along with the *assignation*. Finally, in the case of divorce or separation judgments, the marriage certificate of the spouses must be submitted. In some cases, a transcript from the record of vital statistics to verify the information on the marriage certificate is also required.<sup>368</sup>

### C. Procedure Before the *Juge de l'Exequatur*

After producing the required documents, the burden is on the judgment creditor to establish that all the conditions of *exequatur* are met.<sup>369</sup> The judgment debtor may adduce evidence to rebut or to affirmatively establish the failure of the foreign judgment to meet a condition.<sup>370</sup> Generally, the judgment debtor may not adduce evidence regarding the merits of the underlying dispute.<sup>371</sup> If the judgment debtor does not appear in the *exequatur* proceedings,

363. Bernard, *supra* note 1, at 427. See notes 328-30 and accompanying text, *supra*.

364. Bernard, *supra* note 1, at 427. See notes 265-72 and accompanying text, *supra*. See also Judgment of Oct. 17, 1972, Cass. civ. 1re, 62 R.C.D.I.P. 556 note Francescakis (1973). In France, a default judgment is not entered unless proof, such as documentary evidence, has been presented to show that the plaintiff's claim is well founded. See HERZOG, *supra* note 1, at 259-60. See also N. C. PR. CIV. art. 472.

365. See Bernard, *supra* note 1, at 427; HERZOG, *supra* note 1, at 259-60, 368-71, 572, 616-17. See also note 364 *supra*. When a foreign judgment appears to be "insufficiently motivated" so as to interfere with the judge's "contrôle" of the *exequatur* procedure, the judge should deny *exequatur*. MAYER, *supra* note 1, at 309. See note 108 and accompanying text, *supra*. However, the fact that a foreign judgment is not motivated is not in itself a bar to *exequatur*. LOUSSOUARN, *supra* note 1, at 628. See Judgment of Jul. 11, 1961, Cass. civ. 1re, [1961] D. Jur. 577 note Holleaux, 88 J. DR. INT'L 1120 (1961), 50 R.C.D.I.P. 813 note Motulsky (1961).

366. Bernard, *supra* note 1, at 427. See N. C. PR. CIV. art. 503. See also notes 257-61 and accompanying text, *supra*.

367. Bernard, *supra* note 1, at 427. See notes 349-54 and accompanying text, *supra*.

368. Bernard, *supra* note 1, at 427. See HERZOG, *supra* note 1, at 320-21, 510, 597. See also Judgment of Jan. 3, 1958, Trib. pr. inst., Seine, 86 J. DR. INT'L 776 note Ponsard (1959); Judgment of Nov. 8, 1961, Trib. gr. inst., Seine, 52 R.C.D.I.P. 601 note Loussouarn (1963).

369. Bernard, *supra* note 1, at 428. See MAYER, *supra* note 1, at 311. However, the absence of fraud, see § V.D *supra*, need not be proven. MAYER, *supra* note 1, at 311. This follows from the principle that fraud cannot be presumed. *Id.*

370. See, e.g., MAYER, *supra* note 1, at 309-10.

371. See Bernard, *supra* note 1, at 427. This follows from the termination of revision. See notes 107-12 and accompanying text, *supra*. Compare MAYER, *supra* note 1, at 302-06, 309-11, with HERZOG, *supra* note 1, at 595-96. However, in some respects the merits of the underlying dispute may

the judgment creditor must still come forward with evidence establishing each of the required conditions.<sup>372</sup>

The decision of the *tribunal* granting or denying *exequatur* can be appealed to the appropriate *cour d'appel*.<sup>373</sup> Further appeals to the *Cour de cassation* are allowable.<sup>374</sup> If *exequatur* is denied, an action on the foreign judgment is still possible.<sup>375</sup> When *exequatur* is granted, the clerk of the *tribunal* places the same executory formula on it which appears on the judgments of French courts.<sup>376</sup>

## VII. THE EFFECT OF INTERNATIONAL AGREEMENTS ON THE ENFORCEMENT OF FOREIGN JUDGMENTS IN FRANCE

### A. Introduction

Technically, French law provides that neither the reciprocal enforcement of French judgments in another country's courts, nor the existence of a treaty with respect to judgment enforcement are necessary prerequisites to the enforcement of foreign judgments in France.<sup>377</sup> However, by stringently examining foreign judgments under its principles of *droit commun*, French law provides a comparative advantage to foreign judgments which are affected by the terms of an international agreement. As France has entered many agreements with respect to the reciprocal enforcement of judgments,<sup>378</sup> the influence of this factor in *exequatur* cases is significant.

The first modern international agreement of this type was concluded between France and Switzerland in 1869.<sup>379</sup> Today, the most significant such

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be relevant in determining whether a condition of *exequatur* is met. See, e.g., notes 112, 247, 291-92 and accompanying text, *supra*.

372. See MAYER, *supra* note 1, at 309-11; N. C. PR. CIV. art. 472; note 108 *supra*.

373. See, e.g., LOUSSOUARN, *supra* note 1, at 630; MAYER, *supra* note 1, at 306; HERZOG, *supra* note 1, at 476-77, 427-40, 594-95. See also note 348 *supra*.

374. See note 348 *supra*.

375. MAYER, *supra* note 1, at 308. A foreign judgment retains its probative value (*force probante*) irrespective of the outcome of an *exequatur* proceeding. See LOUSSOUARN, *supra* note 1, at 632-33. A separate action on the underlying issues of the litigation is considered to have a separate cause from the *exequatur* proceeding. See MAYER, *supra* note 1, at 308. Thus, although the denial of *exequatur* has a *chose jugée* effect, that effect only applies to bar another *exequatur* action. *Id.*

376. See HERZOG, *supra* note 1, at 99, 287, 587, 596. See also N. C. PR. CIV. art. 465.

377. See, e.g., LOUSSOUARN, *supra* note 1, at 629; PRACTICAL GUIDE, *supra* note 1, at 56-57.

378. MAYER, *supra* note 1, at 326-29. See notes 86-91 and accompanying text, *supra*.

379. Convention with Switzerland, *supra* note 86. This is the oldest convention with respect to the enforcement of foreign judgments which is still cited in France. See PRACTICAL GUIDE, *supra* note 1, at 64; MAYER, *supra* note 1, at 254, 328-29; Bernard, *supra* note 1, at 428-31. France has been a party to previous agreements affecting the reciprocal enforcement of foreign judgments, including several with Switzerland, dating back to 1658 or earlier. See MOREAU, *supra* note 3, at 29-32. The relationship between France and Switzerland has been especially close with respect to the recognition and enforcement of each other's civil judgments and similar matters. See *id.* The Convention with Switzerland of 1869 has received considerable attention. See, e.g., A. AUJAY, ÉTUDES SUR LE TRAITÉ FRANCO-SUISSE DU 15 JUIN 1869 461-81 (1903). The continuing vitality of the Convention with Switzerland is affirmed by the fact that a specific provision of the Brussels

agreement is the Brussels Convention of 1968.<sup>380</sup> In general, these agreements do not work drastic changes in the basic rules of *exequatur*.<sup>381</sup> However, they do simplify the granting of *exequatur* by implementing different substantive and procedural rules to be applied when *exequatur* is sought. These treaties eliminate much of the uncertainty which exists in *exequatur* proceedings under the *droit commun* rules. The terms of the treaties specifically address problems which commonly arise in *exequatur* cases.<sup>382</sup>

### B. Foreign Judgment Enforcement Under the Brussels Convention

The Brussels Convention modifies the French substantive and procedural law of *exequatur* concerning the civil judgments of European Community nations.<sup>383</sup> The jurisdictional rules which determine competence in *exequatur* cases are substantially altered.<sup>384</sup> However, judgments rendered in matters of capacity, status, marriage and the like; matters of testaments and successions; matters of insolvency and compositions; matters of social security; and, decisions in arbitration are excluded from the terms of the Convention.<sup>385</sup> All other decisions in civil and commercial matters are included regardless of the term used to describe the matter litigated in the judgment-rendering country.<sup>386</sup>

Convention protects the rights of Swiss nationals under the 1869 agreement. Brussels Convention, *supra* note 56, art. 58. For a discussion of treaties affecting the reciprocal enforcement of foreign judgments which preceded the French Revolution see G-R. DELAUME, *LA CONFLITS DE LOIS À LA VEILLE DU CODE CIVIL DANS LES TRAITÉS DIPLOMATIQUES* (1948).

380. Note 56 *supra*. See Bernard, *supra* note 1, at 426, 428-29; MAYER, *supra* note 1, at 326-28; LOUSSOUARN, *supra* note 1, at 637-39.

381. See, e.g., Bernard, *supra* note 1, at 426-30.

382. See, e.g., HERZOG, *supra* note 1, at 603-06. Typically, a bilateral agreement spells out the respective grounds of jurisdiction which will support a finding of competence of the judgment rendering court. *Id.* See Convention with Italy, *supra* note 88, arts. 10-25. Articles ten through twenty-five of the Convention with Italy specify seven types of *compétence indirecte*, see note 170 *supra*, for the resolution of jurisdictional problems in *exequatur* cases. See generally C. D'HOTES, *LES CONVENTIONS BILATÉRALES FRANCO-ITALIENNES DE DROIT INTERNATIONAL PRIVÉ* (1938). *Compétence indirecte* can be established under the Convention by separate rules in the following matters: one, in a personal action (*personnelle ou mobilière*); two, with respect to election of domicile; three, in a commercial action; four, in a tort or quasi-delictual action; five, in a real action; six, with respect to a succession; and seven, founded on a privilege of nationality. *Id.* at 311-34. However, the Convention with Italy has been largely superseded by the Brussels Convention. MAYER, *supra* note 1, at 328.

383. Note 56 *supra*. See Bernard, *supra* note 1, at 426, 428-29. See also, e.g., Herzog, *The Common Market Judgments Convention on Jurisdiction and the Enforcement of Judgments: An Interim Update*, 17 VA. J. INT'L L. 417 (1977) [hereinafter cited as Herzog, *Update*].

384. Brussels Convention, *supra* note 56, arts. 1-24.

385. *Id.* art. 1. See Bernard, *supra* note 1, at 428.

386. Brussels Convention, *supra* note 56, art. 1. See notes 144-47 *supra*. There is some controversy whether matters are to be determined as civil or commercial under national or European Community law. See Herzog, *Update*, *supra* note 383, at 427-28.

A judgment presented in accordance with the terms of the Convention is granted *exequatur* subject to five conditions.<sup>387</sup> The five conditions of *exequatur* required under the Brussels Convention vary somewhat from those conditions mandated by the *droit commun*. Under the Brussels Convention, the judgment must not conflict with French *ordre public*. This condition is understood in the same sense as under the *droit commun* condition which requires conformity with substantive law, except that violation of a jurisdictional rule affecting competence may not be considered as a conflict with *ordre public* under the Convention.<sup>388</sup> The second condition under the Convention is that the defendant in the case of a default judgment must have been served properly and allowed ample time to prepare a defense.<sup>389</sup> Third, the decision must not be inconsistent with a decision rendered by a French court affecting the same parties.<sup>390</sup> Fourth, the foreign court must not have improperly applied a French conflict of laws rule with respect to a preliminary question involving status, capacity, marriage, testaments or successions.<sup>391</sup> This condition must be satisfied only when the outcome reached by the foreign court is different from what it would have been had the French rule been properly applied.<sup>392</sup> Finally, if the judgment concerns either of two special matters addressed in the Convention, the special rules in the Convention must have been properly applied.<sup>393</sup>

The first of these two special matters involves insurance cases, installment loans and sales cases, and other cases falling within the exclusive jurisdiction of a state because of their subject matter.<sup>394</sup> The second special matter involves judgments which were rendered in a signatory state's courts against a domiciliary of a third country.<sup>395</sup> If the signatory state's court would not be competent to render valid judgments under the terms of the Convention against domiciliaries of other signatory states under circumstances in which it has rendered a judgment against a domiciliary of a third country, the Convention provides that, ordinarily, the judgment must be enforced in the other signatory states.<sup>396</sup> However, any signatory state may provide, in other inter-

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387. Bernard, *supra* note 1, at 429.

388. *Id.* See Brussels Convention, *supra* note 56, arts. 27 (1), 28. See also § V.E *supra*.

389. Brussels Convention, *supra* note 56, art. 27(2). See Bernard, *supra* note 1, at 429. See also § V.B.2 *supra*.

390. Brussels Convention, *supra* note 56, art. 27(3). See Bernard, *supra* note 1, at 429. See also note 315 and accompanying text, *supra*.

391. Brussels Convention, *supra* note 56, art. 27(4).

392. *Id.* See Bernard, *supra* note 1, at 429.

393. Bernard, *supra* note 1, at 429. See Brussels Convention, *supra* note 56, arts. 3-5, 59. See also Herzog, *Update*, *supra* note 383, at 422-23, 426.

394. Brussels Convention, *supra* note 56, arts. 3-5. See Bernard, *supra* note 1, at 429; Herzog, *Update*, *supra* note 383, at 422-23. See also note 189 and accompanying text, *supra*.

395. See Brussels Convention, *supra* note 56, art. 59.

396. *Id.* art. 4. See Herzog, *Update*, *supra* note 383, at 423, 426.

national agreements with third countries, whether it will enforce such judgments.<sup>397</sup>

Under the Brussels Convention, the party requesting *exequatur* continues to bear the burden of proving that the conditions of *exequatur* have been met.<sup>398</sup> In contrast with the *droit commun* rules, a partial *exequatur* in which the foreign judgment is modified, is allowed.<sup>399</sup> The procedural rules for *exequatur* under the Convention are considerably different from the *droit commun* procedural rules. The request for *exequatur* is presented to the presiding judge of the *Tribunal de grande instance* in any district where one of the parties, against whom execution is sought, is domiciled.<sup>400</sup> If there is no domicile in France, then the place where execution is to occur is the appropriate venue.<sup>401</sup> The judge first decides whether the judgment-rendering court was competent, in accordance with the terms of the Convention, without allowing the party against whom *exequatur* is sought to contest the issue of competence.<sup>402</sup> However, the party against whom *exequatur* is sought is allowed to appeal.<sup>403</sup> During the appeal period, provisional remedies (*mesures conservatoires*) may take effect, but execution is stayed.<sup>404</sup> Appeals are heard by the *cour d'appel* of the district where the request initiated.<sup>405</sup> On appeal, the failure of the foreign judgment to meet a condition established in the Convention for *exequatur* can be asserted.<sup>406</sup> The decision of the *cour d'appel* may be appealed only by means of a *pourvoi en cassation*.<sup>407</sup>

397. Brussels Convention, *supra* note 56, art. 59; See Herzog, *Update*, *supra* note 383, at 426; Bernard, *supra* note 1, at 429. See also note 418 and accompanying text, *infra*.

398. Bernard, *supra* note 1, at 429.

399. Brussels Convention, *supra* note 56, art. 42. See notes 129-30 and accompanying text, *supra*.

400. Brussels Convention, *supra* note 56, art. 32; Bernard, *supra* note 1, at 428.

401. Bernard, *supra* note 1, at 428.

402. Brussels Convention, *supra* note 56, art. 34; Bernard, *supra* note 1, at 428. The *juge de l'exequatur* is also bound by the determinations of jurisdictional facts made by the judgment-rendering court. *Id.* art. 28. See Bernard, *supra* note 1, at 429. All interested parties are to receive notice of the request for *exequatur*. *Id.* The procedure to be followed in an application for *exequatur* is determined by the law of France, *i.e.*, the law of the country where execution is sought. See Brussels Convention, *supra* note 56, art. 33. See also Herzog, *Update*, *supra* note 383, at 425-26.

403. Bernard, *supra* note 1, at 428. If the defendant is domiciled in a signatory state other than France, he is allowed two months in which to appeal. *Id.* In other cases the appeal period is one month. *Id.* The appeal period commences when the judgment of *exequatur* has been served. *Id.* See Brussels Convention, *supra* note 56, art. 36. See also N. C. PR. CIV. arts. 527, 528, 538; note 122 *supra*.

404. See Brussels Convention, *supra* note 56, arts. 33, 38-39; N. C. PR. CIV. art. 539.

405. Bernard, *supra* note 1, at 428; Brussels Convention, *supra* note 56, arts. 37, 40.

406. See Bernard, *supra* note 1, at 429. The *exequatur* procedure in France under the Brussels Convention is characterized as *non contradictoire* in the first instance, *id.* at 429, 431, but as *contradictoire* on appeal. *Id.* at 428.

407. See note 402 *supra*. Compare Bernard, *supra* note 1, at 428-29, with Herzog, *Update*, *supra* note 383, at 425-26. See Brussels Convention, *supra* note 56, art. 41. See also note 348 and accompanying text, *supra*.

In this simplified procedure, four documents must be produced by the party requesting *exequatur*.<sup>408</sup> One is a complete copy of the foreign judgment with the documentation necessary to establish its authenticity.<sup>409</sup> In addition, in the case of a default judgment, the original, or a certified copy, of the document which initiated the proceedings must be provided.<sup>410</sup> This document must show that the defendant had been served.<sup>411</sup> Documentation that the judgment is presently executory in its state of origin and that it has been served on the judgment debtor must also be submitted.<sup>412</sup> The fourth document which must accompany the request for *exequatur* under the Convention is a French language translation, if the judgment is not in French, prepared by a translator certified by any signatory state.<sup>413</sup>

The most significant change from the *droit commun* principles made by the Brussels Convention concerns jurisdiction. The Convention protects domiciliaries of signatory states by providing a set of exclusive jurisdictional rules for suits between domiciliaries of different signatory states.<sup>414</sup> These rules provide that, in most cases, a defendant is to be sued in the state in which he is domiciled, irrespective of his citizenship.<sup>415</sup> Thus, Articles 14 and 15 of the *Code Civil* are inapplicable as concerns the domiciliaries of other signatory states.<sup>416</sup> With respect to non-domiciliaries, even if they are citizens of signatory states, the regular jurisdictional rules still apply.<sup>417</sup> Consequently, if the party who is liable on a judgment rendered in a signatory state is a domiciliary of that state, the judge should grant *exequatur*. If the judgment was rendered in a state different from that of the defendant's domicile, the Brussels Convention requires that *exequatur* ordinarily be granted as long as the decision

408. Brussels Convention, *supra* note 56, arts. 46-47; Bernard, *supra* note 1, at 429.

409. Brussels Convention, *supra* note 56, art. 46(1); Bernard, *supra* note 1, at 429.

410. Brussels Convention, *supra* note 56, art. 46(2). See Bernard, *supra* note 1, at 429.

411. Brussels Convention, *supra* note 56, art. 46(2). If a default judgment from a signatory State was issued without the entry of proofs, a copy of the complaint or equivalent document (*assignation*) is often indispensable to identify the cause of action alleged in the foreign proceedings. Bernard, *supra* note 1, at 429. This is a significant change from the *droit commun* law of *exequatur*, since unsupported foreign default judgments are normally denied *exequatur*. See notes 270-71, 364-65 and accompanying text, *supra*. Although the terms of the convention mandate the reciprocal enforcement of default judgments, Brussels Convention, *supra* note 56, arts. 27, 28, 34, whether they are supported by proofs or not, notification of the defendant must be established. See *id.* art. 20. The convention incorporates the terms of article 15 of the Hague Service Convention, *supra* notes 262, 264, with respect to the foreign service of documents where the signatory States concerned are also signatories to the Hague Service Convention. Brussels Convention, *supra* note 56, art. 20. The convention also incorporates a mandatory protocol which provides for service abroad on individuals through government channels. *Id.* Protocol art. IV.

412. Brussels Convention, *supra* note 56, art. 47(1). See Bernard, *supra* note 1, at 429.

413. Bernard, *supra* note 1, at 429. See Brussels Convention, *supra* note 56, arts. 46, 48.

414. Brussels Convention, *supra* note 56, arts. 2-18.

415. *Id.* arts. 2-3.

416. *Id.* See LOUSSOUARN, *supra* note 1, at 609-10. This eliminates one of the biggest difficulties in the *exequatur* principles of the *droit commun*. See notes 171-210 and accompanying text, *supra*.

417. Brussels Convention, *supra* note 56, art. 4.



was jurisdictionally proper according to the law of the judgment-rendering state.<sup>418</sup>

### C. *The Effect of Other International Agreements on the Enforcement of Foreign Judgments in France*

There are three categories of other international agreements which affect the enforcement of foreign judgments in France.<sup>419</sup> This categorization results from procedural differences. One form of agreement commits *exequatur* cases to the *chambre du conseil* (conference room), a hearing in the judges' chambers.<sup>420</sup> The second form of agreement commits *exequatur* cases to the presiding judge of the appropriate *tribunal* acting *en référé* (i.e., as if granting provisional relief after a summary hearing).<sup>421</sup> The third form of agreement commits *exequatur* cases to the body which would be appropriate under the *droit commun*, but provides for the application of special rules.<sup>422</sup>

The Treaty between France and Switzerland<sup>423</sup> is the sole example of the first category.<sup>424</sup> The Treaty provides that the party requesting *exequatur* present its judgment to the presiding judge of the *chambre du conseil* of the place, or places, where execution is sought.<sup>425</sup> Generally, the usual documents must be produced and the usual conditions of *exequatur* govern.<sup>426</sup> However, because the judgment is presented in the *chambre du conseil*, it is examined privately. *Chambre du conseil* proceedings are never public.<sup>427</sup> The *chambre du conseil* is usually reserved for non-adversary proceedings.<sup>428</sup> This special treatment granted to Swiss judgments under the Treaty is apparently beneficial to the litigants concerned.

418. *Id.* arts. 4, 16, 28, 31, 34. See Herzog, *Update*, *supra* note 383, at 425. While the Convention's jurisdictional rules do not apply with respect to civil actions against non-domiciliaries of the signatory states, judgments rendered in a signatory state against such non-domiciliaries may still be enforced under the convention's terms in other signatory states. This results from the provisions of articles 4 and 28, which limit the application of the jurisdictional rules to domiciliaries of the signatory states, and of article 31 which mandates the enforcement in other signatory states of a signatory state's judgments which are enforceable where they were rendered. *But see* notes 395-97 and accompanying text, *supra*.

419. Bernard, *supra* note 1, at 426.

420. *Id.* at 429-30. See HERZOG, *supra* note 1, at 494-502. See N. C. PR. CIV. arts. 22, 433-37.

421. Bernard, *supra* note 1, at 430. See HERZOG, *supra* note 1, at 229-30, 238-39. See also N. C. PR. CIV. arts. 484-92, 808-11.

422. Bernard, *supra* note 1, at 430.

423. Note 86 *supra*. See note 379 *supra*.

424. Bernard, *supra* note 1, at 429. See Convention with Switzerland, *supra* note 86, art. 16.

425. Convention with Switzerland, *supra* note 86, art. 16. See Bernard, *supra* note 1, at 430.

426. See Bernard, *supra* note 1, at 430.

427. N. C. PR. CIV. arts. 22, 433, 436. See HERZOG, *supra* note 1, at 494-502.

428. HERZOG, *supra* note 1, at 494-502. When a decision rendered in the *chambre du conseil* of the *tribunal de grande instance* is appealed, the appeal is heard by the *chambre du conseil* of the appropriate *cour d'appel*. *Id.* 499-500. Thus, the privilege of private, less formal proceedings for *chambre du conseil* actions is continued through the appellate stage.

Since 1961, France has concluded several bilateral treaties with French-speaking African nations.<sup>429</sup> These agreements provide examples of the second category. Again, the documentation and conditions required for *exequatur* are generally familiar.<sup>430</sup> The unusual aspect of *exequatur* under these treaties is the procedural setting in which the foreign judgment is considered. These cases are considered as actions *en référé*.<sup>431</sup> Actions *en référé* are provided for a broad variety of special situations in French procedure. An action *en référé* is appropriate when provisional remedies are requested.<sup>432</sup> In such a case, the presiding judge of the court holds a summary hearing.<sup>433</sup> After he renders his decision, the losing party is allowed a short time to appeal.<sup>434</sup> The use of this procedure appears to favor the successful foreign plaintiff. Curiously, the application of this procedure to foreign judgment cases is restricted to former French colonies.

There are eighteen bilateral agreements which represent the third category.<sup>435</sup> As under the *droit commun*, proceedings in the *tribunal de grande in-*

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429. See Bernard, *supra* note 1, at 430. MAYER, *supra* note 1, at 328-29. France has concluded bilateral agreements concerning the recognition and enforcement of judgments with every French speaking African nation. LOUSSOUARN, *supra* note 1, at 637.

430. See Bernard, *supra* note 1, at 430.

431. *Id.* See Agreement on Cooperation in Judicial Matters, Jan. 18, 1965, France - Central African Republic, [1967] J.O. 4916 (May 19, 1967), art. 29; Agreement on Cooperation in Judicial Matters, May 18, 1962, France - Congo (Brazzaville), [1965] J.O. 1043 (Feb. 5, 1965), art. 32; Agreement on Cooperation in Judicial Matters, Apr. 24, 1961, France - Ivory Coast, [1962] J.O. 1265 (Feb. 6, 1962), art. 36; Agreement on Cooperation in Judicial Matters, Apr. 24, 1961, France - Benin, [1962] J.O. 1281 (Feb. 6, 1962), art. 36; Convention on the Execution of Civil Judgments and Extradition, Jul. 23, 1963, France - Gabon, [1965] J.O. 1723 (Mar. 2, 1965), art. 34; Agreement on Cooperation in Judicial Matters, Apr. 24, 1961, France - Upper Volta, [1962] J.O. 1311 (Feb. 6, 1962), art. 36; Convention on Judicial Affairs, Jun. 4, 1973, France - Malagasy Republic, [1975] J.O. 7712 (Jul. 30, 1975) annex II, art. 2; Agreement on Cooperation in Judicial Matters, Jun. 19, 1961, France - Mauritania, [1962] J.O. 1330 (Feb. 6, 1962), art. 36; Agreement on Cooperation in Judicial Matters, Apr. 24, 1961, France - Niger, [1962] J.O. 1299 (Feb. 6, 1962), art. 36; Agreement on Cooperation in Judicial Matters, Mar. 29, 1974, France - Senegal, [1976] J.O. 6868 (Nov. 30, 1976), art. 47.

432. See HERZOG, *supra* note 1, at 229-30.

433. *Id.* See N. C. PR. CIV. arts. 808, 811.

434. HERZOG, *supra* note 1, at 418. In contested matters, the time for appeal of a trial court decision is usually thirty days. N. C. PR. CIV. art. 538. In uncontested matters (*matière gracieuse*) the appeal time is fifteen days. *Id.* For an order from a proceeding *en référé*, the appeal time is fifteen days. N. C. PR. CIV. art. 490. Thus, the proceeding *en référé* shortens the appeal on a contested foreign judgment to the period normally allowed for uncontested matters.

435. Bernard, *supra* note 1, at 430-31. See, e.g., Convention Relating to Exequatur and Extradition, Aug. 27, 1964, France - Algeria, [1965] J.O. 7268 (Aug. 17, 1965); Convention with Austria, *supra* note 90; Convention with Belgium, *supra* note 87; Convention on the Recognition and Enforcement of Judicial and Arbitral Decisions, May 28, 1969, France - Spain, [1970] J.O. 2845 (Mar. 25, 1970), 746 U.N.T.S. 183; Convention with Britain, *supra* note 38; Convention on Jurisdiction and the Enforcement of Civil Judgments in Matters of Personal Status, Apr. 5, 1967, France - Poland, [1969] J.O. 1969 (Feb. 22, 1969), 677 U.N.T.S. 235; Convention on the Reciprocal Enforcement of Civil Judgments, May 18, 1971, France - Yugoslavia, [1972] J.O. 2468 (Mar. 9, 1972).

*stance* are required for *exequatur* under these agreements.<sup>436</sup> Various provisions in these treaties eliminate common problems which arise in *exequatur* cases under the *droit commun*.<sup>437</sup> Problems of concurrent jurisdiction are frequently resolved by the terms of the treaty.<sup>438</sup> The terms of the Hague Convention on Civil Procedure<sup>439</sup> can work in conjunction with a bilateral treaty to resolve problems when France's treaty partner is also a signatory of the Hague Convention.<sup>440</sup>

A detailed discussion of these agreements is beyond the scope of this Comment. These treaties are important in certain cases. Generally, they make it easier for foreign judgments arising in the relevant jurisdictions to be enforced in France. In determining whether to approve foreign judgments under the treaty law, French judges generally apply similar principles to those which govern under the *droit commun*.<sup>441</sup>

### VIII. SUMMARY AND CONCLUSION

Today, French law relies upon an incomplete, but extensive, set of objective principles for settling foreign judgment enforcement questions. Many foreign judgments can be enforced in France through the medium of a summary proceeding.<sup>442</sup> Non-French judgments rendered against French citizens or domiciliaries often may not be enforced in France.<sup>443</sup> The existence of a relevant treaty between France and the judgment-rendering nation will clarify the

436. Bernard, *supra* note 1, at 430. Compare, e.g., Convention with Britain, *supra* note 38, art. 7, § 1 with von Mehren & Gordley, *supra* note 9, at 98-99.

437. See, e.g., Convention with Britain, *supra* note 38. The Convention provides, *inter alia*, that a judgment shall not be denied enforcement "merely on the ground that the original court has applied in the choice of the system of law applicable to the case, rules of Private International Law different from those observed by the court applied to." *Id.* art. 3, § 2. See notes 272-94 and accompanying text, *supra*.

438. See, e.g., Convention with Britain, *supra* note 38. The Convention provides, *inter alia*, that the judgment-rendering court will be recognized as possessing jurisdiction when the judgment debtor was

a plaintiff . . . or counter-claimant in the proceedings . . . [or] submitted to the jurisdiction by voluntarily appearing [or] being a defendant . . . concluded a valid agreement to submit to the jurisdiction of the [judgment-rendering court or] . . . was . . . resident in the country of the original court, or . . . had, within the country of the original court, . . . a business . . . establishment . . . and the proceedings were in respect of a transaction effected through, or at, such establishment . . . .

*Id.* art. 4, § 1. See also note 382 *supra*.

439. Hague Convention Relating to Civil Procedure, Mar. 1, 1954, [1959] J.O. 9420 (Sep. 30, 1959), 286 U.N.T.S. 265.

440. See Bernard, *supra* note 1, at 431. Compare Convention with Britain, *supra* note 38, art. 3, § 1(b) with article 15 of the Hague Service Convention, *supra* note 264.

441. See MAYER, *supra* note 1, at 326. Compare, e.g., Convention with Britain, *supra* note 38, arts. 3-5 with, e.g., Bernard, *supra* note 1, at 427-28.

442. See, e.g., notes 1-15 and accompanying text, *supra*.

443. See, e.g., notes 184-90 and accompanying text, *supra*.

governing principles and eliminate some problems. However, judgments rendered in any nation regardless of its treaty arrangements with France, are within the scope of a broad French foreign judgment enforcement policy.<sup>444</sup> Judgments rendered in the courts of the United States are generally enforceable in France. However, as the United States has no relevant treaty with France, judgments rendered in the United States must rely on a less precise formulation of French foreign judgment enforcement doctrine.<sup>445</sup>

The principle exception to the broad foreign judgment enforcement policy of French law applies to foreign judgments rendered against French nationals and domiciliaries. This problem can be solved only by the terms of a treaty, unless the French party has clearly accepted the jurisdiction of the foreign court.<sup>446</sup> In some cases, *e.g.*, insurance and labor contract cases, subject matter jurisdiction belongs exclusively to the French courts under French law.<sup>447</sup> Consequently, foreign judgments rendered in such matters may not be enforced in France. The boundaries of civil jurisdiction between French and foreign courts are not precisely specified in French law. In general, however, the French courts do not object to the judgments of foreign courts on jurisdictional grounds if: (1) there was no basis for having the matter tried in France and (2) the foreign forum has minimum contacts with the underlying dispute.<sup>448</sup>

There are other exceptions to the judgment enforcement policy of French law. Stringent rules are applied for the review of default judgments.<sup>449</sup> Foreign default judgments are only enforced in France when procedural fairness to the defendant is well established.<sup>450</sup> Migratory divorces are often denied enforcement.<sup>451</sup> Similarly, foreign judgments tainted by forum shopping are suspect and are often denied enforcement.<sup>452</sup> Where a choice of law question determines the outcome in a foreign trial, the resulting judgment may be denied *exequatur* in France. Such judgments are not enforced unless French law favors the result reached by the foreign court.<sup>453</sup> Foreign judgments which conflict with substantive French law are barred from enforcement in France.<sup>454</sup> Those foreign judgments which are unsupported by ample documentation as to propriety and executory character are not enforceable in France.<sup>455</sup> Other excep-

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444. See, *e.g.*, notes 12 and 377 and accompanying text, *supra*.

445. See, *e.g.*, notes 93-94 and 377-78 and accompanying text, *supra*.

446. See, *e.g.*, notes 184-87, 211-14 and 414-18 and accompanying text, *supra*.

447. See note 189 and accompanying text, *supra*.

448. See § V.A *supra*.

449. See, *e.g.*, notes 265-72 and accompanying text, *supra*.

450. See notes 270-72 and accompanying text, *supra*.

451. See notes 281-90 and accompanying text, *supra*.

452. See notes 307-11 and accompanying text, *supra*.

453. See notes 273-94 and accompanying text, *supra*.

454. See notes 312-17 and accompanying text, *supra*.

455. See notes 328-29, 349-53 and 359-68 and accompanying text, *supra*.

tions to the judgment enforcement policy can be found in the interplay of the several conditions which are required to enforce a foreign judgment.<sup>456</sup>

By treaty, many of these problems are resolved. However, these treaties do not alter drastically the basic French approach to the enforcement of foreign judgments.<sup>457</sup> Situations arise where the international agreement is unclear on the appropriate action to be taken with respect to a foreign judgment. In such cases, the French courts rely on their general principles of law (*droit commun*) as if there were no treaty.<sup>458</sup>

The United States and France have no treaty arrangement directly affecting the reciprocal enforcement of foreign judgments. This means that judgments of courts of the United States are less likely to be enforced in France unless their enforcement is supported by the *droit commun* principles of *exequatur*.<sup>459</sup> Since the United States and France are parties to the Hague Service Convention,<sup>460</sup> the terms of that agreement can be invoked with respect to relevant procedural matters to assist the enforcement of an American judgment in France.<sup>461</sup>

French treaties with third countries may indirectly affect United States litigants seeking judgment enforcement in France. For example, an American judgment could be used to produce a British judgment in an action in the courts of the United Kingdom. The British judgment would then be enforceable in France according to the terms of the Treaty between France and the United Kingdom of January 18, 1934.<sup>462</sup> Alternatively, a United States citizen could have become a domiciliary of a signatory state of the Brussels Convention. He could then sue for a judgment in that nation's courts which would be enforceable in France and much of Europe.<sup>463</sup>

Similarly, a United States citizen contemplating a suit could litigate in France in the first instance, when it is appropriate. Since French judgments have a broad reach due to the number of treaty arrangements which France has entered, French judgments are more desirable than those of other coun-

456. See, e.g., notes 265-71 and accompanying text, *supra*. Where a foreign default judgment has been rendered against a French citizen or domiciliary, both the requirement that the foreign court be competent and the requirement that it follow regular procedures present grounds for the denial of *exequatur* arising from the same facts. *Id.* In such a situation these two conditions of *exequatur* work together against the enforcement of the foreign judgment. *Id.* Thus, the enforcement of such judgments is restricted to a greater degree than would be the case where only one condition of *exequatur* was directly relevant to the foreign judgment in question.

457. See note 441 and accompanying text, *supra*.

458. See, e.g., notes 333-42 and accompanying text, *supra*.

459. See notes 94 and 377-78 and accompanying text, *supra*.

460. Note 262 *supra*.

461. *Id.*

462. Convention with Britain, *supra* note 38. Of course, the British judgment would be required to meet the jurisdictional conditions of the Convention in order to be enforced in France. See *id.* arts. 3-4.

463. See notes 383-418 and accompanying text, *supra*.

tries in transnational situations.<sup>464</sup> While these alternatives may rarely be necessary or advisable, they provide interesting tactics for transnational litigation. In any case, United States citizens and domiciliaries should protect themselves with choice of forum or waiver clauses whenever they are entering transactions with French elements.<sup>465</sup> Otherwise, they may be forced to relitigate a dispute in France or face a defendant who is "judgment proof" under French law.

The current state of comity doctrine in France is neither extremely deferential nor extremely disdainful toward the civil judgments of foreign courts. From the perspective of the transnational litigant, enforcing a foreign judgment in France is a task which should be approached with caution but not with undue apprehension. From the perspective of the scholar of private international law, comity doctrine in France has undergone significant developments in recent years.<sup>466</sup> The trend toward the development of clear, objective principles in this area may be expected to continue. Much of the transformation of comity doctrine in France has occurred since the 1950's, a period in which comity doctrine has made similar advances in other countries.<sup>467</sup> This coincidence suggests that a connection exists between the development of an interdependent world order and the willingness of national court systems to enforce each other's civil judgments. France would be an important element in the evolution of this connection. Accordingly, this Comment is offered to assist in the study of contemporary developments in private international law, as well as to assist transnational litigants in the practical matter of enforcing a foreign judgment in France.

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464. See § VII *supra*.

465. See notes 211-14 and accompanying text, *supra*.

466. See notes 95-106 and accompanying text, *supra*.

467. See, e.g., Zaphiriou, *supra* note 12. During this recent period, it has been noted that the [Brussels] Convention, and the bilateral conventions on the reciprocal recognition and enforcement of civil judgments in Europe and the British Commonwealth, as well as the anticipated conventions on recognition and enforcement of judgments with the United States, represent a wide consensus on standards for the recognition and enforcement of foreign judgments and indirectly on the proper exercise of civil jurisdiction in transnational cases. . . . [These events] signal the emergence of certain general standards as to civil jurisdiction and the basic prerequisites for recognition and enforcement of money judgments. We are now at the threshold of new and exciting developments.

*Id.* at 767. Similarly, the principle of comity has been described as "becoming infused with" firmness in the United States and simultaneously in other countries. TENATIVE DRAFT, *supra* note 28, at 11.