

Memorandum 2016-6

**Recognition of Tribal and Foreign Court Money Judgments
(Recognition Standards)**

In this study, the Commission¹ was tasked with reviewing “the standards of recognition of a tribal court or foreign court judgment” under California’s enactment of the 2005 Uniform Foreign-Country Money Judgments Recognition Act (hereafter, “California’s Uniform Act”)² and the Tribal Court Civil Money Judgment Act (hereafter, “Tribal Act”)³ and reporting “its findings, along with any recommendations for improvement of those standards.”⁴

In California, the standards of recognition for both foreign and tribal court judgments are derived from the 2005 Uniform Foreign-Country Money Judgments Recognition Act (hereafter, “Uniform Act” or “2005 Uniform Act”).⁵

Under the Uniform Act, foreign money judgments are entitled to recognition unless an exception applies.⁶ Some of the Uniform Act’s exceptions to recognition are mandatory (i.e., the judgment *shall* not be recognized).⁷ Others are permissive (i.e., the judgment *need* not be recognized).⁸

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Code Civ. Proc. §§ 1713-1724.

3. Code Civ. Proc. §§ 1730-1742.

4. 2014 Cal. Stat. ch. 243, § 1 (SB 406 (Evans)).

5. The 2005 Uniform Act is a revision of the earlier 1962 Uniform Foreign Money-Judgments Recognition Act (hereafter, “1962 Uniform Act”). For the purposes of this memorandum, the relevant provisions of the 2005 and 1962 Acts are quite similar. Therefore, this memorandum includes citations to case law under both the 2005 and 1962 Acts, without noting the particular version of the Act in operation at the time the case was decided. The text of the Acts and the associated commentary is available on the Uniform Law Commission’s website: <http://uniformlaws.org/>.

6. See 2005 Uniform Act § 4(a).

7. *Id.* § 4(b).

8. *Id.* § 4(c).

This memorandum is the second in a series of memoranda discussing the individual standards of recognition for foreign and tribal court judgments in California law. **This memorandum focuses only on the standards of recognition addressing a foreign court’s jurisdiction.**

For the purposes of this memorandum, “foreign judgment” refers to a judgment of a court in a foreign country, but not a judgment of a tribal court. The staff uses this convention, which is somewhat at odds with the Uniform Act’s language,⁹ because California has different statutes governing foreign court judgments and tribal court judgments.

The jurisdictional standards governing tribal courts will be discussed in a supplement to this memorandum.

SUBJECT MATTER JURISDICTION FOR FOREIGN JUDGMENTS

Under California’s enactment of the Uniform Act, if the foreign court lacked subject matter jurisdiction, the resulting foreign judgment cannot be recognized:

Code Civ. Proc. § 1716 (Uniform Act § 4)

1716. ...

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

...

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

...

This makes sense. Generally, if a court lacks jurisdiction over a case, then the resulting judgment is invalid and should not be recognized.¹⁰ As such, lack of jurisdiction has long been accepted as a reason for nonrecognition of a foreign judgment.¹¹

9. See *id.* § 2(1)(C).

10. See Memorandum 2015-38, p. 3.

11. See generally *Hilton v. Guyot*, 159 U.S. 113, 202-203 (1895) (“[W]here there has been opportunity for a full and fair trial abroad *before a court of competent jurisdiction* ... the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.”) (emphasis added); Restatement (Third) of Foreign Relations Law of the U.S. § 482 (1987) (hereafter, “Third Restatement”); see also *id.* § 482 Comment (a) (“Lack of subject matter jurisdiction appears [as a permissive ground for nonrecognition] because jurisdiction of the rendering court over the subject matter is normally presumed, and an inquiry into possible lack of competence is initiated only on the basis of a credible challenge by the judgment debtor or by another person resisting recognition or enforcement.”).

Generally, the subject matter jurisdiction inquiry should focus on whether the court has the *authority* to hear the type of case at issue. In the context of foreign judgment recognition, this inquiry will generally require assessing the laws of the foreign country to determine whether the country empowered its own courts to hear the type of dispute at issue.¹² In other words, “[a] court is said to have jurisdiction of the subject matter of an action if the case is one of the type of cases that the court has been empowered to entertain by the sovereign from which the court derives its authority.”¹³

This exception, as drafted, seems appropriate and sufficiently clear. The staff does not recommend any change to existing California law on this point.

PERSONAL JURISDICTION FOR FOREIGN JUDGMENTS

Personal Jurisdiction, Generally

Traditionally, personal jurisdiction has two separate and distinct components.¹⁴ First, the court must have *grounds* for exercising personal jurisdiction over a defendant. In other words, the defendant must have a sufficient relationship to the forum in which the court sits or must have consented to the court’s jurisdiction.¹⁵

However, even where a court has adequate grounds for exercising personal jurisdiction over a defendant, the jurisdictional inquiry is not complete. In most cases, the court’s jurisdiction must be perfected by giving notice to the defendant through the *service of process*.¹⁶

Much of the Uniform Act’s language regarding personal jurisdiction seems to be focused on the grounds for jurisdiction, rather than on the adequacy of service

12. In some circumstances, the subject matter jurisdiction inquiry may be broader than simply reviewing foreign law. See, e.g., Third Restatement, *supra* note 11, § 482 Comment (d) (“While jurisdiction of the foreign court over the subject matter of the action is normally presumed, ... an order of a foreign court affecting rights in land in the United States or rights in a United States patent, trademark, or copyright is not entitled to that presumption.”).

13. Robert C. Casad & William B. Richmond, *Jurisdiction in Civil Actions: Territorial Basis and Process Limitations on Jurisdiction of State and Federal Courts*, v. 1, § 1.1[1], p. 2 (3d. ed., 1998).

14. See generally *id.* § 1-1[2].

15. See generally *id.* § 1-1[2][a].

16. *Id.* (“Jurisdiction of the person traditionally has been analyzed in terms of two different elements: *basis* and *process*.”); see also *id.* § 1-1[2][b] (“The existence of an appropriate basis, however, is not sufficient to subject a party to the court’s personal jurisdiction unless the party consents to jurisdiction or appears in the action. Certain officially prescribed procedural steps must be taken to connect the party to the court’s authority. ... The act of performing the prescribed steps is called *service of process*.”).

of process.¹⁷ For that reason, the majority of analysis in this memorandum also focuses on grounds for jurisdiction. A separate discussion of service of process will follow later in the memorandum.

Uniform Act's Personal Jurisdiction Provisions

California's enactment of the Uniform Act begins with an apparently straightforward rule, which is very similar to the rule on subject matter jurisdiction:

Code Civ. Proc. § 1716 (Uniform Act § 4)

1716. ...

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

...

(2) The foreign court did not have personal jurisdiction over the defendant.

...

The Act includes an additional set of rules for personal jurisdiction:

Code Civ. Proc. § 1717 (Uniform Act § 5)

1717. (a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following apply:

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

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

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

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

17. See generally 2005 Uniform Act § 5.

However, the issue of service of process has been addressed in the case law applying the Uniform Act. In practice, some courts have assessed the adequacy of service and have found personal jurisdiction lacking where the service of process was inadequate. See, e.g., *Julen v. Larson*, 25 Cal. App. 3d 325, 327, 101 Cal Rptr. 796 (Cal. Ct. App. 1972) ("Here personal jurisdiction over defendant was claimed on the ground that defendant had been doing business in Switzerland and had thereby subjected himself to the jurisdiction of the Swiss courts. Assuming the validity of this claim, the Swiss court could acquire personal jurisdiction over defendant only by effective service of its process.") (citations omitted).

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

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

(b) The list of bases for personal jurisdiction in subdivision (a) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision (a) as sufficient to support a foreign-country judgment.

...

(Note that Sections 1716 and 1717 are substantively identical to Sections 4 and 5 of the Uniform Act, respectively. Because much of the discussion that follows involves analysis of the Uniform Act, rather than California's enactment, that discussion refers to Sections 4 and 5 throughout.)

Section 5(a) lists specific grounds for personal jurisdiction under the Uniform Act. Section 5(b) makes clear that the list in subdivision (a) is not exclusive. A court may recognize other bases for personal jurisdiction as "sufficient to support a foreign-country judgment." The exact scope of the "sufficient bases" authorized under Section 5 is discussed later in the memorandum.¹⁸ For now, it is sufficient to note that the listed bases are compatible with general notions of due process.

Evaluating Personal Jurisdiction

The staff has identified two questions that may be relevant when evaluating a foreign court's exercise of personal jurisdiction:

- (1) Does the foreign court have personal jurisdiction under its own laws?
- (2) Is the foreign court's exercise of personal jurisdiction consistent with general notions of due process?

Under Section 4, a foreign judgment cannot be recognized if the foreign court lacks personal jurisdiction. However, it is unclear which of the two issues are subsumed by this standard.

18. See discussion of "Scope of Sufficient Grounds Under Section 5" *infra*.

Regarding the first issue, it seems proper to deny recognition to a foreign judgment where the foreign court had no legal authority to assert jurisdiction over the party. Such a judgment would presumably be invalid.¹⁹

Regarding the second issue, the staff sees good policy reasons to consider general due process concerns in deciding whether to recognize a foreign court's judgment. California may want its courts to decline to recognize a judgment if the foreign court's assertion of personal jurisdiction violates the defendant's due process rights.

Further, Section 5 suggests that due process considerations are relevant to the inquiry under the Act. That section clearly invites consideration of whether the foreign court's exercise of personal jurisdiction was consistent with general notions of due process (which seem to be provided as a supplement to the foreign court's own laws).

The primary challenge in understanding the Uniform Act's personal jurisdiction rules is determining whether and how each of the two issues is addressed by the Act.

Grounds for Personal Jurisdiction Under the Uniform Act

The Uniform Act's provisions on personal jurisdiction do not clearly indicate whether, in a judgment recognition proceeding, the foreign court's personal jurisdiction is governed by foreign law, general notions of due process, either of these, or both. Nor does the case law interpreting the Uniform Act clearly answer this question.²⁰

The staff sees three general ways that the Uniform Act might consider foreign law and general notions of due process in evaluating the adequacy of personal jurisdiction:²¹

- (1) Personal jurisdiction must satisfy *either* foreign law or general notions of due process.
- (2) Personal jurisdiction must satisfy *both* foreign law and general notions of due process.

19. See Memorandum 2015-38, p. 3.

20. See cases cited in notes 23 and 26 *infra*.

21. There is a fourth option, which is that personal jurisdiction is assessed solely by reference to foreign law. This option, however, seems flatly inconsistent with Section 5 of the Uniform Act, which lists sufficient jurisdictional grounds without making reference to foreign law. Therefore, this option is not discussed further in this memorandum.

- (3) Personal jurisdiction must satisfy *only* general notions of due process.

The staff closely reviewed the text of the Uniform Act, its commentary, relevant case law, and other related authority to determine which of these approaches governs the assessment of personal jurisdiction under the Uniform Act. The staff's findings as to each of these approaches are discussed in turn below.

Approach #1: Jurisdiction Must Satisfy Either Foreign Law or General Notions of Due Process

The first possibility is that the Uniform Act requires that the foreign court's exercise of personal jurisdiction satisfy *either* foreign law *or* general notions of due process. This interpretation is compatible with the language of the Act, as follows: Section 4 could be read to prohibit recognition of a foreign court judgment where the foreign court lacked jurisdiction under its own laws. However, Section 5 provides separate sufficient bases for personal jurisdiction. If grounds for personal jurisdiction exist under Section 5, the court cannot decline to recognize the judgment for lack of personal jurisdiction. Thus, grounds for personal jurisdiction may be sufficient under foreign law (pursuant to Section 4) *or* under general notions of due process (under Section 5). In other words, *each is sufficient, but neither is necessary*.

Despite the textual support, courts do not seem to be applying the Uniform Act in that way. Notably, the staff has not found any opinion that clearly indicates that compliance with foreign law, on its own, is sufficient to defeat a jurisdictional objection. To the contrary, the staff has found cases suggesting that compliance with foreign law on its own is *not* sufficient.²² Further, in nearly all of the case law reviewed by the staff, the jurisdictional analysis focuses on Section 5 of the Act, as if Section 5 is the test for whether a foreign court has jurisdiction.²³

Further, secondary authorities suggest that Approach #1 does not describe how courts are undertaking the Uniform Act's jurisdictional inquiry in practice.²⁴

22. See *Monks Own, Ltd. v. Christ in the Desert*, 168 P.3d 121, 125-127 (N.M. 2007) (finding that personal jurisdiction under foreign law was not in dispute and concluding that compliance with American principles of due process was required to establish jurisdiction under the Uniform Act).

23. See, e.g., *Bank of Montreal v. Kough*, 612 F.2d 467, 470-471 (9th Cir. 1980); *Sung Hwan Co., Ltd. v. Rite Aid Corp.*, 850 N.E.2d 647, 650-653 (N.Y. 2006); *Monks Own, Ltd.*, 168 P.3d at 124-129; *GENUJO LOK Beteiligungs GmbH v. Zorn*, 943 A.2d 573, 579-580 (Me. 2008).

24. See discussion of "Approach #2: Jurisdiction Must Satisfy Both Foreign Law and General Notions of Due Process" *infra*.

Approach #2: Jurisdiction Must Satisfy Both Foreign Law and General Notions of Due Process

The second possibility is that the Uniform Act requires the foreign court's personal jurisdiction satisfy *both* foreign law and general notions of due process. Under Approach #2, a court could decline to recognize a judgment for either of two reasons — lack of personal jurisdiction under the foreign court's own law, or lack of support for personal jurisdiction under general notions of due process. In other words, *both are necessary*.

It is not clear that the adequacy of personal jurisdiction under foreign law would be at issue in a judgment recognition proceeding under the Uniform Act. Presumably, in many cases, any jurisdictional dispute in the underlying case would have been addressed or waived in the original foreign proceeding.²⁵ If so, then the court considering recognition of the judgment would only be concerned with whether the foreign court's exercise of personal jurisdiction was consistent with general notions of due process.

Approach #2 is difficult to reconcile with the language of the Uniform Act. Section 5(a) seems to absolutely preclude nonrecognition of a foreign judgment if any of the listed grounds for personal jurisdiction exist. As discussed above, those grounds seem to be an expression of general notions of due process, rather than foreign law. Thus, if a foreign court lacked personal jurisdiction under its own law, but one of the grounds listed in Section 5(a) existed, the foreign judgment "shall not be refused recognition for lack of personal jurisdiction." This suggests that grounds for personal jurisdiction under foreign law may not be *necessary* in all cases.

Despite this tension with the text of the Act, the staff has found evidence that courts assessing personal jurisdiction under the Uniform Act do, in some cases, assess both foreign law and general notions of due process.²⁶

25. See, e.g., Third Restatement, *supra* note 11, § 482 Reporter's Note 3 ("If the defendant challenged the jurisdiction of the rendering court in the first action and the challenge was unsuccessful or was not carried to conclusion, or if he defended on the merits without challenging the court's jurisdiction, a renewed challenge to jurisdiction of the rendering court is generally precluded.")

26. See, e.g., *Dart v. Balaam*, 953 S.W.2d 478, 481-482 (Tex. App. 1997) (discussing appearance as a waiver of jurisdictional objections under both Texas and Australia law). See also *Sung Hwan Co.*, 850 N.E.2d at 651 ("Thus, the inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law."); *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*, 899 F. Supp. 1248, 1253 (S.D.N.Y. 1995) ("According to the

Moreover, Approach #2 is consistent with the Third Restatement on Foreign Relations Law. The Restatement reads, in relevant part,

(1) A court in the United States may not recognize a judgment of the court of a foreign state if:

...
(b) the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state *and* with the rules set forth in § 421 [which lists “reasonable” grounds of jurisdiction].²⁷

The associated Comment specifies, in part, that:

The most common ground for refusal to recognize or enforce a foreign judgment is lack of jurisdiction to adjudicate in respect of the judgment debtor. If the rendering court did not have jurisdiction over the defendant *under the laws of its own state*, the judgment is void and will not be recognized or enforced in any other state. *Even if the rendering court had jurisdiction under the laws of its own state, a court in the United States asked to recognize a foreign judgment should scrutinize the basis for asserting jurisdiction in the light of international concepts of jurisdiction to adjudicate.* See § 421. Since all the bases for jurisdiction to adjudicate listed in § 421 satisfy the requirements of due process in the United States, any foreign judgment rendered on one of those bases will be entitled to recognition, provided the facts support the assertion of jurisdiction.²⁸

The Restatement is currently being revised. The Draft Fourth Restatement requires nonrecognition of a judgment where “the court that rendered the judgment did not have personal jurisdiction over the party resisting recognition....”²⁹ The commentary and notes in the Draft Fourth Restatement suggest that the primary inquiry into the foreign court’s exercise of personal jurisdiction focuses on the “the minimum requirements of due process imposed by the U.S. Constitution,”³⁰ while acknowledging that “[m]ost States also allow a person opposing recognition of a foreign judgment to raise defects in the rendering court’s jurisdiction under the local law applicable to that court [i.e.,

standards articulated in both New York law and the proof of Quebec law offered by Plaintiff CIBC, the Canadian court obtained valid in personam jurisdiction over Defendant Saxony.”).

27. See, e.g., Third Restatement, *supra* note 11, § 482 (emphasis added).

28. See *id.* at § 482 Comment (c) (emphasis added).

29. Restatement of the Law Fourth, The Foreign Relations Law of the United States: Jurisdiction, Tentative Draft No. 1, § 403 (b) (April 1, 2014), *available at* <https://www.ali.org/projects/show/foreign-relations-law-united-states/> (hereafter, Draft Fourth Restatement).

30. *Id.* § 403 Comment (f).

foreign law].”³¹ Thus, in practice, the majority of the states are requiring that personal jurisdiction be compatible with general notions of due process, but also allow for nonrecognition for a lack of personal jurisdiction under the foreign court’s own laws.

Around the time that the Uniform Act was updated (in 2005), the American Law Institute³² (hereafter, “ALI”) prepared a Proposed Federal Statute on Recognition and Enforcement of Foreign Judgments. Under ALI’s proposed statute, the jurisdictional inquiry focuses on whether the foreign court’s basis for jurisdiction is unacceptable in the United States.³³ However, for default judgments, ALI’s proposed statute permits an inquiry into whether the foreign court lacked jurisdiction under foreign law.³⁴

Finally, the staff reached out to Ms. Kaitlin Dohse, Staff Counsel at the Uniform Law Commission, and Professor Kathy Patchel. Prof. Patchel was the Reporter for the 2005 Uniform Act. Prof. Patchel provided informal input about the personal jurisdiction rules in the Uniform Act. Her responses are not the official views of the Uniform Law Commission (hereafter, “ULC”).

Prof. Patchel’s responses indicate that courts typically assess whether the foreign court’s grounds for personal jurisdiction would be sufficient grounds for the state’s own courts to exercise jurisdiction. However, Prof. Patchel indicates that the Act permits jurisdictional objections on the basis of a lack of jurisdiction under foreign law. Thus, Prof. Patchel’s understanding of the Act seems to be in line with Approach #2.

Approach #3: Jurisdiction Must Satisfy Only General Notions of Due Process

The final possibility is that the Uniform Act *only* requires that the foreign court’s exercise of personal jurisdiction satisfy general notions of due process.

It is possible to reconcile the language of the Uniform Act with Approach #3. In particular, Approach #3 could be reached if Section 5 was read to be the sole test for establishing personal jurisdiction under the Act.³⁵ As discussed, Section

31. *Id.* § 403 Reporter’s Note (7). This note also indicates that “[t]here is authority ... for the proposition that a U.S. court generally will not look behind a foreign court’s finding of personal jurisdiction under its own law.” (citation omitted).

32. The American Law Institute is the organization that prepares the Restatements. See <https://www.ali.org/about-ali/institute-projects/>.

33. See ALI, Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute, §§ 5(a)(iii), 6 (2006).

34. See *id.* § 3(b); see also *Monks Own, Ltd.*, 168 P.3d at 127 (discussing the model statute).

35. See 2005 Uniform Act § 5 Comment. The Comment indicates that “Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to *establish that the foreign court*

5(a) provides that recognition shall not be declined on personal jurisdiction grounds if any of the listed grounds exist. Those grounds seem to be based on general notions of due process, without any reference to the law of the foreign court. Under that reading of the Act, personal jurisdiction under the foreign court's own laws is *not necessary*. Section 5(b) expressly states that the grounds listed in 5(a) are not exclusive. A court may find other sufficient bases for personal jurisdiction. While it is possible that foreign law is taken into account under this catch-all,³⁶ Section 5(b) does not expressly require consideration of foreign law.

The staff did not find any case law that unambiguously supports Approach #3. While many cases assessing jurisdiction rely on Section 5 of the Act (with little or no reference to foreign law),³⁷ it may be that compliance with foreign law simply was not disputed in these cases. Further, Approach #3 appears to be inconsistent with the majority practice, as described by the Restatements and Prof. Patchel.³⁸

Need for Clarification of Personal Jurisdiction Inquiry

As discussed above, the staff sees three possible approaches to the jurisdictional inquiry in the Uniform Act. After having reviewed the Act itself, the commentary, the case law, and related authority, the staff cannot definitively say what the Uniform Act requires with respect to personal jurisdiction. While Approach #2 (grounds must exist under *both* foreign law and general notions of due process) appears to reflect the majority understanding and practice, the language of the Uniform Act (Section 5(a), in particular) seems in tension with this approach.

The staff recognizes that uniformity between the language of California law and the Uniform Act should not be disrupted without good cause. However, the staff is concerned that, in this instance, the Uniform Act's language is not sufficiently clear on a fundamental issue — how should personal jurisdiction be

had personal jurisdiction." (Emphasis added.) Further, the Comment specifies that Section 5(b) permits a court to find that "the foreign court *had personal jurisdiction over the defendant* on some other basis." (Emphasis added.)

36. See, e.g., *Monks Own, Ltd.*, 168 P.3d at 126-127.

37. See, e.g., *Bank of Montreal*, 612 F.2d at 469-471; see also *Bank of Montreal v. Kough*, 430 F. Supp. 1243, 1247-1249 (N.D. Cal. 1977), *aff'd* 612 F.2d 467 (discussing the British Columbia rules for service of process to determine whether the procedure satisfied the due process requirements of the U.S. Constitution).

38. See discussion of "Approach #2: Jurisdiction Must Satisfy Both Foreign Law and General Notions of Due Process" *supra*.

assessed for recognition purposes? California's enactment could be amended to add clarity on that point. While that would introduce nonuniform language, it has the potential to increase uniformity with respect to actual practice. **The staff sees value in making such a revision.**

On the other hand, courts generally appear to be reaching appropriate results in practice. As discussed below, Approach #2 is both the majority practice and appears to be the right result from a policy perspective. Given that the courts appear to be reaching proper results, perhaps the statutory language should be left alone.

As a threshold question for the Commission to decide, should the personal jurisdiction provisions of the Uniform Act be revised to clarify how they operate?

Recommended Clarification

As indicated above, the staff believes that Approach #2 — requiring that personal jurisdiction exist under *both* foreign law and general notions of due process — reflects the predominant practice under the Uniform Act. In particular, Approach #2 seems to have the strongest support from the Third Restatement (and draft Fourth Restatement) and the informal input from Prof. Patchel.

Approach #2 also seems to make the most sense as a matter of policy. Under this approach, a California court could decline to recognize a judgment that is either invalid under the foreign court's own laws or inconsistent with a defendant's due process rights under our laws.

It is worth noting that codifying Approach #2 will *not* require that a California court assess jurisdiction under foreign law in every judgment recognition proceeding. Under the Uniform Act, a court is required to recognize a foreign judgment unless the opponent to recognition establishes that a ground for nonrecognition exists.³⁹ Thus, the opponent to recognition would initially be required to make the case that the foreign court lacked jurisdiction under foreign law.

In most cases, the jurisdictional claims under foreign law would likely have been addressed in the foreign proceeding.⁴⁰ However, in the rare case where a

39. 2005 Uniform Act § 4(d); Code Civ. Proc. § 1716(d).

40. In most cases, where there is a final foreign judgment, it is likely that the party either appeared (and failed to raise a jurisdictional objection) or fully litigated the jurisdictional issue in

party did not have an opportunity to raise its jurisdictional objection before the foreign court, it would be appropriate for California to confirm that jurisdiction was proper under foreign law. While this may not be common, it seems important that California courts have the flexibility to address the issue when it does arise.

If the Commission concludes that the personal jurisdiction provisions of the Uniform Act should be clarified, **the staff recommends that California's provisions be revised to clearly adopt Approach #2.** If the Commission agrees, the staff will present implementing language for review, in a future memorandum.

Scope of Sufficient Grounds Under Section 5

As discussed above, Section 5(a) lists grounds of jurisdiction that are sufficient to establish personal jurisdiction for the purposes of judgment recognition.⁴¹ Section 5(b) makes clear that the list of sufficient grounds is not exclusive. A court “may recognize bases of personal jurisdiction other than those listed in [subdivision] (a) as sufficient to support a foreign-country judgment.”⁴² However, the Uniform Act does not provide guidance on the scope and character of that catch-all.

The Prefatory Note to the 1962 Uniform Act indicates that: “[i]n codifying what bases for assumption of personal jurisdiction will be recognized, which is an area of the law still in evolution, the Act adopts the policy of listing bases *accepted generally* today and preserving for the courts the right to recognize still other bases.”⁴³ Unfortunately, the Commentary does not explain exactly what it means by “generally accepted” grounds. Generally accepted under U.S. Constitutional law?⁴⁴ State law?⁴⁵ International norms?⁴⁶

the foreign court. Appearance is one of the listed grounds for personal jurisdiction under the Uniform Act. 2005 Uniform Act § 5(a)(2).

Moreover, where the foreign court fully litigated the issue of personal jurisdiction, it may be that equitable doctrines would preclude California courts from disrupting the foreign court's determination in most cases. See generally ALI Model Statute, *supra* note 33, § 5 Reporters' Note 4 (“If the jurisdiction of the rendering court under the law [of] the state of origin was challenged before that court, its determination is conclusive; if jurisdiction under the law of the state of origin could have been but was not challenged, it may not be raised for the first time in the context of recognition or enforcement.”).

41. See 2005 Uniform Act § 5(a); Code Civ. Proc. § 1717(a).

42. 2005 Uniform Act § 5(b); Code Civ. Proc. § 1717(b).

43. Emphasis added. The personal jurisdiction provisions were largely unchanged in the 2005 Act.

44. See, e.g., *Bank of Montreal*, 612 F.2d at 471.

45. See, e.g., *Sung Hwan Co.*, 850 N.E.2d at 651.

Prof. Patchel, the Reporter for the 2005 Act, informally explained to the staff that the catch-all provision in Section 5(b) was intended to provide states with some flexibility as to what constitutes sufficient grounds for jurisdiction, *within the boundaries set by the U.S. Constitution*. In other words, the grounds encompassed by the Section 5(b) catch-all could be narrower than the U.S. Constitution's outer boundaries, but no broader. Further, Prof. Patchel indicated that, typically, courts recognize a foreign court's personal jurisdiction if it is based on any ground that would have been adequate for a court of the state to have exercised jurisdiction (i.e., the state applies its own jurisdictional principles). She stated that the drafting committee for the 2005 Act was aware of this practice under Section 5.

Prof. Patchel's description of the majority practice seems to be consistent with the staff's review of the case law.⁴⁷ The staff found that courts are assessing foreign exercises of personal jurisdiction under either U.S. principles of due process or state law.⁴⁸ For example, in *Bank of Montreal v. Kough*, the Ninth Circuit Court of Appeal opined that the Uniform Act's personal jurisdiction catch-all was "intended to leave the door open for the recognition by California courts of foreign judgments rendered in accordance with American principles of jurisdictional due process."⁴⁹ It is worth noting that the court's focus on American principles of due process is consistent with state law, as California has

46. See, e.g., *infra* note 57.

47. Although the staff has not evaluated the underlying jurisdiction laws of the relevant states, the staff surmises that the court's focus on either U.S. constitutional principles or state law will depend on whether a state permits jurisdiction to the extent of the U.S. Constitution (as California does, see *infra* note 50) or has more restrictive state statutes governing jurisdiction.

48. See *Sung Hwan Co.*, 850 N.E.2d at 651; *Bank of Montreal*, 612 F.2d at 470-471; *GENUJO LOK Beteiligungs GmbH*, 943 A.2d at 580 (citing Maine's long-arm statute); *Royal Bank of Canada v. Trentham Corp.*, 491 F. Supp. 404, 406 (S.D. Tex. 1980), *vacated and remanded on other grounds*, 665 F.2d 515 (5th Cir. 1981) (citing "traditional American formulations of the due process tests by which a court's exercise of personal jurisdiction over a nonresider defendant is limited by the Fourteenth Amendment"); *Kam-Tech Systems Ltd. v. Yardeni*, 774 A.2d 644, 652-653 (N.J. Super. Ct. App. Div. 2001).

At least one court, however, has found that sufficiency under Section 5(b) requires an assessment under both foreign law and U.S. due process principles. *Monks Own, Ltd.*, 168 P.3d at 125-126 ("[T]he core question we must answer is whether the New Mexico court, in considering whether to recognize 'other bases of jurisdiction,' applies the foreign jurisdiction's law, or only New Mexico law as it relates to federal due process standards, to determine whether the foreign court had a 'recognizable' basis for personal jurisdiction other than those specifically enumerated under the [Uniform Act]. ... The correct answer seems to be that the laws of both jurisdictions are applied, first the foreign law as to the foreign court's jurisdiction, and then American constitutional principles regarding due process of law.").

49. 612 F.2d at 471.

extended the jurisdictional reach of its courts to the limits of the U.S. Constitution.⁵⁰

The Restatements also provide some useful commentary. Although they are not interpreting the Uniform Act specifically, they address foreign judgment recognition generally and provide some evidence as to the scope of the sufficient grounds for personal jurisdiction under the Uniform Act. The Third Restatement specifies that jurisdiction must be “reasonable,” with respect to the relationship of the state to the party.⁵¹ The Third Restatement also includes a list of reasonable bases for jurisdiction.⁵² Under the Third Restatement, “reasonable” bases appear to be those that satisfy both international notions of jurisdiction, as well as U.S. constitutional restrictions.⁵³ The Draft Fourth Restatement suggests that the primary test for personal jurisdiction is whether the foreign court would have lacked jurisdiction “under the minimum requirements of due process imposed by the U.S. Constitution.”⁵⁴

Finally, it is worth noting that some states have deviated from the language of the Uniform Act, to add more specificity as to the scope of grounds recognized as sufficient under Section 5. Two states, North Carolina and Pennsylvania, have revised Section 5(a) to effectively permit personal jurisdiction so long as it is consistent with the U.S. Constitution.⁵⁵ Three other jurisdictions made changes to Section 5(b) to clarify and expressly limit its scope.⁵⁶

50. See Code Civ. Proc § 410.10 (“A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”).

51. See, e.g., Third Restatement, *supra* note 11, § 421.

52. See *id.*

53. See *id.* at § 421 Reporter’s Note 1 (“The modern concepts of jurisdiction to adjudicate under international law are similar to those developed under the due process clause of United States Constitution.”); see also *id.* § 421(2)(a); § 421 Comment (e); § 421 Reporter’s Note 5 (discussing the sufficiency of presence at the time of service as a basis for jurisdiction in both U.S. and internationally).

54. Draft Fourth Restatement, *supra* note 29, § 403 Reporters’ Note 5.

55. See Memorandum 2015-28, p. 9.

In North Carolina, personal jurisdiction is sufficient if “[t]here was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” See Uniform Foreign-Country Money Judgments Recognition Act (2005), 13, pt. II U.L.A. 2014 Cumulative Pocket Part p. 35. See also N.C. Gen. Stat. § 1-75.4 (bases for long arm jurisdiction); *Dillon v. Numismatic Funding Corp.*, 231 S.E.2d 629 (N.C. 1977) (“By the enactment of G.S. 1-75.4(1)(d), it is apparent that the General Assembly intended to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process.”).

And, in Pennsylvania, personal jurisdiction is sufficient if “the courts of this Commonwealth recognize other bases of jurisdiction.” See Uniform Foreign Money-Judgments Recognition Act (1962), 13, pt. II U.L.A. p. 75. See also David Epstein and Charles S. Baldwin, *International Litigation: A Guide to Jurisdiction, Practice, and Strategy* § 6.02[1] (4th ed. 2010)

- Missouri specifies that a court may recognize other bases of personal jurisdiction “consistent with fairness and substantial justice in the context of international commerce or relations.”⁵⁷
- North Carolina provides that a court may recognize “reasonable bases of personal jurisdiction.”⁵⁸
- Ohio only permits courts to recognize bases for jurisdiction “that have been recognized by the courts of this state or the general assembly.”⁵⁹

On balance, the staff believes that U.S. constitutional principles of due process were intended to serve as a limit under Section 5 (unless a state adopts stricter standards). While there are a few authorities (e.g., Third Restatement, Missouri’s statutory language, above) suggesting that international law might be a proper source for sufficient grounds under Section 5, the weight of the authority seems to be in favor of permitting jurisdiction to the extent authorized in the law governing the state’s own courts. In California, this would mean, consistent with the *Bank of Montreal* case, that personal jurisdiction which complies with U.S. constitutional requirements is sufficient under Section 5 of the Uniform Act.

If the Commission agrees, it should consider whether to revise California’s statutory enactment of the Uniform Act to state that scope expressly. If the Commission believes that this idea is worth pursuing, the staff will present implementing language in a future memorandum.

Adequacy of Service

As indicated earlier, personal jurisdiction requires not only a sufficient ground for jurisdiction, but also requires proper service of process on the defendant.⁶⁰

(Pennsylvania’s long arm jurisdiction statute has been construed to “extend the jurisdiction of the state’s courts as far as permissible under the due process limits of the Constitution.”).

56. See Memorandum 2015-28, p. 9.

57. See Uniform Foreign Money-Judgments Recognition Act (1962), 13, pt. II U.L.A. p. 75.

Virginia included a similar nonuniformity in its enactment of the 1962 Uniform Act. See also *id.* at 76. Virginia’s recent enactment of the 2005 Uniform Act does not contain the nonuniform language. See 2014 Va. Acts of Assembly ch. 462 (approved Mar. 31, 2014).

58. N.C. Gen. Stat. § 1C-1854(b). Read together with North Carolina’s non-uniform addition to subdivision (a), these reasonable bases presumably includes ones that would not be “consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” See *id.* § 1C-1854(a)(7), (b).

59. Ohio Rev. Code § 2329.91(D).

60. See discussion of “Personal Jurisdiction, Generally” *supra*.

The Uniform Act is largely focused on the sufficiency of the jurisdictional grounds. It does not directly address jurisdictional deficiencies arising from improper or inadequate service.

For example, Section 5(a) provides, in part, that “[a] foreign-country judgment may not be refused recognition for lack of personal jurisdiction if” sufficient grounds for jurisdiction exist. Read literally, this suggests that if sufficient grounds for personal jurisdiction are found, a court cannot decline to recognize a judgment based on a defect in the service of process. That seems problematic, and the staff has found cases where the courts considered service of process separately from the sufficiency of the grounds for personal jurisdiction.⁶¹

The staff believes that this is a technical issue that could be cured with a minor revision to make clear that, under the Act, a foreign court can lack personal jurisdiction as a result of improper or inadequate service of process. **Should the staff draft clarifying language for consideration in a future memorandum?**

CONCLUSION

This memorandum discusses the individual exceptions to recognition in the Uniform Act related to a foreign court’s lack of jurisdiction.

As discussed above, the staff found the exception for a lack of subject matter jurisdiction to be appropriate and sufficiently clear.

The staff also reviewed the Uniform Act’s provisions related to a foreign court’s lack of personal jurisdiction. While the staff does not have concerns with how courts are assessing a foreign court’s personal jurisdiction in practice, the staff recommends that the language of the Act be amended to clarify the following points:

- A California court can decline to recognize a foreign judgment for lack of personal jurisdiction if either of the following are true: (1) the foreign court lacked jurisdiction under its own law or (2) the

61. See generally *Julen*, 25 Cal. App. 3d 325 (validity of the jurisdictional ground is assumed, but notice was found to be inadequate); *Vrozos v. Sarantopoulos*, 195 Ill. App. 3d 610 (Ill. App. Ct. 1990) (evidence suggested that defendant was domiciled in foreign country at the commencement of the lawsuit (sufficient basis); the court required further inquiry into the service of process). See also *Royal Bank of Canada*, 491 F. Supp. at 406-409 (“Having determined that the Alberta court could, consonant with the restrictions of due process, exercise personal jurisdiction over the Defendant, the issue becomes whether that court in fact acquired jurisdiction over the Defendant. That inquiry requires an examination of Alberta’s law regarding service of process.”).

foreign court's exercise of personal jurisdiction violates due process (as described by the U.S. Constitution, see below).

- A California court can find the foreign court's grounds for personal jurisdiction "sufficient" under Section 5(b) of the Uniform Act (Code of Civil Procedure Section 1717(b)) only if those grounds are consistent with U.S. constitutional principles of due process.
- A California court is not precluded from finding, for the purposes of a judgment recognition proceeding, that the foreign court lacked personal jurisdiction based on deficiencies in the service of process.

The staff believes that these clarifications would be largely consistent with how the courts are operating under the Uniform Act. In recommending these clarifications, the staff seeks to codify the predominant understanding of the statute.

If the Commission agrees with staff's recommended clarifications, the staff will bring back statutory language implementing those clarifications in a future memorandum.

Respectfully submitted,

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