

Enforcement of International Foreign Judgments, Is That Even a Thing?

by
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In this ever-shrinking world, where travel and mobility have become the norm rather than the exception, clients come forward with a myriad of issues that increasingly have an international overlay. Whether the issue is citizenship in another country, assets in another country, or jurisdiction regarding a party residing in another country, an understanding of international law and its application to family law is becoming increasingly important to the practitioner. In addition to being able to identify these issues when clients come in with an initial dissolution of marriage case, understanding how to assist a client who has already been divorced in a foreign country is equally as important.

There are a variety of different mechanisms, statutes, and theories of law under which an international order can be enforced in the United States. At the time of this writing, there is no uniform mechanism for the enforcement of foreign judgments. The United States is not currently a signor of any treaty or convention that provides for the recognition or enforcement of foreign judgments. However, there is case law under the concept of comity as well as uniform laws adopted by the various states regarding enforcement of money judgments, support, and custody orders that can provide avenues for the enforcement of foreign judgments.

This article is not intended to be an exhaustive list of every possible method of enforcing foreign judgments; rather, the purpose of this article is to provide information regarding those that are the most effective and generally the most successful. The discussion in this article will concentrate on a variety of uniform acts from the Uniform Laws Commission (ULC), previously the National Commission on Uniform State Laws (NCCUSL), that were developed to make it much easier to enforce not just judg-

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ments between states, but judgments from foreign jurisdictions outside of the United States. In addition, this article will discuss the concept of comity, inherent in the uniform laws, but also an independent common law concept, to address the enforcement of foreign judgments.

Part I will be a concise, general overview of the various laws on enforcement of foreign judgments. As will be evident, the type of order being enforced will largely impact the methodology of enforcement undertaken. The remainder of the article will be broken into the types of orders that are likely to be enforced in dissolution of marriage actions. Part II will discuss enforcement of foreign judgment on purely property settlement agreement or orders. Part III will address enforcement of orders from foreign jurisdictions that have been reduced to money judgment. Part IV will explain enforcement of support orders. Finally, Part V will discuss enforcement of foreign custody orders. While there is no one way to effectuate enforcement of a foreign judgment, it will be clear there are preferred methods to accomplish the goal for the client.

I. General Overview of the Enforcement of Foreign Judgments

There is no one, uniform method to enforce foreign judgments in the United States.¹ It is important in the discussion of enforcement of foreign judgments to recognize that while the United States is a signatory to multiple Hague conventions that can be utilized in the effective management of a family law case, like the Hague Service Convention and the Hague Convention on International Child Abduction, the United States is not a signatory to the 1970 Hague Convention on the Recognition of Divorces and Legal Separations.² There is certainly the necessity of international uniformity on enforcement of foreign judgments, and there is discussion on that, but since that does not yet exist,

¹ U.S. Dep't of State, *Enforcement of Judgments*, Travel St. Gov, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Enforcement-of-Judges.html> (last visited Oct. 24, 2020).

² See *Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations*, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80> (last visited Dec. 30, 2020).

it is necessary to look to common law and or state statutory law to proceed. This article will discuss the concepts of comity, the Uniform Foreign Money Judgments Recognition Act of 1962 (UFMFRA) and the amendment to it in 2005, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), and the Uniform Interstate Family Support Act (UIFSA). In family law cases, these are the primary mechanisms to seek enforcement of international foreign judgments.

In broad terms, when seeking to enforce a foreign judgment, there is a method to follow. This means there are certain steps to take to determine the best path to enforcement. Thus, it is important to first know the type of order a client is seeking to have enforced. A foreign custody order will be treated differently than a foreign support order, for example, and a different process is required for each. While they are similar, it is important to follow the necessary procedures to have the greatest success in enforcement. What is unique about the enforcement of foreign judgments as it pertains to family law is that a variety of different aspects of a divorce require different types of jurisdiction. Jurisdictional requirements to simply issue a divorce dissolving the marriage differ from the requirements to order spousal support, and those differ from the requirements to determine custodial designations, which differ from the jurisdictional requirements for child support. Thus, it is possible that portions of a foreign judgment may be enforceable while others are not. For example, for a court in the United States to recognize a divorce entered in a foreign country there must first be a determination that the foreign country had proper jurisdiction over the parties to issue a divorce.³

Once a determination has been made regarding the type of order to be enforced, the next step is to ascertain the foreign country or tribunal that entered the order and, most importantly, gain an understanding of the legal system of that issuing tribunal. It is strongly recommended to hire local counsel for any international case. In the fifty states, the basic requirements for enforcement of a foreign order would include due process, an acknowledgement of personal and/or subject matter jurisdiction,

³ *Clafin v. Clafin*, 288 So. 3d 774 (Fla. 1st Dist. Ct. App. 2020), *review denied*, SC20-237, 2020 WL 4049717 (Fla. July 20, 2020).

and that the law establishing the underlying order seeking to be enforced is not contrary to public policy. One of the most important steps prior to enforcing any foreign judgment in any state is to ensure a good understanding of how the order sought to be enforced was obtained.

A vital step to enforcing any foreign judgment is knowing the legal processes and law in the issuing location. This part of the process is absolutely necessary, since enforcement will depend on due process having been followed in the issuing country as well as evidence that the issuing country has similar, while not identical laws to where enforcement is sought.⁴

Assuming the constitutional requirements of due process have been met, it is likely that most states in the United States will enforce an order so long as the underlying law was not void against public policy. What is void against public policy may vary from state, so it would be necessary to understand the specific policies in the state where enforcement is sought. This does not mean, however, that the laws of the issuing tribunal must be exactly like the law of the state that is enforcing the order, nor that it is even similar.⁵ If it is determined that the issuing country failed to adhere to basic due process or that the laws are violative of public policy in the forum where enforcement is sought, it is likely that there will not be enforcement of the foreign judgment.⁶

With the knowledge of the type of order and necessary information regarding the issuing tribunal, the next step in the process is a determination of the proper method to utilize for enforcement. Has the state in which enforcement is sought enacted uniform laws like UIFSA and the UCCJEA? With the exception of Massachusetts, the answer to that would be yes for any state in the United States.⁷ Massachusetts, notwithstanding the law regularly being proposed in its legislature, has yet to adopt the UCCJEA and still functions under the UCCJA.⁸ However,

⁴ *In re Marriage of Malak*, 227 Cal. Rptr. 841 (1986).

⁵ *Id.* at 1025.

⁶ *See Clafin*, 288 So. 3d at 779.

⁷ Uniform Law Commission, *Interstate Family Support Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb> (last visited Dec. 30, 2020).

⁸ *Id.*

the basic issues discussed herein with enforcement of foreign custody orders will apply similarly whether under the UCCJA or UCCJEA. While thirty-three states have enacted the Uniform Foreign Money Judgments Recognition Act (UFMJRA)⁹ and twenty-six have adopted the Uniform Foreign Country Money Judgment Recognition Act (UFCMJRA),¹⁰ both specifically state that their purpose is not to enforce support in domestic relations cases. Thus, enforcement of support is most successful by utilizing UIFSA. However, awards of specific dollar amounts may be enforceable under either the UFMJRA or the UFCMJRA, even if rising from a dissolution of marriage action in a foreign country.¹¹

Before detailing the process of enforcing final judgments under one of the statutory concepts discussed above, it is important to examine the concept of comity and its application to the enforcement of foreign judgments.

II. Common Law and Comity

While this part of the article concentrates on the enforcement of foreign judgments incorporating property settlement agreements or requiring the distribution of property, the principles discussed in this section can arguably be used for the enforcement of all foreign judgments, but they may not be the most direct or simplest method. As previously indicated, there is no uniform law or federal legislation regarding the enforcement of foreign divorce final judgments. Thus, the evaluation of the methodology of enforcement turns to a review of the law in the individual states. A caveat, while most states similarly apply the laws as explained in this article, there are variations and it is im-

⁹ Uniform Law Commission, *Foreign Money Judgments Recognition Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=9c11b007-83b2-4bf2-a08e-74f642c840bc> (last visited Dec. 30, 2020).

¹⁰ Uniform Law Commission, *Foreign-Country Money Judgments Recognition Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=AE280c30-094a-4d8f-b722-8dcd614a8f3e> (last visited Dec. 30, 2020).

¹¹ *In re Marriage of Srichanchao v. Reedstrom*, C5-95-130, June 13, 1995 WL 351556 (Minn. Ct. App. 1995); *Jeong Suk Bang v. Joon Hong Park*, 321 N.W.2d 831 (Mich. Ct. App. 1982)

perative to ensure how the state in which enforcement is sought addresses foreign judgments.

While the concept of the constitutional theory of full faith and credit does not technically extend to foreign judgments, the concept of comity really ensures that state courts are applying full faith and credit to foreign judgments in family law cases.¹² “States, however, are not required to give full faith and credit to foreign country judgments; dismissal based on comity is a matter of discretion.”¹³ Assuming certain requirements are met, most states will enforce foreign divorce judgments under the theory of comity.¹⁴ Absent a showing of fraud or a violation of public policy, comity should be used to uphold foreign judgments.¹⁵ For example, in *Aleem v. Aleem*, the Maryland court would not give comity to a foreign divorce obtained in Pakistan by the husband that provided the wife no opportunity for equitable distribution unless the husband granted her such a right.¹⁶ This requirement for the husband to provide permission for the wife to receive equitable distribution violated Maryland’s constitutional Equal Rights Amendment and therefore violated public policy for the State of Maryland.¹⁷ Similarly, if a foreign judgment or agreement is sought to be enforced but was obtained by fraud, the court can permit an attack as to validity because of the fraud, even if the foreign state would not permit such a collateral attack.¹⁸

The starting point for a discussion of the enforcement of foreign judgments under the theory of comity is *Hilton v. Guyot*.¹⁹ In *Hilton* the U.S. Supreme Court established the basis for acknowledgement of a foreign judgment and its enforcement in the United States. The essential determination, which is truly the underlying theme for the enforcement of any foreign judgment, hinges on a determination that the following occurred in the issu-

¹² Ann Laquer Estin, *Foreign and Religious Family Law: Comity, Contract, and the Constitution*, 41 PEPP. L. REV. 1029 (2014).

¹³ *Ashfaq v. Ashfaq*, 467 S.W.3d 539, 541 (Tex. App. 2015).

¹⁴ *Hilton v. Guyot*, 159 U.S. 113, 169-70 (1895).

¹⁵ *Badawi v. Awel Mounir Alesawy*, 135 A.D.3d 792, 792 (N.Y. App. Div.).

¹⁶ *Aleem v. Aleem*, 947 A.2d 489, 500 (2008).

¹⁷ *Id.* at 422.

¹⁸ *Feinberg v. Feinberg*, 40 N.Y.2d 124, 126 (N.Y. 1976).

¹⁹ *Hilton*, 159 U.S. 113.

ing jurisdiction: that there was a full and fair trial, before a court of competent jurisdiction that followed procedures allowing adverse parties to present their cases, with a system of laws that provides impartial justice for the citizens, and that there is no evidence of fraud; if all of these requirements are met, then the United States should recognize the foreign judgment.²⁰ The *Hilton* case involved a French order, and all of these due process basics were found; however, the French would not provide the same reciprocity to an order of the United States, so no enforcement was available.²¹

This 1895 case is the benchmark on an understanding of comity as it applies to foreign judgments, and the *Hilton* case added another required factor before a foreign judgment would be enforced, and that was the requirement of reciprocity.²² Essentially, for the United States to enforce a foreign judgment, there needed to be evidence that the country issuing the foreign judgment would similarly enforce an order from the United States. This made it very difficult to enforce foreign judgments because many countries would not enforce U.S. issued judgments. Many states have laws that dispense with the need for reciprocity which eases the requirements under *Hilton* and can be an aid to enforcement under the theory of comity. This is of particular importance since under the uniform laws discussed later in this article, it is necessary for reciprocity of laws to exist, so a theory of comity may be the only method of enforcement.

For example, in the case of *S.B. v. W.A.*, out of New York, the former wife utilized the theory of comity and sought to enforce an order from Abu Dhabi, awarding her custody and child support. She filed for a declaratory action in New York, asking the New York court to treat the final judgment of divorce from the Abu Dhabi court as if it had been issued in New York and enforce it.²³ The order of divorce from Abu Dhabi also included a lump-sum deferred dowry payment owed to the wife of \$250,000 under a duly signed Mahr Agreement executed prior to the parties' marriage.²⁴ In this case, the husband made interest-

²⁰ *Id.* at 202.

²¹ *Id.* at 210.

²² *Id.*

²³ *S.B. v. W.A.*, 959 N.Y.S.2d 802, 807 (N.Y. Sup. Ct. 2012).

²⁴ *Id.* at 815.

ing arguments, fighting the enforcement of the Abu Dhabi divorce, alleging the parties were still married because they were not divorced in New York and he disputed the payment of the deferred dowry under the Mahr Agreement with a separation of church and state argument.²⁵ The New York court found that “[t]he general principle of law is that a divorce decree obtained in a foreign jurisdiction by residents of this State, in accordance with the laws thereof, is entitled to recognition under the principle of comity unless the decree offends the public policy of the state of New York.”²⁶ Moreover, the New York court upheld the enforcement of the Mahr Agreement, determining that it was completely within the parties’ rights to enter into such an agreement and that under the UFCMJRA (discussed more fully below), the funds were owed to the wife. Prevalent throughout the ruling is the court’s determination of the proper jurisdiction of the Abu Dhabi court to divorce the parties and enter the various rulings, including the money judgment under the terms of the Mahr. Moreover, the New York court in a detailed evaluation determined that no part of the rulings violated public policy, concluding that even if the laws of Abu Dhabi were different, they afforded the same basic principles and guidelines as the New York court system:

Recognition of a foreign judgment may be withheld where (1) it is contrary to the public policy of the state where the recognition is sought, (2) the country in which the decree was rendered does not recognize American decrees, or (3) the judgment was obtained in bad faith, by fraud, or by taking advantage of the foreign law.²⁷

As a side note, it is not necessary for a foreign country’s judgment to be enforced that the country is a signatory to any of the Hague conventions. Simple comity is enough; however, comity is a matter of discretion and a failure to comply with due process will foreclose the enforcement of a foreign judgment under its principles.²⁸ This is why involving a lawyer in the jurisdiction of the issuing order is so important to enforcing a foreign judgment.

²⁵ *Id.*

²⁶ *Id.* at 799.

²⁷ *Hager v. Hager*, 274 N.E.2d 157, 159 (Ill. App. Ct. 1971), *see also In re Marriage of Muruges & Kasilingam*, 993 N.E.2d 1109 (Ill. App. Ct. 2013).

²⁸ *Ashfaq*, 467 S.W. 3d 539.

III. Money Judgments

As discussed at the outset, and highlighted in the *S.B.* case above, multiple types of enforcement may be needed for the various parts of a dissolution of marriage ruling arising from a foreign jurisdiction. This can include traveling under common law theories, like comity, as well as state statutory constructs. Like in *S.B.*, the theory of comity was necessary to recognize the Abu Dhabi court's jurisdiction and authority to divorce the parties, but the New York court applied a state statute to enforce the payment owed to the wife under the Mahr Agreement. In seeking to enforce the monies owed her, the wife was simply asking the court to recognize a foreign country money judgment and convert it to a New York judgment.²⁹ By adopting the Uniform Foreign Country Money-Judgments Recognition Act, the state of New York had established a statutory construct for the enforcement of foreign money judgments.³⁰ Again, it is therefore integrally important to the enforcement of any foreign judgment to know what laws are applicable in the state in which enforcement is sought.

Both the UFMJRA and UFCMJRA clearly indicate the purpose of these uniform laws is not to be used for the enforcement of awards of support from domestic relations foreign orders. So it is necessary to turn to other methods for enforcement.

IV. Support Orders – Alimony and Child Support

In 2008, the Uniform Laws Commission (UCL) (formerly the National Conference of Commissioners of Uniform State Laws—NCCUSL) set forth the Uniform Interstate Family Support Act (UIFSA).³¹ UIFSA has been adopted by all fifty states and the District of Columbia.³² It is the preferred method of enforcement for support orders whether from the United States or abroad. The 2008 UIFSA provided updates to the 1992 and 2001 Interstate Support Act, to add provisions and reconcile discrep-

²⁹ See *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 222 (N.Y. 2003).

³⁰ *S.B.*, 959 N.Y.S.2d at 802.

³¹ Uniform Law Commission, *supra* note 7.

³² *Id.*

ancies with the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The United States signed the convention at The Hague on November, 2007, indicating its intent to bring the convention into force. However, the signature by the United States still requires each state to create necessary implementing laws.³³ In addition, in 2014, Public Law 113-183, was signed by the President enacting the treaty.³⁴ All states adopted UIFSA by 2016.³⁵

UIFSA provides for the establishment of child support, as well as the recognition of paternity, and the enforcement of child support both interstate and from foreign countries. For purposes of this article, the concentration will be on the ability to enforce foreign support orders. As previously indicated, not all the states have adopted UFMJRA or UFCMJRA, so UIFSA is the primary way to enforce support orders issued in another country or tribunal. The enforcement can be for child support, alimony, spousal support, health insurance and health related expenses as well as fees and costs associated with the same. As with all foreign judgments, prior to seeking enforcement it is wise to consult with counsel in the jurisdiction where the order originated. It is necessary to determine that the court issuing the order had personal and subject matter jurisdiction over the case, that the laws of the country provide similar safeguards to those that are expected in the United States, and that due process was followed, including notice and an opportunity to be heard. In addition, local counsel will be necessary to obtain documents required to seek enforcement.

Each state has enacted UIFSA and they are essentially identical to that which can be found on the ULC website but conformed to meet the statutory sections and language as adopted by each state.³⁶ A strict following of the requirements of the enacted statute in the jurisdiction in which one is seeking enforcement is recommended for successful enforcement to occur. The first step in the process of seeking enforcement under UIFSA is

³³ UNIF. INTERSTATE FAMILY SUPPORT ACT, prefatory note, at 5 (Nat'l Conf. of Comm'rs on Unif. State Laws 2018).

³⁴ *Id.* at 7.

³⁵ *Id.*

³⁶ CAL. FAM. CODE § 5700; TEX. FAM. CODE § 159; WIS. STAT. ANN. § 769.

to register the foreign support order in the state where enforcement is sought.³⁷ This is done by instituting an action in the appropriate court seeking registration and providing the court, to then be served on the responding party, two copies of the order that is to be registered, one of which must be a certified copy. If the order is not in English, it would be appropriate to also file a copy of the order translated and certified by the translator. There can be hurdles to obtaining a certified copy of the foreign order which is why local counsel is beneficial and, frankly, necessary.³⁸

Once the registration action has been filed, the foreign order is enforceable and should be enforced as an order of the state where registration occurred.³⁹ Upon registration, notice is to be given to the non-registering party at which point, the obligor can contest the validity of the order or enforcement of the order.⁴⁰ To contest the validity or enforcement of a registered support order the person seeking to vacate it has a variety of defenses to claim. The most common are similar to those that have arisen with other types of enforcement, like a lack of due process or lack of personal jurisdiction by the issuing tribunal.⁴¹ Other defenses include, but are not limited to, that the order was obtained by fraud, that the order is not the final order, that the issuing tribunal stayed the order pending an appeal, that there is an adequate defense under the law of the enforcing state, or that full or partial payment has been made.⁴² Should one of these defenses be successful, enforcement of the foreign order is unlikely. A support order entered without proper notice, or in violation of the public policy of the state where enforcement is sought, will likely result in a vacating of the registration and an inability to enforce.⁴³ This is why knowing the details surrounding the order before the filing of an enforcement is action is the preferred method of practice.

³⁷ *Id.* § 601.

³⁸ *Id.* § 602.

³⁹ *Id.* § 603.

⁴⁰ *Id.* § 606.

⁴¹ *Id.* § 607.

⁴² *Id.*

⁴³ *In re E.H.*, 450 S.W.3d 166 (Tex. App. 2014).

V. Custody Orders

In 1997, the Uniform Law Commission introduced the Uniform Child Custody Jurisdiction and Enforcement Act.⁴⁴ At the time of this writing every state, except Massachusetts, has adopted the UCCJEA.⁴⁵ It has been introduced as a bill to the Massachusetts State legislature numerous times, to no avail. Prior to the 1997 UCCJEA, all fifty states, the District of Columbia, and the Virgin Islands had enacted the Uniform Child Custody Jurisdiction Act (UCCJA).⁴⁶ However, each state enacted the UCCJA differently so there was a lack of uniformity to the “uniform” law.⁴⁷ The Uniform Law Commission recognized that the lack of uniformity and enforcement of child custody awards was an issue. Depending upon where the child and the parent were and where the enforcement was taking place would require different methodologies to enforce custody orders. The goals with the UCCJEA were to decrease the cost of enforcement, increase the certainty of an outcome, and reduce the length of time required to enforce foreign judgments.⁴⁸

In addition, the Parental Kidnapping Prevention Act (PKPA) was enacted to deal with international custody issues and required full faith and credit be given to foreign custody orders.⁴⁹ There were conflicts between the PKPA and the UCCJA, so the ULC set out to remedy these issues with the creation of the UCCJEA. There were multiple purposes for the UCCJEA, including more clarification about jurisdiction for an initial determination of child custody and clarifications regarding modification, but the relevant purpose for this article was the creation of enforcement mechanisms which were haphazard and not uniform prior to the UCCJEA and did not necessarily apply to foreign

⁴⁴ Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d> (last visited Dec. 31, 2020).

⁴⁵ *Id.*

⁴⁶ Uniform Law Commission, *Child Custody Jurisdiction Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=020a80d7-902e-412b-9b44-112a1693760c> (last visited Dec. 31, 2020).

⁴⁷ UNIF. CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT 1, 9 U.L.A. 690 (Nat'l Conf. of Comm'rs on Unif. State Laws 2007).

⁴⁸ *Id.* at prefatory notes.

⁴⁹ 28 U.S.C. § 1738A (2019).

judgments.⁵⁰ While there was underlying law regarding jurisdictional issues and the need for proper due process, there was little guidance, if any, on the actual enforcement of orders.

Article 3 of the UCCJEA is entirely about the enforcement of custody awards. In this article, reference is made to the ULC version of the UCCJEA. Each state that has adopted the UCCJEA does so within the statutory constructs of their specific state, but the general concepts are the same as the ULC's UCCJEA. As is the overriding theme in the enforcement of foreign judgments, most states will enforce a foreign custody order so long as the parties had notice and an opportunity to be heard and the laws of the issuing tribunal do not violate public policy. Assuming the order that is sought to be enforced can meet these principles, the UCCJEA can be used to enforce child custody determinations from foreign jurisdictions.⁵¹ It is likely common for most jurisdictions, when considering the enforcement of foreign custody awards, to default to The Hague Convention on International Child Abduction, but that goes beyond the confines of this article. While the Hague Convention on International Child Abduction is likely the preferred method in dealing with return of a child when taken from their habitual residence, that could be an article all on its own.⁵²

For purposes of this article from an enforcement perspective, the UCCJEA is the most effective method of enforcement when not dealing with issues of a wrongfully removed child. For example, if all parties are now living in the United States and there is an issue with the enforcement of a custody award, the UCCJEA is the most effective mechanism and truly the only mechanism with which to seek enforcement. When a child has been wrongfully removed from the United States to a foreign jurisdiction or vice versa, it is best to consult with an international attorney to determine the proper legal mechanism to trigger, either under the The Hague Convention on International Child Abduction or the UCCJEA. It is also important to note that The

⁵⁰ UNIF. CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT, prefatory notes, at 1.

⁵¹ U.S. Dep't of State, *supra* note 1.

⁵² See also *In re T.L.B.*, 272 P.3d 1148, 1154 (Colo. App. 2012); *Child Abduction Section*, <https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction> (last visited Dec. 31, 2020).

Hague Convention on the Civil Aspects of International Child Abduction is not intended to be used to enforce visitation orders but rather to determine the child's habitual residence, which can then enforce its custody order. So, the UCCJEA would be the mechanism to enforce an order made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

To enforce a foreign custody order, the same steps as with enforcement of all foreign judgments should be followed. A review of the custody order seeking to be enforced must first involve a determination of the laws of the issuing tribunal. If the issuing tribunal provides notice and follows principles of due process, it is likely the award is enforceable. It is also necessary that the law of the issuing tribunal has similar jurisdictional requirements as the UCCJEA (as enacted in the state in which enforcement is sought) provides. The next issue to be evaluated is whether the issuing tribunal has laws that violate public policy. For example, a Sharia court order from Gaza giving custody to a father would not be recognized because the law did not take into consideration the best interest of the child and simply awarded custody to fathers.⁵³ Similarly, a Massachusetts court determined that a Lebanese custody order should not be recognized because the laws of the issuing court provide that a father gets custody even if both parents are fit and proper to serve the role.⁵⁴ The violation of public policy by the laws of the issuing tribunal are the primary basis on which a state court would not recognize or enforce a foreign judgment.

Assuming the order entered from the foreign jurisdiction is not violative of due process, in every state but Massachusetts the UCCJEA would be the appropriate mechanism for enforcement. The statute has been adopted, with essentially the same language, in all states other than Massachusetts. Thus, following the registration requirements provided for in the statutory language is necessary for enforcement. The first step, as with UIFSA, requires the filing of a request for registration with two copies of the foreign judgment, one of which must be certified. If the original order or judgment is not in English, it should be translated,

⁵³ *Ali v. Ali*, 652 A.2d 253, 336 (N.J. Super. Ct. Ch. Div. 1994).

⁵⁴ *Charara v. Yatim*, 937 N.E.2d 490, 498 (Mass. App. Ct. 2010).

and a certified translation should also be filed. Again, local counsel in the jurisdiction that issued the order is a true necessity to effectuate successful enforcement. The non-registering party can contest jurisdiction, alleging the issuing tribunal did not have jurisdiction, that the order sought to be enforced is not the last order entered, or that notice was not given prior to the custody award being entered. If any of these defenses are proven, the foreign order will likely not be enforced. However, if no defenses are raised or the defenses are rejected, the foreign order likely will be enforced. Under the UCCJEA, the court can then enforce the foreign order as if it were its own, including issuing a warrant to take physical custody of the child.

The importance of understanding the foreign jurisdiction's law cannot be stressed enough. Many tribunals or countries may have laws that are different than the UCCJEA and each state's custody statutes, but if the issuing tribunal's law are substantially similar, it is likely the foreign order will be enforced. This does not mean that the laws of the issuing tribunal must be exactly like the law of the state that is enforcing the order.⁵⁵ In *In re Marriage of Malek*, the California court determined that notwithstanding the fact that the law in Lebanon was different than that in California, the custody order entered followed proper due process prior to its entry and the laws, while different than California's, did not violate public policy. The *Malek* case is interesting and informative in that the California court determined that notwithstanding the fact that the laws of Lebanon were different, they were substantially in compliance with the UCCJEA in that both parents were in Lebanon at the time the order was entered, Lebanon had significant connections to the family, and while the language is different the laws appear to look at the best interest of the child.

Similarly, a Maryland court that determined that a Pakistani order granting custody to the father in the absence of the mother at the hearing should be recognized under both the UCCJEA and principles of comity.⁵⁶ This was primarily predicated on the fact the mother was given notice and an opportunity to be heard,

⁵⁵ *In re Marriage of Malek*, 227 Cal. Rptr. 841 (1986).

⁵⁶ *Hosain v. Malik*, 309 671 A.2d 988, 1000 (Md. Ct. Spec. App.1996).

just as the UCCJEA provides that “failure to appear may result in a decision adverse to that party.”⁵⁷

VI. Conclusion

The clear thread that runs through enforcement of any foreign judgment, regardless of the topic, has to do with the way the judgment was obtained. Does the foreign tribunal entering the order have similar concepts of personal and subject matter jurisdiction as the United States? If so, that is one step towards a probable enforcement of an order. Does the foreign tribunal follow the concepts of due process, such as providing notice and the opportunity to be heard? If these two thresholds are met, enforcement is likely. However, the main hindrance at that point has to do with the actual law in the issuing tribunal. It cannot be violative of the public policies of the state where enforcement is sought. A court order awarding custody to one parent, without a hearing or based simply on the sex of the parent, is far less likely to be enforced than an order where evidence was taken and both parties were present. It is imperative to have a thorough understanding of the laws in the jurisdiction where the order was entered and where enforcement is sought.

⁵⁷ *Id.* at 999.