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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. 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.

mary, exequatur proceeding. Exequatur refers to both the procedure and the writ of execution, which are used when a foreign judgment is enforced. Unless a treaty provides otherwise, exequatur is granted if a foreign judgment meets several, specific conditions. 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.

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

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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.


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. Ire, [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.


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. Questions of jurisdiction and procedure are important considerations in determining whether a foreign judgment will be granted *exequatur*. 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.

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


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.


13. See § VII infra.


15. See § V.B.2 infra.


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

Foreign judgments also are accepted by French courts as valid evidence of an obligation. 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.

Historically, however, French law has been hostile to the enforcement of foreign judgments. Current French practice still reflects a degree of, apparently nationalistic, disdain towards foreign judgments. 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. 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. International organizations such as the European Economic Community partially have resolved these jurisdictional problems.

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.
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].
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. 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. 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.

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. Such a policy would be unrealistic if followed absolutely, because the enforcing system could not abandon its sovereign responsibility for determining legal consequences


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.Mass. 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.30

Thus, comity doctrine attempts to identify abstract principles which can be used to determine the enforceability of foreign judgments.31 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.32 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.33 The development of this consensus among nations, with respect to the mutual enforcement of judgments, has been accomplished through treaty law,34 legislation,35 draft proposals36 and jurisprudence.37 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.38

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, RESTATMENT OF THE LAW, SECOND CONFLICT OF LAWS 298-303 (1971); Bertram-Notthagen, 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.
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, has three main divisions. These are choice of law, jurisdiction and the enforcement of foreign judgments. To a degree, the enforcement of foreign judgments is merely the application of choice of law rules to foreign judgments. 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. In a foreign judgment question, the principal issue is often that of jurisdiction to adjudicate. 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. However, different legal systems have different bases of

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 5-6; 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 10, 48.
jurisdiction as a reference. 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. Competence, or jurisdiction to adjudicate, is the first condition of *exequatur* in French law 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. 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. French law honors the principle of residence, as well as nationality, in determining the competence of courts. In contrast, Anglo-American law prefers the principle of presence, while German law takes account of domicile, residence and the presence of personal property. 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. On the other hand, the principles of consent and significant contacts are recognized in several systems. 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.


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. An important case in point is the European Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention). 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. 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.

III. THE DEVELOPMENT OF MODERN COMITY DOCTRINE IN FRANCE

A. Introduction

The mechanism of exequatur allows the enforcement of the foreign judgment itself. 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. 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. 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. INTL 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.62 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*,63 French law forbade the execution of foreign judgments in French territory.64 This rule apparently originated in a Royal Ordinance of 1629,65 during the middle of the age of Richelieu.66 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.67 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,68 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 judicial decisions rendered in foreign countries and declared executory by a French tribunal.69 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.


63. The term *Code Civil* is used consistently in this Comment for the *Code Napoleon* 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. Moreau, *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.


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


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

69. C. Civ. art. 2123. Author's translation.
In 1819, Holker v. Parker 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. 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. This paradoxical rule is referred to as the principle of *révision au fond*. 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. 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. 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. However, this trend did not continue, perhaps due to the difficulty of deter-

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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.
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.
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.77 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.78

The requirement of relitigating, before French courts, matters previously tried abroad was criticized in other countries.79 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.80 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 81

The Spanish Court applied a reciprocity rule which barred enforcement of the French judgment.82 This view exaggerates, perhaps, the attitude of the French courts.83 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.84

The imposition of reciprocity requirements in other countries affected French judgments adversely and caused the French courts to exercise the révision doctrine with restraint.85 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, 1869.86 Other bilateral agreements followed with

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.
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.
Belgium in 1899, with Italy in 1930, and with Austria in 1966. Multilateral conventions on various matters, including covenants regarding the reciprocal enforcement of judgments, were also entered into by France.

The agreements articulated formal, objective tests for application to judicial decisions rendered in the other parties' courts. 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. Nations which were unwilling or uninterested in settling this issue by treaty, e.g., the United States, 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. In this period, the European Economic Community (EEC) was formed by the Treaty of Rome. The European Coal and Steel Community and the

89. Convention with Britain, supra note 38.
92. E.g., Convention with Britain, supra note 38, arts. 3-5.
93. See, e.g., Nadelmann, Recognition, supra note 62, at 251.
95. See, e.g., MAYER, supra note 1, at 260-64. See also note 78 supra.
96. Note 25 supra.
European Atomic Energy Community were also formed. In joining these Communities, France agreed to respect the judgments of its treaty partners. The EEC approach to judgment enforcement problems led to the Brussels Convention. This convention now receives much of the attention devoted to foreign judgment enforcement in France.

Under the influence of these events, the révision doctrine lost its vitality. In effect, the doctrine is no longer law. In Charr v. Hasim Ulasahim, the Cour d'appel of Paris renounced the doctrine and soundly criticized it in comparative law terms. This decision received attention in France and in other countries, leading to speculation that the doctrine was being abandoned. 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. 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.

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.
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.
106. See note 102 supra.
In the place of révision, the French courts now apply the doctrine of contrôle in foreign judgment enforcement matters. The contrôle doctrine requires that certain procedures be rigidly followed when a foreign judgment is presented for exequatur. 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. The examination is similar to that used by the courts of other countries in foreign judgment enforcement matters. In addition, the procedure is similar to the examination specified in relevant international agreements and uniform acts. 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.

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. In some respects the merits remain within the reach of the French judge. Some of the governing principles may require the application of French rules to essentially foreign facts. Further, certain aspects of the applicable tests have not been clearly defined. 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.

Now, the foreign judgment, itself, is the matter in question and not the litigation which preceded the foreign judgment.

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. The formula commands the huissiers 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. The "executory formula" is a command in the name of the French people which operates without any territorial limits through all of France. No intermediate steps are required to execute a French judgment in another part of France.

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

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.
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 exequatur as 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., HATZ & 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 Andoran 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 FRANCAIS 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. 126

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. 127 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. 128

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. 129 Such alterations were consistent with révision doctrine. Today, changing the terms of a foreign judgment is forbidden. 130

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. Thus, it is proper for the judgment creditor to request that money damages awarded in a foreign currency be converted into francs. Requests such as this should be made in the petition (assignation) for *exequatur*. Interest payments are also awarded in *exequatur* proceedings. Any interest which was due according to the judgment’s terms at the time that *exequatur* is granted is awarded automatically. Additional interest then accrues at a rate provided for by statute. This rate doubles one month after *exequatur* is granted, if the award has not been paid. Requests involving the structuring of provisional remedies may be allowed in an *exequatur* proceeding. This factor is important, as provisional remedies, such as garnishment (*saisie-arrêt*), are available on a foreign judgment before *exequatur* is granted. Demands which substantially increase or decrease the award of the foreign court will not be considered in an *exequatur* proceeding. 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. 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.

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

4. Standing

The party requesting _exequatur_ must have a recognizable interest in the foreign judgment. This interest must be established if it is not apparent; otherwise, _exequatur_ will be denied in accordance with a general principle of law. 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. 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. This is due to the _res judicata_ (chose jugée) effect which _exequatur_ gives to a foreign judgment. The standing of a spouse to seek _exequatur_ of his or her deceased ex-spouse's foreign divorce has also been recognized.

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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._
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. 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. Three, the law applied by the foreign court must have been appropriate, in accordance with the French choice of law rules. Four, the foreign judgment must not conflict with substantive French law. Five, the foreign judgment must not conflict with substantive French law. Six, the foreign judgment must be enforceable in the jurisdiction where it was rendered.

Each of these conditions will be examined before the mechanical aspects of the exequatur procedure are discussed.

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. When it is appropriate for a court to exercise jurisdiction over a matter, that court is said to be competent. 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. 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. Second, jurisdiction is a subject connected with both national and international law. Jurisdiction cannot be discussed as if it were within the bounds of any one legal system. 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. 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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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. LISITZYN & 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 appears to be sanctioned in French law's resolution of the competence question.

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. French citizenship of a litigant can result in a presumption of exclusive jurisdiction in the French courts over the matter litigated abroad. Such a presumption rejects the jurisdictional basis of all foreign courts and prevents the enforcement of such judgments in France. 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

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 (*règles françaises 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. 540 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*.

173. *Id.*
jurisdictionally proper forum, nationality problems will dominate the competence determination.\footnote{174} 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.\footnote{175} 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 \textit{Nouveau Code}.\footnote{176}

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.\footnote{177} The determining factor may be the domicile of a party,\footnote{178} a choice of forum clause\footnote{179} or a clause attributing domicile in a contract.\footnote{180} 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.\footnote{181}

The most sensible approach to this condition of \textit{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.\footnote{182} In such cases, a foreign judgment will not be granted \textit{exequatur}.\footnote{183}

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.\footnote{184} Generally, there are four situations in which French jurisdiction is exclusive.\footnote{185} One is where the defendant is a French citizen who has not clearly waived his right to a trial before French courts.\footnote{186} Another is where the defendant is a permanent resident of France, even though not a citizen, and

\begin{itemize}
\item \footnote{174}{Id.}
\item \footnote{175}{Id. See § VII infra.}
\item \footnote{176}{N. C. Pr. Civ. art. 48. Text at note 213 infra. See, e.g., \textit{Practical Guide}, supra note 1, at 57.}
\item \footnote{177}{See notes 228-31 and accompanying text, infra.}
\item \footnote{178}{See N. C. Pr. Civ. art. 42.}
\item \footnote{179}{See N. C. Pr. Civ. art. 48.}
\item \footnote{180}{Id. See \textit{Herzog}, supra note 1, at 202-03.}
\item \footnote{181}{See N. C. Pr. Civ. art. 46. See generally \textit{Herzog}, supra note 1, at 187-98.}
\item \footnote{182}{See, e.g., \textit{Practical Guide}, supra note 1, at 57.}
\item \footnote{183}{Id.}
\item \footnote{184}{E.g., \textit{Mayer}, supra note 1, at 270-71.}
\item \footnote{185}{\textit{Practical Guide}, supra note 1, at 57. The reach of exclusive French jurisdiction in civil matters is not clearly defined. See \textit{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.}
\item \footnote{186}{\textit{Practical Guide}, supra note 1, at 57. See \textit{Mayer}, supra note 1, at 271-72.}
\end{itemize}
where he has not accepted the jurisdiction of a foreign court. A third situation exists where a choice of forum clause, or the like, controls and confers jurisdiction on the French courts. 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.

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

In external matters, French law is more concerned with nationality than with domicile and is more concerned with the plaintiff than with the defendant. The Code Civil provides two rules for such cases; one applies to French citizens and the other applies to aliens. In both cases, the rule guarantees a plaintiff's access to a French forum. 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. 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.
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.\(^{199}\) These articles are intended to be complementary.\(^{200}\) Article 14 makes French courts available to French citizens for all suits against foreigners.\(^{201}\) Article 15 gives foreigners access to French courts for suits against French citizens.\(^{202}\) 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.\(^{203}\) 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.\(^{204}\) A foreign court will be considered competent in such a case, only if a treaty so provides\(^{205}\) or if the French citizen has waived his right to litigate in a French forum.\(^{206}\) Such a waiver can result from an express agreement or may be implied from the French citizen’s voluntary use of the foreign forum.\(^{207}\)

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."\(^{208}\) Apparently, exequatur was denied due to the competence condition; in turn, competence was denied due to the French nationality of the defendant.\(^{209}\) 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]."\(^{210}\)

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

\textit{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 (\textit{commerçants}), and unless it has been specified in a very apparent manner by the party against whom it was raised.\textsuperscript{213}

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.\textsuperscript{214} 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.\textsuperscript{215} The "permanent resident," like any citizen, is given the benefit of "exclusive" French jurisdiction unless he has accepted the jurisdiction of the foreign court.\textsuperscript{216} Through these jurisdictional mechanisms, French justice protects French citizens and residents, and provides a rationale for refusing to enforce foreign judgments rendered against them.\textsuperscript{217}

3. Cases in Which French Jurisdiction is Not Exclusive

In transnational situations, jurisdiction is usually concurrent rather than exclusive.\textsuperscript{218} Due to Articles 14 and 15 of the Code Civil, this statement is less correct when French elements are involved. However, there are situations

\textsuperscript{211}. \textit{See} HERZOG, supra note 1, at 202-03, 589-90.


\textsuperscript{213}. N.C. Pro Civ. art. 48. Author's translation.


\textsuperscript{215}. \textit{See} PRACTICAL GUIDE, supra note 1, at 57; MAYER, supra note 1, at 272-73. \textit{See also} N. C. FR. Civ. art. 42, at text accompanying note 235 infra. \textit{But see} text accompanying note 237 infra.

\textsuperscript{216}. MAYER, supra note 1, at 272-73.

\textsuperscript{217}. \textit{See id. at} 270-73.

\textsuperscript{218}. \textit{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.\textsuperscript{219} 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 \textit{exequatur} proceeding is whether the foreign court was “internationally competent according to the French rules of international jurisdiction.”\textsuperscript{220} These rules are generally an international projection of the rules which govern domestic jurisdiction in France.\textsuperscript{221} 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.\textsuperscript{222} Most of the case law simply links the normal French jurisdictional rules to the rule used when reviewing the competence of foreign courts in \textit{exequatur} cases.\textsuperscript{223} Under the latter approach, the foreign court is considered to have \textit{compétence indirecte} if it would have had jurisdiction (\textit{compétence directe}) under domestic French law.\textsuperscript{224}

The jurisdictional test is not entirely clear in this respect.\textsuperscript{225} 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.\textsuperscript{226} However, in many situations a foreign court’s jurisdictional basis will be considered competent in French law.\textsuperscript{227} 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.\textsuperscript{228} When neither plaintiff nor defendant is a French national, the French courts refer to the venue rules to determine international jurisdiction.\textsuperscript{229} France follows the principle \textit{actor sequitur forum rei}; thus, suit is normally brought at the defendant’s domicile.\textsuperscript{230} Separate rules establish venue in matters involving corporations, in tort matters and over resident non-domiciliaries.\textsuperscript{231} The principal venue rules are established in the \textit{Nouveau Code. As the Nouveau

\textsuperscript{219.} See, e.g., \textsc{Mayer}, \textit{supra} note 1, at 272-73.
\textsuperscript{220.} \textsc{Practical Guide}, \textit{supra} note 1, at 57.
\textsuperscript{221.} \textit{Id.} See note 170 \textit{supra}.
\textsuperscript{223.} \textsc{Mayer}, \textit{supra} note 1, at 266-68.
\textsuperscript{224.} \textit{Id.} See note 170 \textit{supra}.
\textsuperscript{225.} \textit{See notes} 167-70 and accompanying text, \textit{supra}.
\textsuperscript{226.} \textit{Id.} See, e.g., \textsc{Steiner & Vagts}, \textit{supra} note 5, at 801-02.
\textsuperscript{227.} \textit{See notes} 240-43 and accompanying text, \textit{infra}.
\textsuperscript{228.} \textit{See Herzog}, \textit{supra} note 1, at 174.
\textsuperscript{229.} \textit{E.g.}, \textsc{Steiner & Vagts}, \textit{supra} note 3, at 752-53.
\textsuperscript{230.} \textit{Id}.
\textsuperscript{231.} \textit{See} \textsc{N. C. Pr. Civ. arts.} 42-48.
Code has only been in force since 1976, few comments have been made concerning its international impact.232 However, its venue provisions are similar to those of its predecessor, the Code de Procédure Civile.233

In addition to Article 48,234 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.235

**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.236

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."237 In these instances, the jurisdictional basis of a foreign court will be accepted if it satisfies the French venue standards.238 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. 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." The modern approach to competence problems in France, as elsewhere, is to apply a "sufficient contacts" rule. Thus, in Sté Sotalor v. D. N. Ernst Gmbh et cie, 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.

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. In many other cases, international agreements control. In the typical transnational civil case, the French courts simply project their venue rules onto foreign courts.

One effect of the jurisdictional test is to place the merits of a dispute within reach of the juge de l’exequatur. 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.

239. See id.
241. See Yates, supra note 140, at 257-58; TENTATIVE DRAFT, supra note 28, at 62. See also note 170 supra.
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. 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. The formulation of the rule is that the procedures must be regular in accordance with "the French law applicable to international matters." This condition is of particular importance when foreign default judgments are presented for exequatur.

The French courts have construed this condition liberally towards the procedures followed in most foreign courts. 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. In addition, it is required that the means of proof used in the foreign trial be consistent with this ordre public.

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.
251. See note 250 supra.
253. See note 250 supra.
254. See, e.g., Loussouarn, supra note 1, at 628.
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.256

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.257 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.258 Generally, the rules of notice are embodied in Articles 640 through 694 of the Nouveau Code.259 A judgment, whether from a foreign or French court, is not enforceable in France until after it has been served.260 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.261

France is a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (Hague Service Convention),262 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.263 Judgments rendered in the United States should not be denied exequatur in France for procedural reasons if the terms of this Convention are followed.264

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.
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. 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. 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. 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.


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.268 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.269

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.270 Before exequatur will be granted, the judgment creditor is required to show that proofs were actually entered on the claim at the foreign trial.271 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.272

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


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.273 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.274

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.275 The applicable substantive law will usually be French law if French elements are involved.276 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.
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.\footnote{277} 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.\footnote{278}

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.\footnote{279} 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 \textit{exequatur} cases.\footnote{280}

Occasionally, this is the case with respect to migratory divorce judgments.\footnote{281} Migratory divorces are also denied \textit{exequatur} on the grounds of jurisdictional competence, procedural regularity, fraud and conflict with substantive French law.\footnote{282}

2. Application to Foreign Divorces

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

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.

\footnote{277} See notes 237-46 and accompanying text, supra.
\footnote{278} See, e.g., Loussouarn, supra note 1, at 622-27; Mayer, supra note 1, at 264-73, 277-82.
\footnote{279} See notes 39-41 and accompanying text, supra.
\footnote{280} See, e.g., Mayer, supra note 1, at 277-82; Loussouarn, supra note 1, at 626-27.
\footnote{281} See, e.g., Herzog, supra note 1, at 599-600.
\footnote{282} Id.
\footnote{283} Id. See Mayer, supra note 1, at 283.
\footnote{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.285 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.286

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.287 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*.288 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.289 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.290

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*.291 *Dénaturation* exposes suspect foreign judgments to an examination similar to *révision*.292 In such cases, the *juge de l'exequatur* applies the law to the facts of the foreign dispute in accordance with French rules.293 Although this principle is law, it is criticized and it has not been applied in recent cases.294

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.295 Under French law, the

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285. *Id.* *See* Mayer, supra note 1, at 281.
286. *See* Herzog, supra note 1, at 599-600.
288. *See* Mayer, supra note 1, at 278.
289. *Id.* at 411.
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." 296 In fact, the condition, as applied in *exequatur* proceedings, is concerned only with fraud on French law rather than fraud on foreign law. 297 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. 298 This is another aspect of French law which is unfavorable to changes of domicile antecedent to litigation. 299 When French law would not have applied to the suit anyway, no fraud on French law occurs. 300 However, the presentation of the resulting foreign judgment for *exequatur* may be considered as a fraud on French law in some cases. 301 On occasion, this rule has prevented the granting of *exequatur* to American migratory divorces. 302 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*. 303 Both the courts and the commentators agree that it is fraud on French law, not foreign law, which matters in *exequatur* cases. 304 However, some commentators view a fraud on foreign law as working a fraud on French law when the foreign judgment is presented for *exequatur*. 305 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*. 306

French law views changes of nationality or of domicile antecedent to litigation unfavorably in connection with the competence condition, 307 the choice of law condition 308 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.
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.
308. See, e.g., HERZOG, supra note 1, at 599.
process of changing domicile antecedent to litigation is *le forum shopping*. 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*. 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.

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. This condition of *exequatur* requires the foreign judgment to conform with *ordre public*. *Ordre public* is a doctrine which, although not synonymous with public policy, refers to similar concepts. 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. 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*. In some cases, equity decrees restricting business practices may conflict with French competition policies and are, thus, unenforceable. 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-

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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 156 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).
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.\textsuperscript{318} 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.\textsuperscript{319}

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.\textsuperscript{320} 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.\textsuperscript{321} The right to receive a support award without proof of paternity was expressly denied to litigants with support suits pending on January 3, 1972.\textsuperscript{322} 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.\textsuperscript{323}

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.\textsuperscript{324} 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.\textsuperscript{325} The effect of the foreign decision on French

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\textsuperscript{318} Bernard, *supra* note 1, at 428.


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


\textsuperscript{322} See id. art. 12.


sensibilities will influence the outcome as it does in applying other conditions of *exequatur*.

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. 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*. In the proofs required for *exequatur*, a document is required from the clerk of the judgment-rendering court, stating that

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.


327. See note 5 supra.

the judgment is executory in that jurisdiction at that time.\(^{329}\) Thus, as with the \textit{ordre public} requirement, the relevant point in time is when \textit{exequatur} is requested. While not all commentators refer to this requirement as a "condition of \textit{exequatur}," it is clear that this is necessary before \textit{exequatur} is granted.\(^{330}\)

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.\(^{331}\) As a separate matter, French judges generally stay \textit{exequatur} proceedings while foreign judgments are being appealed.\(^{332}\) 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.\(^{333}\)

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

However, subsequent to the entry of judgment in England and prior to requesting \textit{exequatur}, the judgment debtor had become insolvent. The judgment debtor had previously given one of his creditors a "floating charge" on his assets.\(^{337}\) Under English law, the floating charge "crystallized" upon his insolvency.\(^{338}\) This gave the prior creditor a preferred claim to the debtor’s assets and stayed execution of the judgment against the debtor in England.\(^{339}\)

\(^{329}\) Bernard, supra note 1, at 427. \textit{See} § VI.B \textit{infra}.

\(^{330}\) Compare Bernard, supra note 1, at 428, \textit{with} Mayer, supra note 1, at 273-74. \textit{See also} Herzog, supra note 1, at 593.

\(^{331}\) \textit{See} Bernard, supra note 1, at 428. \textit{See also} Mayer, supra note 1, at 273-74. \textit{Cf.} Judgment of Nov. 17, 1974, Cass. civ. 1re, 102 J. DR. INT'L 99 note A.P. (1975) (\textit{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.


\(^{334}\) Convention with Britain, note 38 supra.

\(^{335}\) \textit{Id.} arts. 2-5.


\(^{339}\) \textit{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.\textsuperscript{340}

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.\textsuperscript{341} 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).\textsuperscript{342}

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.\textsuperscript{343} These courts are the principal courts of general, original jurisdiction.\textsuperscript{344} Since 1972, there has been at least one judge on each Tribunal's bench who is responsible for considering exequatur applications.\textsuperscript{345} This judge, known as the juge de l'exequatur, routinely determines whether arbitral awards and foreign judgments are fit for judicial execution.\textsuperscript{346} 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.\textsuperscript{347} However, the part of the tribunal's decision which is considered as a finding of fact will be subject to a restricted appeal.\textsuperscript{348}

Application for exequatur is made in a petition, known as an assignation.\textsuperscript{349} Within the assignation, the domicile and the nationality of all parties must be stated clearly.\textsuperscript{350} The provisions of general procedural law apply to exequatur...
proceedings. This means that several items of basic information must be stated in the assignation. In addition to nationality and domicile, the names, capacities and ages of each party must be stated or the assignation will be dismissed. 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.

The assignation should also recite, in substance, the decree entered by the foreign court. Exactly reproducing the foreign judgment in the assignation is not necessary. However, a copy of the judgment must be produced later. 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.

B. Required Documents

After the assignation has been properly served, the judgment creditor is required to produce six documents to support his claim for exequatur. 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) of the competent, certifying authority of the judgment-rendering state, as provided in the Hague Convention of October 5, 1961. 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.
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.
juge de l'exequatur will require a separate, particularized certification by the clerk, with an official seal.\textsuperscript{363}

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.\textsuperscript{364} A default judgment based on unsupported allegations may not be granted exequatur.\textsuperscript{365}

In addition, proof of service of the foreign judgment on the unsuccessful party \textsuperscript{366} and proof of the domicile of the parties\textsuperscript{367} 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.\textsuperscript{368}

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.\textsuperscript{369} The judgment debtor may adduce evidence to rebut or to affirmatively establish the failure of the foreign judgment to meet a condition.\textsuperscript{370} Generally, the judgment debtor may not adduce evidence regarding the merits of the underlying dispute.\textsuperscript{371} If the judgment debtor does not appear in the exequatur proceedings,
the judgment creditor must still come forward with evidence establishing each of the required conditions. 372

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

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. 377 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, 378 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. 379 Today, the most significant such 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 234, 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
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agreement is the Brussels Convention of 1968. In general, these agreements do not work drastic changes in the basic rules of *exequatur*. 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.

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. The jurisdictional rules which determine competence in *exequatur* cases are substantially altered. 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. 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.

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 competence indirecte, see note 170 supra, for the resolution of jurisdictional problems in *exequatur* cases. See generally C. D'Hostes, LES CONVENTIONES BILATÉRALES FRANCO-ITALIENNES DE DROIT INTERNATIONAL PRIVÉ (1938). Competence indirecte can be established under the Convention by separate rules in the following matters: one, in a personal action (personelle au mobiliire); 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.


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. 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. 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. Third, the decision must not be inconsistent with a decision rendered by a French court affecting the same parties. 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. 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. 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. 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. The second special matter involves judgments which were rendered in a signatory state's courts against a domiciliary of a third country. 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. However, any signatory state may provide, in other inter-

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*.
392. *Id.* See Bernard, *supra* note 1, at 429.
395. See Brussels Convention, *supra* note 56, art. 59.
national agreements with third countries, whether it will enforce such judgments.\footnote{397}

Under the Brussels Convention, the party requesting \textit{exequatur} continues to bear the burden of proving that the conditions of \textit{exequatur} have been met.\footnote{398} In contrast with the \textit{droit commun} rules, a partial \textit{exequatur} in which the foreign judgment is modified, is allowed.\footnote{399} The procedural rules for \textit{exequatur} under the Convention are considerably different from the \textit{droit commun} procedural rules. The request for \textit{exequatur} is presented to the presiding judge of the \textit{Tribunal de grande instance} in any district where one of the parties, against whom execution is sought, is domiciled.\footnote{400} If there is no domicile in France, then the place where execution is to occur is the appropriate venue.\footnote{401} 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 \textit{exequatur} is sought to contest the issue of competence.\footnote{402} However, the party against whom \textit{exequatur} is sought is allowed to appeal.\footnote{403} During the appeal period, provisional remedies (\textit{mesures conservatoires}) may take effect, but execution is stayed.\footnote{404} Appeals are heard by the \textit{cour d'appel} of the district where the request initiated.\footnote{405} On appeal, the failure of the foreign judgment to meet a condition established in the Convention for \textit{exequatur} can be asserted.\footnote{406} The decision of the \textit{cour d'appel} may be appealed only by means of a \textit{pourvoi en cassation}.\footnote{407}

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\footnote{397}{Brussels Convention, supra note 56, art. 59; See \textit{Herzog, Update}, supra note 383, at 426; Bernard, supra note 1, at 429. See also note 418 and accompanying text, infra.}
\footnote{398}{Bernard, supra note 1, at 429.}
\footnote{399}{Brussels Convention, supra note 56, art. 42. See notes 129-30 and accompanying text, supra.}
\footnote{400}{Brussels Convention, supra note 56, art. 32; Bernard, supra note 1, at 428.}
\footnote{401}{Bernard, supra note 1, at 428.}
\footnote{402}{Brussels Convention, supra note 56, art. 34: Bernard, supra note 1, at 428. The \textit{juge de l'exequatur} is also bound by the determinations of jurisdictional facts made by the judgment-rendering court. \textit{Id.} at art. 28. See Bernard, supra note 1, at 429. All interested parties are to receive notice of the request for \textit{exequatur}. \textit{Id.} The procedure to be followed in an application for \textit{exequatur} is determined by the law of France, \textit{i.e.}, the law of the country where execution is sought. See Brussels Convention, supra note 56, art. 33. See also \textit{Herzog, Update}, supra note 383, at 425-26.}
\footnote{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. \textit{Id.} In other cases the appeal period is one month. \textit{Id.} The appeal period commences when the judgment of \textit{exequatur} has been served. \textit{Id.} See Brussels Convention, supra note 56, art. 36. See also N. C. PR. CIV. arts. 527, 528, 538; note 122 supra.}
\footnote{404}{See Brussels Convention, supra note 56, arts. 33, 38-39; N. C. PR. CIV. art. 539.}
\footnote{405}{Bernard, supra note 1, at 428; Brussels Convention, supra note 56, arts. 37, 40.}
\footnote{406}{See Bernard, supra note 1, at 429. The \textit{exequatur} procedure in France under the Brussels Convention is characterized as \textit{non contradictoire} in the first instance, \textit{id.} at 429, 431, but as \textit{contradictoire} on appeal. \textit{Id.} at 428.}
\footnote{407}{See note 402 supra. Compare Bernard, supra note 1, at 428-29, \textit{with} \textit{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*. One is a complete copy of the foreign judgment with the documentation necessary to establish its authenticity. 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. This document must show that the defendant had been served. 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. 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.

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. 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. Thus, Articles 14 and 15 of the *Code Civil* are inapplicable as concerns the domiciliaries of other signatory states. With respect to non-domiciliaries, even if they are citizens of signatory states, the regular jurisdictional rules still apply. 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

409. Brussels Convention, *supra* note 56, art. 46(1); 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.
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*.
was jurisdictionally proper according to the law of the judgment-rendering state.\footnote{418}

\section*{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.\footnote{419} This categorization results from procedural differences. One form of agreement commits \textit{exequatur} cases to the \textit{chambre du conseil} (conference room), a hearing in the judges’ chambers.\footnote{420} The second form of agreement commits \textit{exequatur} cases to the presiding judge of the appropriate \textit{tribunal} acting \textit{en référé} (i.e., as if granting provisional relief after a summary hearing).\footnote{421} The third form of agreement commits \textit{exequatur} cases to the body which would be appropriate under the \textit{droit commun}, but provides for the application of special rules.\footnote{422}

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

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\footnote{418} Id. arts. 4, 16, 28, 31, 34. See Herzog, \textit{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. \textit{But see} notes 395-97 and accompanying text, supra.

\footnote{419} Bernard, \textit{supra} note 1, at 426.

\footnote{420} Id. at 429-30. See \textit{Herzog, supra} note 1, at 494-502. See \textit{N. C. Pr. Civ. arts.} 22, 433-37.

\footnote{421} Bernard, \textit{supra} note 1, at 430. See \textit{Herzog, supra} note 1, at 229-30, 238-39. \textit{See also} \textit{N. C. Pr. Civ. arts.} 484-92, 808-11.

\footnote{422} Bernard, \textit{supra} note 1, at 430.

\footnote{423} Note 86 \textit{supra.} See note 379 \textit{supra.}

\footnote{424} Bernard, \textit{supra} note 1, at 429. See Convention with Switzerland, \textit{supra} note 86, art. 16.

\footnote{425} Convention with Switzerland, \textit{supra} note 86, art. 16. See Bernard, \textit{supra} note 1, at 430.

\footnote{426} See Bernard, \textit{supra} note 1, at 430.

\footnote{427} \textit{N. C. Pr. Civ. arts.} 22, 433, 436. See \textit{Herzog, supra} note 1, at 494-502.

\footnote{428} \textit{Herzog, supra} note 1, at 494-502. When a decision rendered in the \textit{chambre du conseil} of the \textit{tribunal de grande instance} is appealed, the appeal is heard by the \textit{chambre du conseil} of the appropriate \textit{cours d’appel}. \textit{Id.} 499-500. Thus, the privilege of private, less formal proceedings for \textit{chambre du conseil} actions is continued through the appellate stage.
Since 1961, France has concluded several bilateral treaties with French-speaking African nations. These agreements provide examples of the second category. Again, the documentation and conditions required for *exequatur* are generally familiar. 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*. 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. In such a case, the presiding judge of the court holds a summary hearing. After he renders his decision, the losing party is allowed a short time to appeal. 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. 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.


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.

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

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.

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. Non-French judgments rendered against French citizens or domiciliaries often may not be enforced in France. The existence of a relevant treaty between France and the judgment-rendering nation will clarify the
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. 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.

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. In some cases, e.g., insurance and labor contract cases, subject matter jurisdiction belongs exclusively to the French courts under French law. 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.

There are other exceptions to the judgment enforcement policy of French law. Stringent rules are applied for the review of default judgments. Foreign default judgments are only enforced in France when procedural fairness to the defendant is well established. Migratory divorces are often denied enforcement. Similarly, foreign judgments tainted by forum shopping are suspect and are often denied enforcement. 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. Foreign judgments which conflict with substantive French law are barred from enforcement in France. Those foreign judgments which are unsupported by ample documentation as to propriety and executory character are not enforceable in France.

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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.456

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.457 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.458

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.459 Since the United States and France are parties to the Hague Service Convention,460 the terms of that agreement can be invoked with respect to relevant procedural matters to assist the enforcement of an American judgment in France.461

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, 1934.462 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.463

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.\textsuperscript{464} 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.\textsuperscript{465} 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.\textsuperscript{466} 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.\textsuperscript{467} 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.

\textit{James C. Regan}

\begin{footnotes}
\item[464.] See § VII supra.
\item[465.] See notes 211-14 and accompanying text, supra.
\item[466.] See notes 95-106 and accompanying text, supra.
\item[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. \textit{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. \textit{TENATIVE DRAFT}, supra note 28, at 11.
\end{footnotes}