

Memorandum 73-27

Subject: Study 39.100 - Enforcement of Sister State Money Judgments

Attached to this memorandum are two copies of a revised version of the tentative recommendation relating to enforcement of sister state money judgments. The decisions of the Commission at the March meeting concerning this recommendation have been implemented with a few exceptions noted below, some additional changes have been made, and the Comments have been expanded. It is hoped that the Commission will be able to approve this recommendation so that it may be sent out for comment. Mark your suggested editorial changes on one copy and turn it in to the staff at the April meeting.

Significant changes and additions are as follows:

Code of Civil Procedure Sections 674 and 681. At the March meeting, the Commission decided to provide that the 10-year period of duration of judgment liens, and the 10-year period for obtaining writs of execution, should run from the first entry or registration in the state. A suggestion of our consultant to prevent more than one registration of the same judgment was not adopted. Upon lengthy consideration, the staff has concluded that it is best to allow only one entry of judgment whether in an action on the judgment or upon registration. To allow a sister state judgment to be registered more than once would cause confusion for those looking to the records of the recorder even if the 10-year period for duration of judgment liens were to run from the first entry in the state. The desired result of making clear the time from which the 10-year periods run is achieved by allowing only one entry of judgment in the state. Of course, this solution does not attempt to solve any problems arising from the situation where, e.g., a Nevada judgment is first

registered in California, then suit is brought on the Nevada judgment in Oregon, and then the Oregon judgment is registered in California. At the March meeting, the Commission decided not to try to deal with the complexities of that situation, and the staff believes this is a sound decision. In the tentative recommendation as now drafted, Section 674 is amended to make clear that judgment includes registration. However, the staff does not believe that Section 681 needs to be amended if a sister state judgment can be entered only once in the state. Section 681 reads as follows:

The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ or order issued for the execution or enforcement of the judgment. If, after the entry of the judgment, the issuing of such writ or order is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the 10 years within which execution or order may issue.

Code of Civil Procedure Section 1713.1. This is a section of the Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc. §§ 1713-1713.8 --see Exhibit I) which defines "foreign state" and "foreign judgment." The effect of this section in conjunction with Section 1713.3 (see Exhibit I) is to make foreign nation money judgments, which meet the other requirements of the Uniform Foreign Money-Judgments Recognition Act, enforceable by the registration system of this recommendation. (See discussion under Section 1915 below.) Since it deals with foreign nations, jurisdictions controlled by the United States are excluded from the coverage of the act--hence the listing of territories, insular possessions, the Panama Canal Zone, the Trust Territory of the Pacific, and the Ryukyu Islands (primarily Okinawa). However, as the Comment explains, the United States returned Okinawa and the Ryukyus to Japan effective May 15, 1972. The courts there were operating on authority

of an Executive Order of President Eisenhower (Exec. Order No. 10713, June 5, 1957) issued pursuant to the Treaty of Peace With Japan of September 8, 1951. ([1952] 3 U.S.T. 3169, 3172-3173, T.I.A.S. No. 2490). However, as of May 15, 1972, these courts are part of the Japanese system and therefore should be treated as judgments of other Japanese courts--that is, under the provisions of Code of Civil Procedure Sections 1713-1713.8. Hence, the exception to the definition of "foreign state" in Section 1713.1(1) concerning the Ryukyu Islands should be removed.

The Commission should consider one problem involved with this. What will happen if a judgment creditor holding an Okinawa judgment rendered before May 15, 1972, should try to enforce it under the Uniform Enforcement of Foreign Judgments Act? Will this involve problems the Commission has sought to avoid by making the state registration procedure unavailable for the enforcement of federal judgments? The difficulty with federal judgments, as the Commission will recall from the March meeting, is that they are registrable under 28 U.S.C. § 1963 which leads to certain problems of multiple registration and determining date of "entry." Furthermore, the Commission felt that Section 1963, the federal registration provision, is an adequate enforcement remedy for judgment creditors holding federal judgments from other districts.

The staff concludes that these problems do not exist with regard to an Okinawa judgment because 28 U.S.C. § 1963 refers to judgments of federal district courts whereas the courts of Okinawa and the Ryukyus were presidential courts. See Rose v. McNamara, 375 F.2d 924 (D.C. Cir. 1967) (holding the Okinawa courts to be not unconstitutional but noting that the Okinawa court is not an "Article III court"; holding that U.S. District Courts did not have jurisdiction over violations of Okinawa taxing statute; and holding that

statute requiring federal jurors be citizens applied only to U. S. District Courts). It is therefore extremely doubtful that an Okinawa judgment could be registered under Section 1963. In any event, the problem would be miniscule if it exists at all since there cannot be too many Okinawa judgments which are sought to be enforced against judgment debtors in California.

This amendment will need to be made eventually, and this seems an appropriate time since the problem is related to the enforcement of money judgments.

Code of Civil Procedure Section 1710.40. This section has been changed so that the waiting period runs from the mailing of service rather than proof of service. But more importantly, the staff has rewritten this section so that the clerk mails notice 10 to 15 days after the judgment is filed instead of having the judgment creditor serve notice on the debtor. This was done because the clerk would normally send notice of entry anyway (Code Civ. Proc. § 664.5) and it seemed to be a waste of effort to require the judgment creditor to send notice as well. As the section is now structured, the creditor files the judgment. Then he may seek a writ of execution and have it levied. The sheriff will give or send notice of levy to the judgment debtor. Ten to 15 days after the judgment is filed, the clerk sends notice of filing to the judgment creditor and the judgment debtor. Then a 20-day period must elapse before the property can be sold on execution (unless it is perishable), during which time the judgment debtor has an opportunity to apply for a stay and raise his defenses to enforcement of the judgment. Hence, the judgment creditor may have his judgment satisfied within 30 to 35 days from the date he files the judgment. This procedure is somewhat speedier than the draft the Commission considered in March, but the staff thinks it is better and adequately protects debtors.

Code of Civil Procedure Section 1915--Foreign Nation Money Judgments.

Section 1713.3 of the Uniform Foreign Money-Judgments Recognition Act (enacted in California in 1967) provides that a money judgment of a foreign country is "enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." At the March meeting, the Commission indicated its approval of the policy of allowing the registration of such foreign nation judgments under the revised Uniform Enforcement of Foreign Judgments Act (recommended Section 1710.10 et seq.), subject to solving any problems arising from a conflict with Code of Civil Procedure Section 1915. Section 1915 reads as follows:

Except as provided in Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of this code, a final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as a final judgment rendered in this state.

The Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc. §§ 1713-1713.8) is attached as Exhibit I, and the Prefatory Note and Comments of the Commissioners on Uniform State Laws regarding the act are attached as Exhibit II.

The staff agrees with Professor Riesenfeld that Section 1915 should be repealed for the reasons given in the Comment to Section 1915 in the tentative recommendation. The section was never able to achieve its historical purpose, and courts since 1907 have ignored it, distinguished it, created exceptions to it, or noted its existence while ruling contrary to its apparent meaning. See cases cited in Comment to Section 1915. Professor Ehrenzweig has noted that, if given its literal meaning, Section 1915 would give judgments of foreign countries greater effect than judgments of sister states. A. Ehrenzweig, Conflict of Laws § 45 at 163 n.25 (1962). The staff has been able to discover

no case in which a court gave Section 1915 any effect beyond the normal principles of enforcement of foreign judgments. California has tended to treat foreign nation judgments as judgments of sister states even though foreign nation judgments are not covered by the full faith and credit clause. See Scott v. Scott, 51 Cal.2d 249, 254, 331 P.2d 641, ___ (1958)(Traynor, J., concurring); Restatement (Second) of Conflict of Laws § 98, Comment b (1971); Dorman, California's Statutory Contributions in the Field of International Judicial Assistance, 39 L.A. Bar Bull. 7, 11 (1963). Hence, under generally recognized principles, valid judgments of competent foreign nation courts having jurisdiction where reasonable notice and opportunity to be heard has been afforded will be recognized (and, if money judgments, enforced) subject to defenses on grounds that, for example, the judgment was procured by fraud, the judgment is subject to equitable relief in either the nation of rendition or the forum state, the judgment has been satisfied, the judgment is contrary to the strong public policy of the state, the enforcement of the judgment is barred by the statute of limitations of the foreign nation or the forum state, and the judgment is on a governmental claim. Restatement (Second) of Conflict of Laws §§ 92, 100-121 and Comments (1971). See also Sections 1713-1713.8, attached as Exhibit I. With the exception of the defense of the foreign nation judgment being contrary to the strong public policy of the state, these principles apply to both foreign state and foreign nation judgments according to the Restatement. This is an area which is best handled by the common law and principles of private international law; Section 1915 only causes confusion.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

Memorandum 73-27

EXHIBIT I
CODE OF CIVIL PROCEDURE SECTIONS 1713-1713.8

Chapter 1

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Chapter 2

FOREIGN MONEY-JUDGMENTS

Sec.

- 1713. Short title.
- 1713.1 Definitions.
- 1713.2 Applicability.
- 1713.3 Recognition and enforcement.
- 1713.4 Grounds for non-recognition.
- 1713.5 Personal jurisdiction.
- 1713.6 Stay in case of appeal.
- 1713.7 Saving clause.
- 1713.8 Uniformity of interpretation.
- 1714 to 1724. Repealed.
- 1725. Blank.
- 1726 to 1729. Repealed.

Chapter 2 was added by Stats.1967, c. 503, p. 1847, § 1.

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

Table of Jurisdiction in Which Adopted

Jurisdiction	Where Found
Illinois	S.H.A. ch. 77, §§ 121-129.
Maryland	Code 1957, Art. 35, §§ 52-A to 53-L.
Michigan	M.C.L.A. §§ 691-1131 to 691-1159.
Oklahoma	12 Okl.St. Ann. §§ 710-718.

§ 1713. Short title

This chapter may be cited as the Uniform Foreign Money-Judgments Recognition Act.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

For disposition of former section 1713, see italicized note and Table at the head of Title 11, following section 1712.

Uniform Law: This section is identical with section 9 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.1 Definitions

As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 1 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.2 Applicability

This chapter applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 2 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.3 Recognition and enforcement

Except as provided in Section 1713.4, a foreign judgment meeting the requirements of Section 1713.2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 3 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.4 Grounds for non-recognition

(a) A foreign judgment is not conclusive if

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

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

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

(b) A foreign judgment need not be recognized if

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by extrinsic fraud;

(3) The cause of action or defense on which the judgment is based is repugnant to the public policy of this state;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 4 of the Uniform Foreign Money-Judgments Recognition Act, except that in subd. (b) (3) the words "or defense" were inserted. See Uniform Laws Annotated.

§ 1713.5 Personal jurisdiction

(a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(1) The defendant was served personally in the foreign state;

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

(3) The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or

(6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 5 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.6 Stay in case of appeal

If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been

determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 6 of the Uniform Foreign Money-Judgments Recognition Act. See Uniform Laws Annotated.

§ 1713.7 Saving clause

This chapter does not prevent the recognition or nonrecognition of a foreign judgment in situations not covered by this chapter.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

Historical Note

Uniform Law: This section is identical with section 7 of the Uniform Foreign Money-Judgments Recognition Act, except that this section substitutes "chapter" for "Act," and has inserted the words "or nonrecognition." See Uniform Laws Annotated.

§ 1713.8 Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Added by Stats.1967, c. 503, p. 1847, § 1.)

EXHIBIT II

9B UNIFORM LAWS ANNOTATED 64 (1966)

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

Historical Note

The Uniform Foreign Money-Judgments Recognition Act was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1962.

Commissioners' Prefatory Note

In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad.

The Act states rules that have long been applied by the majority of courts in this country. In some respects the Act may not go as far as the decisions. The Act makes clear that a court is privileged to give the judgment of the court of a foreign country greater effect than it is required to do by the provisions of the Act. In codifying what bases for assumption of personal jurisdiction will be recognized, which is an area of the law still in evolution, the Act adopts the policy of listing bases accepted generally today and preserving for the courts the right to recognize still other bases. Because the Act is not selective and applies to judgments from any foreign court, the Act states that judgments rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law shall neither be recognized nor enforced.

The Act does not prescribe a uniform enforcement procedure. Instead, the Act provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit.

In the preparation of the Act codification efforts made elsewhere have been taken into consideration, in particular, the [British] Foreign Judgments (Reciprocal Enforcement) Act of 1933 and a Model Act produced in 1960 by the International Law Association. The Canadian Commissioners on Uniformity of Legislation, engaged in a similar endeavor, have been kept informed of the progress of the work. Enactment by the states of the Union of modern uniform rules on recognition of foreign money-judgments will support efforts toward improvement of the law on recognition everywhere.

Comment to § 2
of Uniform Act;
CCP § 1713.2

Commissioners' Note

Where an appeal is pending or the defendant intends to appeal, the court of the enacting state has power to stay proceedings in accordance with section 6 of the Act. [§ 6 is CCP § 1713.6]

Comment to § 3
of Uniform Act;
CCP § 1713.3

Commissioners' Note

The method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 in a state having enacted that Act.

Comment to § 4
of Uniform Act;
CCP § 1713.4

Commissioners' Note

The first ground for non-recognition under subsection (a) has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S. 113, 205, 16 S.Ct. 139, 40 L.Ed. 95 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for non-recognition. A case of serious injustice must be involved.

Comment to § 5
of Uniform Act;
CCP § 1713.5

Commissioners' Note

New bases of jurisdiction have been recognized by courts in recent years. The Act does not codify all these new bases. Subsection (b) makes clear that the Act does not prevent the courts in the enacting state from recognizing foreign judgments rendered on the bases of jurisdiction not mentioned in the Act.

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires states to enforce¹ the valid money judgments² of the courts of sister states subject to certain defenses.³

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1. The manner of enforcing sister state money judgments is not specified by the federal Constitution or statutes but rather is determined by the law of the forum state. Restatement (Second) of Conflict of Laws § 99 (1971).
 2. Restatement (Second) of Conflict of Laws § 100 & Introductory Note §§ 99-102 (1971); Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935). The United States Supreme Court has not yet decided whether judgments ordering the performance of an act other than the payment of money--e.g., orders to convey land--are required by the full faith and credit clause to be enforced. Restatement (Second) of Conflict of Laws § 102, Comment c (1971). Although California courts have allowed the enforcement of sister state decrees to convey land (Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957)(dictum); Spalding v. Spalding, 75 Cal. App. 569, 243 P. 445 (1925); Redwood Inv. Co. v. Exley, 64 Cal. App. 455, 221 P. 973 (1923)), they are not required to do so by the U.S. Constitution. Restatement (Second) of Conflict of Laws § 102, Reporter's Notes to Comments c and d (1971). This recommendation is limited to consideration of a procedure for enforcing money judgments entitled to full faith and credit.
 3. Defenses to enforcement include the following: the judgment is not final and unconditional; the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

In California, the exclusive way to enforce a sister state money judgment is to bring an action on the judgment in a California court; when a domestic judgment is obtained, then execution may issue.⁴ This traditional manner of enforcing judgments of sister states requires all the normal trappings of an original action. The judgment creditor must file a complaint. There must be judicial jurisdiction. The creditor probably will want to seek a writ of attachment until such time as the judgment has been established. A trial (however summary) must be held in order to establish the sister state judgment at which time the judgment debtor may raise any defenses to the validity of the judgment that he may have. Only after the entry of the domestic judgment may the judgment creditor seek execution on the debtor's assets in the state.

The formal, traditional process of enforcing sister state judgments understandably has been the subject of criticism.⁵ A simpler and more efficient method of enforcing sister state judgments is offered by a registration system similar to the procedure enacted by Congress in 1948 for the enforcement of federal district court judgments in other districts⁶ and

4. 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548 (2d ed. 1971); Restatement (Second) of Conflict of Laws § 99, Comment b; § 100, Comment b (1971); cf. Code Civ. Proc. §§ 337.5(3), 1913.
5. See, e.g., Kulzer, The Uniform Enforcement of Foreign Judgments Act and The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act), State of New York Judicial Conference, 13th Annual Report 248 (1968); Report of the Standing Committee on Jurisprudence and Law Reform; 52 A.B.A. Report 292 (1927); Jackson, Full Faith and Credit--The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945); Paulsen, Enforcing the Money Judgment of a Sister State, 42 Iowa L. Rev. 202 (1957).
6. 28 U.S.C. § 1963 (1970); see Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965); Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955); Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 715 (N.D. Cal. 1955); Matanuska Valley Lines, Inc. v. Molitor, 365 F.2d 358 (1966), cert. denied, 386 U.S. 914 (1967). Registration systems have long been used successfully

the revised Uniform Enforcement of Foreign Judgments Act of 1964.⁷ The registration system of the Uniform Act has been adopted in the major commercial states of New York and Pennsylvania and also in Wisconsin, Arizona, Colorado, Kansas, Oklahoma, North Dakota, and Wyoming.⁸

The Law Revision Commission recommends that a registration system for the enforcement of sister state judgments be enacted in California. Under this system, the judgment creditor merely files his authenticated sister state judgment⁹ in a California superior court where it is treated for all purposes as if it had been reduced to a domestic judgment. Between 10 and 15 days after the judgment is filed, the clerk of court sends notice of the filing to the judgment debtor¹⁰ so that he may raise any defense that he may have

in other countries with federated states, e.g., Australia. See Yntema, The Enforcement of Foreign Judgments in Anglo-American Law, 33 Mich. L. Rev. 1129 (1935); Leflar, The New Uniform Foreign Judgments Act, 24 N.Y.U. L.Q. Rev. 336, 343-345 (1949); Morison, Extra-Territorial Enforcement of Judgments Within the Commonwealth of Australia, 21 Aust. L.J. 298 (1947).

7. 9A Uniform Laws Ann. 488 (1965).

8. In addition, an earlier act--the Uniform Enforcement of Foreign Judgments Act of 1948--which provides a summary judgment procedure, has been adopted in Illinois, Missouri, Oregon, Washington, Nebraska, and Arkansas. 9A Uniform Laws Ann. 475 (1965); National Conference of Commissioners on Uniform State Laws, Handbook (1970).

9. Foreign nation money judgments are enforceable by the recommended registration procedure by virtue of the Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc. §§ 1713-1713.8) enacted in California in 1967. Code Civ. Proc. § 1713.3. Of course, the authentication requirements are stricter for foreign nation judgments than for sister state judgments. See Evid. Code §§ 1452, 1453, 1454, and 1530(a).

10. The 10- to 15-day delay in sending notice of the filing to the judgment debtor is intended to allow time for the judgment creditor to obtain a writ of execution and have it levied on the debtor's property in California.

to the enforcement of the judgment. The judgment creditor may obtain a writ of execution at the time he files the foreign judgment, but assets levied upon may not be sold (except in the case of perishables) or distributed to the creditor until 20 days after the clerk sends notice of filing to the judgment debtor.

The recommended registration procedure offers several distinct advantages over the traditional enforcement process. The registration system is speedy, efficient, and inexpensive to utilize. It offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration procedure avoids the necessity under current law of obtaining a writ of attachment during the time suit is brought to establish the sister state judgment.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 674 and 1713.1 of, to amend the heading of Title 11 of Part 3 of, to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, and to repeal Section 1915 of, the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

Section 1. Section 674 of the Code of Civil Procedure is

amended to read:

674. An abstract of the judgment or decree of any court of this State, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a

small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, minutes or docket in the justice court.

Comment. Section 674 is amended to make clear that a judgment entered pursuant to Section 1710.40 may be recorded and become a lien pursuant to Section 674. See Section 1710.40 and Comment thereto.

Sec. 2. Section 1713.1 of the Code of Civil Procedure is

amended to read:

1713.1. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, ~~or the Ryukyu Islands;~~

or

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Comment. Section 1713.1(1) is amended to reflect the return to Japan of administrative rights over the Ryukyu Islands effective May 15, 1972. See Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, June 17, 1971, art. I, para. 1; art. V, paras. 1 & 2 (effective May 15, 1972).

Sec. 3. Section 1915 of the Code of Civil Procedure is repealed.

~~1915.--Except-as-provided-in-Chapter-2-(commencing-with-Section-1713)
of-Title-11-of-Part-3-of-this-code,-a-final-judgment-of-any-other-tribunal-of
a-foreign-country-having-jurisdiction,-according-to-the-laws-of-such-country;
to-pronounce-the-judgment,-shall-have-the-same-effect-as-in-the-country
where-rendered,-and-also-the-same-effect-as-final-judgments-rendered-in
this-state.~~

Comment. Section 1915 is repealed because it has been largely ignored by the courts and has served no useful purpose. See A. Ehrenzweig, Conflict of Laws § 45 at 163, n.25 (1962) ("Being much too sweeping in its language.... this provision has remained ineffective."). See also Ryder v. Ryder, 2 Cal. App.2d 426, 37 P.2d 1069 (1935); DeYoung v. DeYoung, 27 Cal.2d 521, 165 P.2d 457 (1946); Harlan v. Harlan, 70 Cal. App.2d 657, 161 P.2d 490 (1945); Sohnlein v. Winchell, 230 Cal. App.2d 508, 41 Cal. Rptr. 145 (1964).

Section 1915 apparently was enacted in nearly its present form in 1907 with an eye to the doctrine of reciprocity to assure the foreign execution of judgments entered in California against insurance companies in foreign nations, primarily Germany, involving claims arising out of the 1906 earthquake and fire. However, the section failed to achieve its basic historical purpose when in 1909 the imperial court of Germany refused to permit the execution of California judgments rendered by default against German insurance companies. See Lorenzen, The Enforcement of American Judgments Abroad, 29 Yale L.J. 188,

§ 1915

202-205 (1919). Since that time, the meaning and effect of Section 1915 have been a source of confusion. See, e.g., Scott v. Scott, 51 Cal.2d 249, 254, 331 P.2d 641, ___ (1958)(Traynor, J., concurring); Ryder v. Ryder, supra; Comment, Recognition of Foreign Country Divorces: Is Domicile Really Necessary?, 40 Cal. L. Rev. 93 (1952). Section 1915 became of even less possible use with the enactment of the Uniform Foreign Money-Judgments Recognition Act (Sections:1713-1713.8) in 1967, which removed foreign nation money judgments entitled to recognition under that act from the effect of Section 1915. With the repeal of Section 1915, the enforcement of foreign nation judgments is a matter of other statutory provisions and decisions of the courts under principles of the common law and private international law. See Sections 1713-1713.8; Scott v. Scott, supra (Traynor, J., concurring); Restatement (Second) of Conflict of Laws § 98, Comment b (1971); Smit, International Res Judicata and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44 (1962).

Sec. 4. The heading of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11. ~~OF PROCEEDINGS IN PROBATE COURTS~~

FOREIGN MONEY JUDGMENTS

Sec. 5. Chapter 1 (commencing with Section 1710.10) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

Chapter 1. Enforcement of Sister State
Money Judgments

§ 1710.10. "Sister state judgment"

1710.10. As used in this chapter, "sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States requiring the payment of money which is entitled to full faith and credit in this state.

Comment. Section 1710.10 is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). However, unlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10 is limited to sister state judgments requiring the payment of money. If a sister state judgment requires both the payment of money and the performance of some other act, only the part of the judgment which requires the payment of money may be enforced by the procedures of this chapter; the portion of the judgment not relating to the payment of money may be enforced in California, if at all, only by an action to enforce the judgment.

Section 1710.10 also requires that the sister state money judgment be one that is "entitled to full faith and credit in this state," a matter determined by the decisions interpreting the full faith and credit clause of the United States Constitution. See U.S. Const., Art. IV, § 1. See also 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 100, 102, Comment c and Reporter's Note (1971).

Certain money judgments of the courts of foreign nations also may be enforced by the procedures of this chapter pursuant to the Uniform Foreign Money-Judgments Recognition Act. Code Civ. Proc. §§ 1713-1713.8. That act provides that a foreign nation money judgment that meets certain specified requirements is conclusive between the parties and "is enforceable in the

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same manner as the judgment of a sister state which is entitled to full faith and credit." Code Civ. Proc. § 1713.3.

Federal money judgments may be registered in California federal district courts pursuant to federal procedures. 28 U.S.C. § 1963 (1970).

Nothing in this chapter affects the right of a judgment creditor to bring an action in California to enforce a sister state, federal, or foreign nation money judgment. See Section 1710.70.

§ 1710.20. Application for enforcement; filing; contents

1710.20. (a) A judgment creditor may apply for the enforcement of a sister state judgment by filing an application with the superior court for the county designated by Section 1710.30.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that the sister state judgment is presently enforceable in the jurisdiction where rendered and a statement of the amount remaining unpaid under the judgment.

(2) A statement that no action based on the sister state judgment is currently pending in any court of this state and no judgment based on such sister state judgment has previously been entered in any proceeding in this state.

(3) A statement setting forth the name and last known residence address of the judgment debtor. The statement required by this paragraph may be made on the basis of the applicant's information and belief.

(4) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.20 requires an application for relief under this chapter to be filed with a superior court and prescribes the contents of such application. Use of the procedure provided by this chapter should not be so frequent as to be burdensome, and the consolidation of all such proceedings in the superior court should promote its efficient and uniform operation.

The statement required by paragraph (1) of subdivision (b) is based on a requirement of the New York version of the revised Uniform Enforcement of Foreign Judgments Act of 1964. See N.Y.C.P.L.R. § 5402(a)(Supp. 1972). This statement is intended to prevent double recovery and to show clearly that the sister state judgment is, to the knowledge of the judgment creditor, properly enforceable. The statement required by paragraph (2) of subdivision (b) reflects the substantive requirement of Section 1710.60. See Section 1710.60 and Comment thereto. The statement required by paragraph (3) of subdivision (b) will permit an initial check as to proper venue. See Section 1710.30 and Comment thereto. The statements required by both paragraphs (3) and (4) of subdivision (b) are the same in substance as those required by subdivision (a) of Section 3 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). The application is, of course, subject to the general rules for papers filed in a superior court. See Section 1710.30 and Comment thereto. Hence, in addition to the matters required by this section, the application will also include the name and address of the judgment creditor's attorney. See Cal. R. Ct. 201(c).

Subdivision (c) requires that a properly authenticated copy of the sister state judgment be attached to the application. Section 1738 of Title 28 of the United States Code requires that full faith and credit be given to judgments authenticated in the manner there set forth and thereby provides certain maximum restrictions. For California provisions relating to authentication of judgments, see, e.g., Evid. Code §§ 1452, 1453, 1454, 1530(a).

The limitations period for applications filed pursuant to this chapter are provided by Title 2 of Part 2 of this code. Paragraph (3) of Section 337.5 prescribes a basic 10-year period for commencement of an action upon

a sister state judgment. See Section 363 ("action" includes special proceeding). However, a lesser period may be applicable under the borrowing provision of Section 361. Biewind v. Biewind, 17 Cal.2d 108, 109 P.2d 701 (1941); Parhm v. Parhm, 2 Cal. App.3d 311, 82 Cal. Rptr. 570 (1969); Weir v. Corbett, 229 Cal. App.2d 290, 40 Cal. Rptr. 161 (1964); Stewart v. Spaulding, 72 Cal. 264, 13 P. 661 (1887). But cf. Mark v. Safren, 227 Cal. App.2d 151, 38 Cal. Rptr. 500 (1964). On the other hand, the 10-year period is tolled while the judgment debtor is absent from the state. See Section 351; Cvecich v. Giardino, 37 Cal. App.2d 394, 99 P.2d 573 (1940). If the judgment is made payable in installments, the statute of limitations for each installment runs from the time each payment falls due. Biewind v. Biewind, supra; DeUprey v. DeUprey, 23 Cal. 352 (1863); Mark v. Safren, supra.

§ 1710.30. Application for enforcement: venue

1710.30. Subject to the power of the court to transfer the proceeding pursuant to Title 4 (commencing with Section 392) of Part 2, the application shall be filed in the office of the clerk of the superior court for:

- (a) The county in which the judgment debtor resides; or
- (b) If the judgment debtor is a nonresident, any county in this state.

Comment. Section 1710.30 makes clear the venue requirements for proceedings under this chapter. The application must be filed in the county where the judgment debtor resides. See Section 1710.20(b)(3)(application shall set forth judgment debtor's last known residence address). Where a judgment creditor errs in his application, the judgment debtor may request a transfer of the proceeding, but it seems that this will rarely be worth the time and expense and a transfer will not affect the validity of actions already taken.

§ 1710.40. Entry of judgment; notice of entry; effect of judgment

1710.40. (a) Upon the filing of the application, the clerk shall enter a judgment based upon the application. Entry shall be made in the same manner as entry of a judgment of the superior court.

(b) No less than 10 nor more than 15 days after entry of judgment, the clerk shall mail notice of entry of judgment to the judgment debtor at the address set forth in the judgment creditor's application. The clerk shall execute an affidavit of such mailing and place it in the court's file in the case.

(c) The judgment so entered shall have the same effect and be subject to the same procedures, defenses, and proceedings for the reopening, vacating, or staying as any other judgment of a superior court of this state and may be enforced or satisfied in like manner.

(d) Notwithstanding subdivision (c), property seized under a writ of execution issued on a judgment entered pursuant to this chapter shall not be sold earlier than 20 days after the clerk mails notice of entry of the judgment to the judgment debtor. However, if property seized is perishable, it may be sold in order to prevent its destruction or loss of value, but the proceeds of the sale ~~shall not~~ be distributed to the judgment creditor earlier than 20 days after the clerk mails notice of entry of the judgment to the judgment debtor.

Comment. Section 1710.40 is similar to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). Section 2 requires the clerk to file a sister state judgment and treat it in the same manner as a judgment of his state. Subdivision (a) of Section 1710.40 accomplishes the same end by requiring entry of a judgment on the basis

of the judgment creditor's application (attached to which is a copy of the sister state judgment).

Notice of entry of judgment is not sent "promptly" as provided in Section 664.5; instead, subdivision (b) requires the clerk to wait 10 days before sending the notice. This delay provides the judgment creditor time to obtain a writ of execution and have it levied upon the judgment debtor's property prior to notice. Hence, the judgment debtor may receive notice of the judgment creditor's enforcement activities before he receives notice of entry of judgment from the clerk since the levying officer is required by the statutory form to serve a copy of the writ of execution on the judgment debtor at the time of levy or to mail a copy to him after levy. Section 682.1. However, even though the judgment debtor's property is levied upon prior to notice of entry of judgment, subdivision (d) delays sale until at least 20 days after the mailing of notice of entry of judgment in order that the judgment debtor may raise any defenses he may have to the enforcement of the sister state judgment in California. See also Section 692 (notice to debtor 10 days before sale of personal property and 20 days before sale of real property).

Subdivision (c) provides that a judgment based on a sister state money judgment is to be treated in all respects as a judgment rendered in this state. For example, the Code of Civil Procedure provisions regarding judgment liens (§ 674), execution (§ 681 et seq.), and supplemental proceedings (§ 714 et seq.) all apply to the judgment. The judgment may be renewed for purposes of execution or other enforcement after 10 years as provided by Section 685. However, the same sister state judgment may not serve as the basis for entry of a California judgment more than once. See Sections 1710.60 and 1710.70 and Comments thereto.

§ 1710.50. Stay

1710.50. (a) If the judgment debtor shows the court that an appeal from the sister state judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the sister state judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of a superior court of this state would be stayed, the court shall stay enforcement for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

Comment. Section 1710.50 is the same in substance as Section 4 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488, 489 (1965). See Code Civ. Proc. §§ 681a (stay of execution), 917.1 (undertaking to stay enforcement on appeal).

§ 1710.60. Limitation to one filing or proceeding

1710.60. No sister state judgment may be enforced pursuant to this chapter if an action based on such judgment is currently pending in any court of this state or if a judgment based on such judgment has previously been entered in any proceeding in this state.

Comment. Section 1710.60, together with subdivision (b) of Section 1710.70, precludes a judgment creditor from using his sister state judgment as the basis for more than one California judgment. The creditor may either secure enforcement pursuant to this chapter or bring a separate action to enforce his sister state judgment. He may not, however, do both and he may not apply more than once under this chapter on the same sister state judgment. He may, of course, renew the California judgment pursuant to Section 685.

§ 1710.70. Optional procedure

1710.70. (a) Except as provided in subdivision (b), nothing in this chapter affects any right a judgment creditor may have to bring an action to enforce a sister state judgment.

(b) No action to enforce a sister state judgment may be brought where a judgment based on such sister state judgment has previously been entered pursuant to this chapter.

Comment. Section 1710.70 is similar to Section 6 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488, 489 (1965). The enactment of this chapter is not intended to restrict the traditional means of enforcing sister state money judgments which requires the judgment creditor to bring an independent action in this state. See 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548-3549 (2d ed. 1970); Restatement (Second) of Conflict of Laws §§ 99, 100, Comment b (1971); Restatement of Judgments § 47, Comment e (1942). However, subdivision (b) makes clear that the judgment creditor must choose between the methods of enforcement offered. He may not obtain two judgments in this state based on the same sister state judgment by using the two different procedures. See also Section 1710.60 and Comment thereto.