#D-1200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Pre-Print
RECOMMENDATION

Recognition of Tribal and Foreign Court Money Judgments

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

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SUMMARY OF RECOMMENDATION

California law includes substantive standards governing the recognition of foreign country and tribal court money judgments. These substantive standards are derived from the 2005 Uniform Foreign-Country Money Judgments Recognition Act. The Legislature directed the Commission to study these standards and report its findings and any recommendations for improvement to the standards.

As discussed in this recommendation, the Commission has reviewed the individual, substantive standards of recognition in detail. For the most part, the Commission found that the standards are operating appropriately in practice. Where the Commission identified the potential for confusion, the recommendation proposes minor reforms or commentary to provide clarification. The Commission's proposed reforms and commentary provide clarification on the following issues:

- Exercises of discretion to recognize a foreign or tribal court judgment in spite of a defect in the foreign or tribal court proceeding.
- Assessment of whether a foreign or tribal court lacked personal jurisdiction over the defendant.
- Defects in notice that could lead to nonrecognition of a foreign or tribal court judgment.
- Types of fraud that could lead to nonrecognition of a foreign or tribal court judgment.
- Resolving a situation of conflicting judgments.
- Recognition of foreign defamation judgments.

This recommendation was prepared pursuant to Section 1 of Chapter 243 of the Statutes of 2014 and Government Code Section 8298.

RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

In 2014, the Legislature enacted Senate Bill 406, establishing the Tribal Court Civil Money Judgment Act (hereafter, "Tribal Court Judgment Act") and directing the Commission to study "the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure)."[1]

The substantive rules governing the recognition of judgments under the Tribal Court Judgment Act and California's Uniform Foreign-Country Money Judgments Recognition Act (hereafter, "California's Uniform Act") are fundamentally the same. Under either Act, a judgment that falls within the scope of the Act is entitled to recognition, unless an exception to recognition applies. The Acts, collectively referred to hereafter as "Judgment Recognition Acts," each list essentially the same set of exceptions to recognition.[2]

As the Legislature considered Senate Bill 406, interested persons raised concerns about the exceptions to recognition in the Judgment Recognition Acts. Presented with these concerns, the Legislature chose to amend the bill, adding an automatic repeal (i.e, "sunset") provision and directing the Commission to study the exceptions to recognition in advance of the law's repeal.[3]

The Commission has reviewed the exceptions to recognition in the Judgment Recognition Acts in detail. For the most part, the Commission did not find problems with the operation of the exceptions. However, the Commission found that certain exceptions could benefit from clarifying amendments or commentary. This recommendation includes proposed legislation that would provide additional clarity as to how these exceptions are intended to operate in practice.

As noted above, the lists of exceptions to recognition in the Judgment Recognition Acts are largely the same. For that reason, the discussion generally focuses on the Judgment Recognition Acts collectively. In some instances, the California Uniform Act and Tribal Court Judgment Act are discussed separately to identify differences between the Acts or differences in other laws that would affect the interpretation and understanding of the Acts.

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1. 2014 Cal. Stat. ch. 243.

2. Compare Code Civ. Proc. § 1716(b), (c) with Code Civ. Proc. § 1737(b), (c).

3. See Assembly Committee on Judiciary Analysis of Senate Bill 406 (June 13, 2014), p. 8 (hereafter, "SB 406 Assembly Judiciary Analysis").

BACKGROUND

In order to understand the Judgment Recognition Acts, it is helpful to briefly consider the history of judgment recognition law, the policy rationale underlying judgment recognition law, and how judgment recognition law operates generally. Each of these issues is discussed briefly, in turn, below.

History of Judgment Recognition Law

In California, most of the statutory exceptions to recognition applicable to tribal and foreign court money judgments have been largely unchanged since 1967, when California adopted the 1962 Uniform Foreign Money-Judgments Recognition Act (hereafter, "1962 Uniform Act").[4]

The 1962 Uniform Act set forth substantive standards governing the recognition of both foreign country and tribal court civil money judgments.[5] The 1962 Uniform Act codified "the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries."[6] Thus, the exceptions to recognition, although newly codified, had previously been recognized under the common law.[7]

In 2005, the Uniform Law Commission revised the 1962 Uniform Act, preparing the Uniform Foreign-Country Money Judgments Recognition Act (hereafter, "2005 Uniform Act"). The 2005 Uniform Act:

> continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation.[8]

California enacted the 2005 Uniform Act in 2007.[9] From that time until the Tribal Court Judgment Act took effect, the recognition of both tribal and foreign court money judgments was governed by California's enactment of the 2005 Uniform Act.[10]

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4. 1967 Cal. Stat. ch. 503, § 1.

5. See 1962 Uniform Act §§ 1 (defining "foreign state" and "foreign judgment"), 3 (default rule of recognition for foreign judgments), and 4 (grounds for nonrecognition).

6. Uniform Foreign-Country Money Judgments Recognition Act (2005) Prefatory Note.

7. See generally Hilton v. Guyot, 159 U.S. 113 (1895).

8. 2005 Uniform Act Prefatory Note. Given the relationship between the Acts, the Commission's study included case law arising under the 1962 Uniform Act. See *infra* note 21.

9. 2007 Cal. Stat. ch. 212, § 2.

10. See former Code Civ. Proc. § 1714, as enacted by 2007 Cal. Stat. ch. 212, § 2 (defining "foreign country" and "foreign-country judgment"); see also Code Civ. Proc. § 1741.

In 2014, the Tribal Court Judgment Act was enacted to specify a detailed procedure for seeking recognition of a tribal court judgment, while retaining the substantive rules that already governed the recognition of tribal court money judgments.[11]

Policy Rationale for Judgment Recognition

As a general matter, there are a number of policy rationales supporting recognition of judgments from other jurisdictions. These rationales include respecting state sovereignty, promoting international relations (between sovereigns), avoiding international conflicts, facilitating the transnational operations of businesses and individuals, promoting judicial efficiency, providing predictability, providing finality, and avoiding the intra-jurisdictional conflicts and inconsistencies that would invariably crop up in the absence of judgment recognition.[12]

Operation of Judgment Recognition Law

Under the Judgment Recognition Acts, a foreign or tribal court judgment is entitled to recognition unless an exception applies.[13]

The Acts have two different categories of exceptions: mandatory exceptions (requiring nonrecognition of the judgment) and discretionary exceptions (permitting nonrecognition of the judgment).[14] If a mandatory exception applies, the court *must* deny recognition of the judgment. If a discretionary exception applies, the court *may* deny recognition of the judgment.

The Acts list all of the permissible exceptions to recognition. Unless one of the listed exceptions to recognition applies, the judgment would be entitled to recognition.

COMMISSION'S STUDY

Scope

In Senate Bill 406, the Commission was directed to review only the "standards of recognition" under the Judgment Recognition Acts. The Commission

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11. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 6.

12. See generally Donald Earl Childress III, Comity as Conflict: Resituating International Comity as Conflict of Laws, 44 U.C. Davis L. Rev. 11, 14 (2010); Joel R. Paul, Comity in International Law, 32 Harv. Int'l L.J. 1, 54-56 (1991); Alan Reed, A New Model of Jurisdictional Propriety for Anglo-American Foreign Judgement Recognition and Enforcement: Something Old, Something Borrowed, Something New?, 25 Loy. L.A. Int'l & Comp. L. Rev. 243, 274-275 (2003); Kevin J. Christensen, Of Comity: Aerospatiale as Lex Maritima, 2 Loy. Mar. L.J. 1, 2-3, 23 (2003).

13. See Code Civ. Proc. §§ 1716(a); 1736(a); 1737(a), (d).

14. See 2005 Uniform Act § 4 Comment 3.

understood "standards of recognition" to mean the substantive exceptions to recognition contained in the Judgment Recognition Acts.[15] For the most part, the Commission did not examine the definitions[16] or general scope[17] provisions of the Acts.

In conducting this study, the Commission focused on the exceptions to recognition and the related provisions.[18]

The Commission did not assess and takes no position on the procedure for seeking tribal court judgment recognition established by the Tribal Court Judgment Act.

Analytical Approach

In conducting this study, the Commission reviewed each exception to recognition in detail to determine whether the exception has been cause for confusion or has led to problematic results. Further, the Commission considered why, as a general matter, certain exceptions were deemed discretionary (i.e., are there justifications for recognizing a judgment when these exceptions apply?).

The Commission paid particular attention to the specific concerns discussed in the analysis of Senate Bill 406 prepared by the Assembly Committee on the Judiciary.[19]

This research included a close review of the language of the Uniform Acts, the associated commentary of the Uniform Law Commission, relevant Restatements of Law,[20] judgment recognition case law,[21] and, as needed, other legal analysis and commentary.

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15. The 2005 Uniform Act refers to the exceptions to recognition as "standards of recognition." See 2005 Uniform Act § 4.

16. See Code Civ. Proc. §§ 1714, 1732. The Commission did review the definition of "due process" in the Tribal Court Judgment Act, as that definition pertains to the substance of the standards of recognition. See Code Civ. Proc. §§ 1732(c) (defining "due process"); 1737(b)(3), (c)(8) (exceptions pertaining to due process).

17. See Code Civ. Proc. §§ 1715, 1731.

18. Code Civ. Proc. §§ 1716, 1717, 1732(c) and 1737.

19. See SB 406 Assembly Judiciary Analysis, *supra* note 3.

20. See, e.g., Restatement (Third) of Foreign Relations Law of the United States §§ 421, 482 (1987) (hereafter, "Third Restatement"); Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction §§ 403, 404 (Tentative Draft No. 1, April 1, 2014) (hereafter, "Draft Fourth Restatement").

21. This case law includes cases arising under both the 1962 and 2005 Uniform Acts.

Twenty-two jurisdictions, including California, are currently operating under an enactment of the 2005 Uniform Act, while fourteen jurisdictions are currently operating under an enactment of the 1962 Uniform Act. See Uniform Foreign-Country Money Judgments Recognition Act (2005), 13, pt. II U.L.A. 2015 Cumulative Annual Pocket Part p. 19 (Arizona and Georgia, which are not listed, have also enacted the 2005 Uniform Act); Uniform Foreign Money-Judgments Recognition Act (1962), 13, pt. II U.L.A. 2015 Cumulative Annual Pocket Part p. 43. (Delaware,

Unless otherwise noted, the analysis and recommendations that follow apply to both foreign and tribal court judgment recognition proceedings.

Recommendations

The Commission largely concluded that the exceptions were working well in practice.

In a few cases, the Commission identified possibilities for confusion. To address those issues, the Commission proposes legislative changes to clarify the statutory language[22] and, where appropriate, comments to provide additional guidance about the law.[23]

Given that the exceptions to recognition in both of California's Judgment Recognition Acts derive from the 2005 Uniform Act, the Commission's proposed legislation includes relevant commentary from the Uniform Law Commission that provides additional explanation about the operation and effect of the exceptions to recognition.[24]

DISCRETION TO RECOGNIZE

As discussed previously, the Judgment Recognition Acts each contain a set of discretionary exceptions to recognition. When a discretionary exception applies, the court must decide whether or not to recognize the judgment.

Many of the discretionary exceptions relate to issues of due process or fairness in the foreign or tribal court proceeding.[25] The fairness-related exceptions from California's Uniform Act are reproduced below:

> A court of this state is not required to recognize a foreign-country judgment if any of the following apply:
>
> (1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.
>
> (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

Georgia, and Illinois, which are listed as jurisdictions that have adopted the 1962 Act, have all enacted the 2005 Uniform Act); see also Ariz. Rev. Stat. §§ 12-3251 to 12-3254; Ga. Code Ann. §§ 9-12-110 to 9-12-119.

22. See, e.g., discussion of "Personal Jurisdiction under California's Uniform Act" *infra*; see also proposed Code Civ. Proc. § 1717 *infra*.

23. See, e.g., proposed Code Civ. Proc. § 1716 Comment *infra*.

24. See, e.g., proposed Code Civ. Proc. § 1716 Comment (Background from the 2005 Uniform Act) *infra*.

25. See Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1) (lack of notice to defendant); 1716(c)(2), 1737(c)(2) (fraud); 1716(c)(5), 1737(c)(5) (contrary to parties' dispute resolution agreement); 1716(c)(6), 1737(c)(6) (seriously inconvenient forum); 1716(c)(7), 1737(c)(7) (lack of court integrity); 1716(c)(8), 1737(c)(8) (due process failure); but see, e.g., Code Civ. Proc. §§ 1716(c)(4), 1737(c)(4) (conflicting judgments).

> …
> (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.
> (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.
> (7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.
> (8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
> …[26]

In some cases, the phrasing of the exception seems to require that the defect be prejudicial (e.g., the defendant "did not receive notice of the proceeding in sufficient time to enable the defendant to defend"[27]).

A committee analysis of Senate Bill 406 questions whether recognition would ever be appropriate when one of these exceptions applies. The analysis calls for further study of this issue:

> Even a cursory review of the grounds for discretionary nonrecognition raise legitimate questions as to the fairness and due process provided in the underlying action and what should the appropriate standard be for recognition in state court. For example, the bill (and [California's Uniform Act]) allows a court, in its discretion, to recognize and enforce a tribal court money judgment even when the specific proceedings in the tribal court leading to the judgment were not compatible with due process of law. Currently the bill – and [California's Uniform Act] – require mandatory nonrecognition of a tribal order if it was rendered under a judicial system that does not provide procedures compatible with the requirements of due process. However, if the system provides procedures that, at least on paper, provide due process of law, but the actual procedures used in a particular case do not, the defendant has not been afforded due process of the law and thus, the proceeding would not, under the Ninth Circuit decision in *Wilson v. Marchington* [127 F.3d 805 (9th Cir. 1997)], be entitled to recognition in federal court. Is it reasonable policy – under both this bill and [California's Uniform Act] – to permit such an order to be enforced by a California court? This is obviously a very important question calling for further study.[28]

The Commission reviewed the Uniform Law Commission's commentary for the rationales for discretionary recognition. The commentary suggests one situation in which it might be proper to recognize a foreign or tribal court judgment when a discretionary exception applies.

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26. Code Civ. Proc. § 1716(c); see also *id.* § 1737(c).

27. Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1).

28. SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7.

> For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.[29]

The Commission identified other equitable issues that might similarly justify recognition of a judgment despite unfairness in the foreign or tribal court proceeding. For example, the court could conclude that recognition was appropriate if the party opposing recognition was somehow responsible for bringing about the problem in the foreign or tribal court (i.e., had unclean hands). Or, the court might find that the defendant had effectively waived the right that is the basis for the objection. In practice, the Commission expects that instances where equitable considerations will warrant recognition in spite of an applicable exception will be rare, but a court should not be precluded from recognizing a judgment when those circumstances exist.

Treating the fairness-related exceptions as discretionary allows a court to evaluate the level of harm, the parties' conduct in the foreign or tribal court system, and any other factors the court deems relevant in determining whether an individual foreign or tribal court judgment should be recognized.

The Commission concludes that the statutory language, permitting discretionary recognition for specified exceptions, is appropriate as drafted. However, the Commission believes it would be helpful to provide guidance on when a court might exercise its discretion to recognize a judgment, consistent with the discussion above. The proposed legislation includes a comment providing such guidance.[30]

MANDATORY EXCEPTIONS TO RECOGNITION

The Judgment Recognition Acts each include three mandatory exceptions to recognition. These exceptions require that a judgment be denied recognition in situations where:

- The foreign or tribal judicial system, as a whole, does not provide impartial tribunals or procedures compatible with due process.
- The foreign or tribal court lacked subject matter jurisdiction.
- The foreign or tribal court lacked personal jurisdiction over the defendant.

Each of these mandatory exceptions is discussed, in turn, below.

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29. 2005 Uniform Act § 4 Comment 12.

30. See proposed Code Civ. Proc. § 1716 Comment *infra*.

Systemic Lack of Due Process

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment that "was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law."[31]

> Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course.[32]

During the legislative process for Senate Bill 406, a tribe raised concerns that this exception has "the potential to negate a tribal judgment simply because a superior court judge finds the judgment incongruous with the State's idea of due process or impartiality, without regard for the basic tenants of Tribal Sovereignty."[33]

That concern may be partially addressed by the fact that this exception does not require strict compliance with U.S. constitutional due process. The Uniform Law Commission's commentary on the 2005 Uniform Act makes that point clear.

> [A] mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved. The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under [this provision], so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding.[34]

Further, the commentary describes this provision as requiring procedures compatible with "fundamental fairness,"[35] suggesting that the reference to "due process" is not intended to invoke the full panoply of due process rights and obligations afforded under the United States Constitution.

Although the Tribal Court Judgment Act was not intended to change the legal standards that apply to judgment recognition, the Act adds clarification as to some of the due process requirements for the recognition of tribal court judgments. The

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31. Code Civ. Proc. §§ 1716(b)(1), 1737(b)(3).

32. See 2005 Uniform Act § 4 Comment 12.

33. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7, *quoting* comments of the Habematolel Pomo of Upper Lake. The analysis suggests that the tribe may have broader concerns about the mandatory exceptions. Lacking additional detail on the nature of any broader concerns, the Commission was not able to evaluate those concerns.

34. 2005 Uniform Act § 4 Comment 5 (citations omitted).

35. *Id*. at Comment 12.

Tribal Court Judgment Act defines "due process" as including, but not limited to "the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker."[36] This definition effectively establishes certain minimal requirements that must be satisfied in all cases. In other words, the Act would preclude recognition of a judgment from a tribal court system unless that system provides all of the listed due process rights. However, the list of due process rights is not exhaustive. A court could thus find that a tribal court system failed to provide due process on some other grounds.

The Commission has not identified problems with how the systemic due process exception has been applied in practice, nor do the court decisions suggest confusion about how this exception is intended to operate.[37]

The Commission concludes that this exception is appropriate and sufficiently clear as drafted.

Lack of Subject Matter Jurisdiction

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment if the rendering court "did not have jurisdiction over the subject matter."[38]

This seems proper. Generally, where a court lacks subject matter jurisdiction over a case, the resulting judgment would be invalid and should not be recognized.[39]

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36. Code Civ. Proc. § 1732(c).

37. See, e.g., Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1413 (9th Cir. 1995) (applying this exception to deny recognition to an Iranian judgment against the former shah's sister on the grounds that she "could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf.").

38. Code Civ. Proc. §§ 1716(b)(3), 1737(b)(2).

39. See generally 46 Am. Jur. 2d. Judgments § 22 ("In order for a judgment to be valid and enforceable, the court which renders it must have jurisdiction of the parties, as well as jurisdiction of the subject matter. A judgment rendered without jurisdiction may be attacked and vacated at any time, either directly or collaterally.") (citations omitted); see also Carr v. Kamins, 151 Cal. App. 4th 929, 933, 60 Cal. Rptr. 3d 196 (2007) ("'A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant.' An order after judgment that gives effect to a judgment that is void on its face is itself void and subject to appeal even if the judgment itself is not appealed.") (citations omitted); but see Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd., 181 Cal. App. 4th 752, 767, 104 Cal. Rptr. 3d 641 (2010) ("However, a court does not necessarily act without subject matter jurisdiction merely by issuing a judgment going beyond the sphere of action prescribed by law. Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction … . The distinction is critical, because action

For foreign country judgments, subject matter jurisdiction would be governed by the foreign country's own law.[40] For tribal court judgments, subject matter jurisdiction would be governed by the tribe's own law and, where the matter involves persons who are not tribe members, federal law.[41]

The Commission concludes that this exception to recognition is appropriate and sufficiently clear as drafted.

Lack of Personal Jurisdiction

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment if the rendering court "did not have personal jurisdiction over the defendant."[42]

The provisions governing personal jurisdiction in California's Uniform Act and the Tribal Court Judgment Act are materially different. For that reason, the Acts are discussed separately below.

Personal Jurisdiction under California's Uniform Act

As noted above, California's Uniform Act provides for mandatory nonrecognition of a judgment where the foreign court lacked personal jurisdiction over the defendant.[43]

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in excess of jurisdiction by a court that has jurisdiction in the fundamental sense (i.e., jurisdiction over the subject matter and the parties) is not void, but only voidable. Errors of substantive law are within the jurisdiction of a court and are not typically acts beyond the court's fundamental authority to act. For example, a failure to state a cause of action, insufficiency of evidence, abuse of discretion, and mistake of law, have been held nonjurisdictional errors for which collateral attack will not lie.") (citations, emphasis, and quotation marks omitted).

40. See Draft Fourth Restatement, *supra* note 20, § 403 Comment g ("A court in the United States will not recognize a judgment of a court of a foreign state if the court that rendered the judgment did not have jurisdiction over the subject matter of the dispute. A court that lacked the capacity under its national law to render a judgment cannot expect that judgment to gain recognition elsewhere. The assignment of designated subjects to the jurisdiction of particular foreign courts is, however, solely a matter of foreign law, and the consequences of a mistaken assertion of subject-matter jurisdiction also must depend on foreign law."); see also Third Restatement, *supra* note 20, § 482 Comment a ("[J]urisdiction of the rendering court over the subject matter is normally presumed…").

41. See Cohen's Handbook of Federal Indian Law § 7.02[1][a] (Nell Jessup Newton Editor-in-Chief, Lexis Nexis 2012) (hereafter, "Cohen's Handbook").

> Tribal court subject matter jurisdiction over tribal members is first and foremost a matter of internal tribal law. There is no general federal statute limiting tribal jurisdiction over tribal members, and federal law acknowledges this jurisdiction.
>
> A tribe's exercise of adjudicative jurisdiction over non-Indians or nonmembers does raise questions of federal law, however, reviewable in federal court.

Id. (citations omitted).

42. Code Civ. Proc. § 1716(b)(2); see also *id*. § 1737(b)(1) (same with minor differences in phrasing).

When considering a foreign court's exercise of personal jurisdiction, a court in this state may have two separate and distinct concerns:

(1) Whether the foreign court's basis for personal jurisdiction over the defendant is consistent with principles of personal jurisdiction in this state.

(2) Whether the foreign court's exercise of personal jurisdiction was permitted under its own law.

Each of these concerns is discussed, in turn, below.

California Principles of Personal Jurisdiction

If a foreign court's exercise of personal jurisdiction over the defendant offends California's principles of personal jurisdiction, then, as a matter of policy, California may want to decline to recognize the resulting judgment.

For the most part, the judgment recognition case law on personal jurisdiction addresses whether the foreign court's exercise of personal jurisdiction is consistent with principles of personal jurisdiction where recognition is sought.[44] This result seems to be suggested by a separate section of California's Uniform Act, Code of Civil Procedure Section 1717, which provides a list of bases for personal jurisdiction that are sufficient for the purposes of the Act. That section is reproduced in relevant part below:

> (a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following apply:
>
> (1) The defendant was served with process personally in the foreign country.
>
> (2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.
>
> (3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.
>
> (4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.
>
> (5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

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43. Code Civ. Proc. § 1716(b)(2).

44. See generally Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 5 ("U.S. courts will not enforce a foreign judgment if the court rendering the judgment would have lacked personal jurisdiction over the person opposing recognition of the judgment under the minimum requirements of due process imposed by the U.S. Constitution."); see also *id*. § 403 Comment f; Commission Staff Memorandum 2016-6, pp. 14-16.

> (6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.
>
> (b) The list of bases for personal jurisdiction in subdivision (a) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision (a) as sufficient to support a foreign-country judgment.
>
> …

In drafting this list of bases for personal jurisdiction, the Uniform Law Commission "adopt[ed] the policy of listing bases accepted generally today and preserv[ed] for the courts the right to recognize still other bases."[45]

Generally, the personal jurisdiction provisions of the Uniform Act have been understood to permit a court to recognize bases of personal jurisdiction that are consistent with the U.S. Constitution or, in states with additional restrictions on personal jurisdiction, the state's own standards.[46] For instance, in a Ninth Circuit case, the court concluded that the personal jurisdiction provisions of California's Uniform Act "seem[] to us intended to leave the door open for the recognition by California courts of foreign judgments rendered in accordance with American principles of jurisdictional due process."[47]

With respect to ensuring that a foreign court's exercise of personal jurisdiction is consistent with California's jurisdictional principles, the Commission concluded the personal jurisdiction provisions of California's Uniform Act are operating appropriately in practice.

Foreign Law

If a foreign court lacks personal jurisdiction under its own laws, then the foreign court would have no legal authority to assert jurisdiction over the defendant. The resulting foreign court judgment would presumably be invalid.[48]

The Commission found some authority suggesting that, in a judgment recognition proceeding, a court may consider whether the foreign court lacked personal jurisdiction under foreign law.[49] However, the existing language of

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45. 1962 Uniform Act Prefatory Note.

46. See Commission Staff Memorandum 2016-6, pp. 13-16.

47. Bank of Montreal v. Kough, 612 F.2d 467, 471 (9th Cir. 1980). California's long-arm jurisdiction statute extends the jurisdictional reach of the California courts to the limits of the state and federal Constitutions. See Code Civ. Proc. § 410.10.

48. See *supra* note 39.

49. See, e.g., Monks Own, Ltd. v. Christ in the Desert, 168 P.3d 121, 125-27 (N.M. 2007) (finding that personal jurisdiction under foreign law was not in dispute); Dart v. Balaam, 953 S.W.2d 478, 481-82 (Tex. App. 1997) (discussing appearance as a waiver of jurisdictional objections under both Texas and Australia law); Sung Hwan Co., Ltd. v. Rite Aid Corp., 850 N.E.2d 647, 651 (N.Y. 2006) ("Thus, the inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares

California's Uniform Act appears to preclude an objection to personal jurisdiction under foreign law in certain cases. In particular, Code of Civil Procedure Section 1717, reproduced above, provides that a judgment "shall not be refused recognition for lack of personal jurisdiction" if any of the listed bases apply, without permitting any assessment of whether jurisdiction is adequate under foreign law.

The Commission notes that, in most cases, objections to personal jurisdiction would likely have been resolved in the foreign court proceeding, either by the foreign court deciding the issue or through waiver where the defendant appears without raising a jurisdictional objection. In such cases, a California court should not permit re-litigation of the issue.[50] As a general matter, the Commission believes that objections to personal jurisdiction under foreign law would likely only arise in the context of a default judgment where the defendant did not appear at all before the foreign court.

The Commission concluded that permitting objections to personal jurisdiction under foreign law seems to reflect the predominant practice under the Uniform Act, as well as the best policy result (i.e., avoiding recognition of invalid foreign court judgments).[51] To that end, the Commission concluded that minor reforms are needed to make clear that, in appropriate circumstances, a court is not precluded from considering whether the foreign court's exercise of personal jurisdiction was authorized by foreign law.

Conclusion

In accordance with the foregoing discussion, the Commission recommends amendments to Code of Civil Procedure Section 1717 making clear that a foreign court lacks personal jurisdiction if either (1) the foreign court's basis for personal jurisdiction violates California's jurisdictional principles or (2) the foreign court's exercise of personal jurisdiction was not permitted under foreign law.[52]

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our notions of procedure and due process of law."); Canadian Imperial Bank of Commerce v. Saxony Carpet Co., 899 F. Supp. 1248, 1253 (S.D.N.Y. 1995) ("According to the standards articulated in both New York law and the proof of Quebec law offered by Plaintiff CIBC, the Canadian court obtained valid in personam jurisdiction over Defendant Saxony."); see also Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 7.

50. Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 7 ("There is authority, however, for the proposition that a U.S. court generally will not look behind a foreign court's finding of personal jurisdiction under its own law.").

51. See Commission Staff Memorandum 2016-6, pp. 11-13.

52. The Commission's commentary also specifies that a defect in the service of process could support a finding that the foreign court lacks personal jurisdiction, where that defect is sufficient to defeat personal jurisdiction under foreign law. See proposed Code Civ. Proc. § 1717 Comment *infra*. Where defective service of process does not defeat jurisdiction, the defective service may nonetheless be grounds for nonrecognition under other exceptions. See, e.g., Code. Civ. Proc. § 1716(c)(1) (defendant did not receive sufficient notice).

Personal Jurisdiction under Tribal Court Judgment Act

The Tribal Court Judgment Act states the general rule that a court must decline recognition of a tribal court judgment where the tribal court lacked personal jurisdiction over the defendant.[53] The Tribal Court Judgment Act differs from California's Uniform Act in that the Tribal Court Judgment Act does not include an analog to Code of Civil Procedure Section 1717, listing sufficient bases for personal jurisdiction.[54]

The omission of such a provision is reasonable. There are significant, material differences in the jurisdictional laws governing states and tribes. In particular, the federal case law assessing tribal court jurisdiction combines concepts that are traditionally associated with both subject matter jurisdiction (a court's authority to hear a matter) and personal jurisdiction (a court's ability to adjudicate as to a particular party).[55] The federal case law describes a test for tribal court subject matter jurisdiction that focuses on the status of the party (i.e., a nonmember) and that party's connections with the tribe (i.e, requiring either a consensual relationship with the tribe or its members or conduct threatening or directly affecting the tribe as a whole).[56] Given these differences, the Commission concluded that, at a minimum, the list of sufficient bases for personal jurisdiction in Code of Civil Procedure Section 1717 could be confusing when applied to a tribal court's exercise of personal jurisdiction over a non-tribe member. Thus, the Commission concludes that the omission of an analogous provision in the Tribal Court Judgment Act was appropriate.

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53. Code Civ. Proc. § 1737(b)(1).

54. See generally discussion of "California Principles of Personal Jurisdiction" *supra*.

55. See, e.g., Smith v. Salish Kootenai College, 434 F.3d 1127, 1136-40 (9th Cir. 2006) (en banc) (acknowledging general characterization of tribal civil jurisdiction as subject matter jurisdiction in case law, while noting that aspects of tribal adjudicatory jurisdiction resemble personal jurisdiction). See also Katherine Florey, Beyond Uniqueness: Reimagining Tribal Courts' Jurisdiction, 101 Cal. L. Rev. 1499, 1536-40 (December 2013) (discussing *Smith v. Salish Kootenai College*); *id*. at 1504-05 ("In keeping with this supposed tribal uniqueness, the Supreme Court has developed the jurisdictional doctrines that govern tribes on an entirely clean slate. In other words, the Court has never seriously examined the field of personal jurisdiction, or related doctrines like conflict of laws, when discussing Indian country — despite the fact that these doctrines are, by their nature, designed to accommodate different legal values and contexts in multi-jurisdictional disputes. Instead, the Court has developed new doctrines and categories, presumably rooted in federal common law, that bear little relation to jurisdictional concepts as applied in any other context. For example, the Court speaks of 'legislative,' 'adjudicative,' and, in some cases, 'subject matter' jurisdiction in scenarios that would ordinarily be conceptualized as ones involving personal jurisdiction.") (citations omitted).

56. See Montana v. United States, 450 U.S. 544, 565-66 (1981) (setting forth a test describing limits on tribe's civil regulatory authority); Strate v. A-1 Contractors, 520 U.S. 438, 453 (1997) (concluding that tribe's "adjudicative jurisdiction does not exceed its legislative jurisdiction," thereby applying *Montana* test to tribal court jurisdiction).

The Commission further concludes, that the omission of such a provision was not intended to change the scope of the personal jurisdiction inquiry for the recognition of tribal court judgments.[57] The Tribal Court Judgment Act, as drafted, does not preclude a court from finding that a tribal court lacked personal jurisdiction over the defendant if either (1) the tribal court's exercise of personal jurisdiction was not authorized by tribal law or (2) the tribal court's basis for personal jurisdiction violates California's jurisdictional principles.

Therefore, the Commission concludes that the Tribal Court Judgment Act is appropriate as drafted, but proposes commentary clarifying the scope of the personal jurisdiction inquiry.[58]

DISCRETIONARY EXCEPTIONS TO RECOGNITION

The Judgment Recognition Acts each include nine discretionary exceptions to recognition. These exceptions permit a court to deny recognition of a judgment in situations where:

- The defendant did not receive timely notice.
- The judgment was procured by fraud that precluded the defendant from defending the case.
- California public policy would be offended by recognition of the judgment.
- The judgment conflicts with another final judgment.
- The proceeding was contrary to the parties' dispute resolution agreement.
- The court was a seriously inconvenient forum.
- The court rendering the judgment appears to have lacked integrity with respect to the judgment.
- The proceeding was incompatible with due process.
- The judgment was for defamation and failed to provide free speech and press protections.

Each of these discretionary exceptions is discussed, in turn, below.

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57. See, e.g., SB 406 Assembly Judiciary Analysis, *supra* note 3, at 1 ("While, this bill establishes a new procedural framework for seeking recognition of tribal court money judgments in California courts, it does not significantly change the legal grounds for recognition or nonrecognition of these judgments."); see also Assembly Floor Analysis of SB 406, p. 3 (Aug. 6, 2014) ("Any money judgment that is non-enforceable under existing law would continue to be non-enforceable under this legislation — this bill just simplifies the procedures for seeking enforcement of a tribal court judgment."); Senate Floor Analysis of SB 406, p. 7 (Aug. 8, 2014) (according to Judicial Council (source of SB 406), bill would "continu[e] to apply the principles of comity appropriate to judgments of sovereign tribes.").

58. See proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

Lack of Notice

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he defendant in the proceeding in the foreign [or tribal] court did not receive notice of the proceeding in sufficient time to enable the defendant to defend."[59]

As a general matter, it seems unfair to hold a defendant responsible for a judgment where the defendant was precluded from putting on a defense due to a failure to receive timely notice.

The terms of this provision seem to emphasize the *timing* of the notice. Nonetheless, the Commission concludes that this provision, as drafted, would permit an objection to notice where the *content* of the notice is defective.

The Commission concluded that the lack of notice exception is appropriate, as drafted. To alleviate any possible confusion on whether this exception permits objections to defects in the content of the notice, the Commission provides clarifying commentary on that issue.[60]

Fraud

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case."[61]

The Uniform Law Commission's commentary specifies that this provision only permits nonrecognition in cases of "extrinsic fraud—conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case."[62] The reference to "extrinsic fraud" may be cause for confusion, as it may suggest a categorical test for the applicability of this provision.[63] However, the language of the exception itself establishes a functional test, focusing on whether the fraud deprived the party of an adequate opportunity to present its case.

Commentary on judgment recognition suggests that modern case law focuses on "whether the injured party had any opportunity to address the alleged misconduct during the original proceeding."[64]

Standing alone, the Uniform Law Commission's comment, which is reproduced in the Commission's commentary,[65] might suggest a limitation on type of fraud

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59. Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1).

60. See proposed Code Civ. Proc. § 1716 Comment; proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

61. Code Civ. Proc. §§ 1716(c)(2), 1737(c)(2).

62. 2005 Uniform Act § 4 Comment 7.

63. Draft Fourth Restatement, *supra* note 20, § 404 Reporters' Note 3.

64. *Id*.

that could serve as grounds for nonrecognition. For that reason, the Commission provides supplemental commentary clarifying that the Uniform Law Commission's reference to extrinsic fraud should not be construed as limiting the application of the fraud exception.

The Commission concludes that the fraud exception, as drafted, is appropriate.

Repugnant to Public Policy

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States."[66]

The Uniform Act's commentary explains the scope of this provision:

> [A] difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel."[67]

As indicated, this provision establishes a "stringent test for finding a public policy violation."[68]

Under the 1962 Uniform Act, this exception referred only to the cause of action or claim for relief. In 2005, the Uniform Law Commission revised this provision to also apply to the judgment itself. This amendment addressed confusion in the case law about whether the provision applies where the specific judgment is repugnant to public policy, but the underlying cause of action or claim for relief is not.[69]

With the 2005 amendment, the Commission concludes that this exception is appropriate and sufficiently clear as drafted. Therefore, the Commission recommends no change to this provision.

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65. See proposed Code Civ. Proc. § 1716 Comment; proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

66. Code Civ. Proc. § 1716(c)(3); see also *id*. § 1737(c)(3) (same with minor differences in phrasing).

67. See 2005 Uniform Act § 4 Comment 8 (citation omitted).

68. *Id*.

69. See *id*.

Conflicting Judgments

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he judgment conflicts with another final and conclusive judgment."[70]

The Commission concludes that this exception is appropriate and sufficiently clear as drafted.

Nonetheless, the Commission provides comments offering guidance to a court asked to resolve a situation of conflicting judgments. Absent other law requiring the recognition of a particular judgment,[71] a court may be unsure how to resolve a conflict between multiple judgments, each otherwise eligible for recognition.

Neither the Judgment Recognition Acts, nor the Uniform Law Commission's commentary, provide guidance on this point. The Draft *Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction* suggests that:

> If the court rendering the later judgment fairly considered the earlier judgment and declined to recognize the earlier judgment under standards comparable to those set forth in this Restatement, a U.S. court should ordinarily recognize the later judgment.[72]

The Commission provides that guidance in its comments.

Contrary to Parties' Dispute Resolution Agreement

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he proceeding in the foreign [or tribal] court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that [] court."[73]

By its terms, this provision applies to a dispute resolution agreement that identifies a particular forum for litigation or alternative dispute resolution (i.e., arbitration or mediation).[74]

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70. Code Civ. Proc. §§ 1716(c)(4), 1737(c)(4).

71. For example, a court may be required to decline recognition of a foreign or tribal court judgment that conflicts with a sister-state judgment that is entitled to full faith and credit under the U.S. Constitution. See U.S. Const. art. IV, § 1.

72. Draft Fourth Restatement, *supra* note 20, § 404 Comment f. The standards in the Restatement are largely the same as those in the Uniform Act. Compare 2005 Uniform Act § 4 with Draft Fourth Restatement §§ 403, 404.

73. Code Civ. Proc. §§ 1716(c)(5), 1737(c)(5).

74. See 2005 Uniform Act § 4 Comment 9 (This provision "allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment.").

Generally, "[w]here a valid choice-of-forum agreement governs a dispute, a U.S. court will refuse to recognize a foreign judgment resulting from a breach of that agreement in the absence of a waiver of rights under that agreement."[75]

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Seriously Inconvenient Forum

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "jurisdiction [is] based only on personal service [and] the foreign [or tribal] court was a seriously inconvenient forum for the trial of the action."[76]

By its terms, this provision is limited to situations in which personal jurisdiction is premised *solely* on personal service. In practice, this significantly limits the application of the exception.[77] It will be rare that personal jurisdiction is premised solely on personal service. Typically, the defendant will have had other contacts with the foreign or tribal jurisdiction that would support the exercise of personal jurisdiction.[78]

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75. Draft Fourth Restatement, *supra* note 20, § 404 Reporters' Note 7.

Courts have declined to recognize foreign court judgments on the basis of this provision. See, e.g., Diamond Offshore (Bermuda), Ltd. v. Haaksman, 355 S.W.3d 842 (Tex. App. 2011); Montebueno Mktg. v. Del Monte Foods Corp.-USA, 2012 U.S. Dist. LEXIS 39372 (N.D. Cal. 2012), *aff'd* 570 Fed. Appx. 675 (9th Cir. 2014).

However, the courts have recognized foreign court judgments that are contrary to a dispute resolution agreement where the person raising the objection effectively waived that objection by participating in the foreign court proceedings. See, e.g., *Dart*, 953 S.W.2d at 482 ("While the contract between Appellant and Appellee specified that disputes would be submitted to the courts of Vanuatu, neither party sought to enforce that right. Appellee waived his right by filing suit in Australia. Appellant in turn elected to waive his right by making an unconditional appearance and by filing a counter-claim seeking affirmative relief in the Australian court. Having failed to contest the issue in the Australian court, Appellant cannot now assert it as a basis for nonrecognition.").

76. Code Civ. Proc. § 1716(c)(6); see also *id*. § 1737(c)(6) (same with minor differences in phrasing).

77. See Third Restatement, *supra* note 20, § 421 Reporter's Note 5 ("Jurisdiction based on service of process on one only transitorily present in a state is no longer acceptable under international law if that is the only basis for jurisdiction and the action in question is unrelated to that state.")

78. See, e.g., Bank of Nova Scotia v. Tschabold Equip., 754 P.2d 1290, 1295 (Wash. Ct. App. 1988) ("The Canadian court's jurisdiction over Pacific Western was based upon its long-arm rule, a court order, and Pacific Western's voluntary appearance, as well as upon personal service. Refusing recognition of ScotiaBank's Canadian judgment is therefore not warranted on [the inconvenient forum] basis.").

Although the practical effect of this provision may be limited, given its narrow application, the Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Lack of Integrity of Rendering Court

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment."[79]

The Uniform Law Commission added this provision to the 2005 Uniform Act to complement the mandatory exception to recognition applicable in situations where the judicial system as a whole fails to provide impartial tribunals. The Uniform Law Commission's commentary describes the difference between the showings required under this discretionary exception and the corresponding mandatory exception:

> Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.[80]

This provision is relatively new, so there is little commentary or case law discussing its application. However, the rationale for declining to recognize a judgment when this provision applies is sound.

The Uniform Law Commission commentary also suggests a situation where *recognition* of the judgment might be appropriate, even if this exception is established.[81] The commentary suggests that a party's failure to appeal the foreign court judgment could serve as a reason for a court to recognize the foreign court judgment when this exception applies.[82] Although a court could conclude that nonrecognition is nonetheless the appropriate result in such a situation, the comment suggests potentially relevant considerations that might bear on a court's decision whether or not to recognize the judgment.[83]

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

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79. Code Civ. Proc. § 1716(c)(7) see also *id*. § 1737(c)(7) (same with minor differences in phrasing).

80. 2005 Uniform Act § 4 Comment 11.

81. See discussion of "Discretion to Recognize" *supra*.

82. 2005 Uniform Act § 4 Comment 12.

83. See discussion of "Discretion to Recognize" *supra*.

Incompatible with Due Process

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he specific proceeding … leading to the judgment was not compatible with the requirements of due process of law."[84]

This provision was also new to the 2005 Uniform Act and was added to complement the mandatory exception for systemic due process failures. The reasons for the addition are similar to those discussed above.[85]

As with the previous exception, the explanation provided by the Uniform Law Commission as to the scope of this provision, the rationale for nonrecognition, and the possibility that countervailing considerations could support recognition in spite of the exception seems sound.[86]

The Commission notes that the Tribal Court Judgment Act's definition of "due process,"[87] discussed *supra*,[88] would apply to tribal court judgment recognition proceedings. As indicated previously, the definition would effectively establish a list of categorical violations of due process, without preventing a court from finding that the violation of other, non-listed due process rights warrants nonrecognition under this provision.

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Defamation

Originally, the Uniform Act did not include a specific exception targeted at foreign or tribal defamation judgments. Courts applying the Uniform Act would, however, decline to recognize foreign defamation judgments that were inconsistent with the free speech protections in the United States under the exception for "repugnan[cy] to public policy."[89]

In 2009, in response to increasing concern about defamation plaintiffs filing suits in foreign countries with plaintiff-friendly libel laws and a relatively low bar for personal jurisdiction (a phenomenon known as "libel tourism"),[90] the California Legislature enacted Senate Bill 320.[91] This bill supplemented

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84. Code Civ. Proc. §§ 1716(c)(8), 1737(c)(8).

85. See discussion of "Lack of Integrity of Rendering Court" *supra*.

86. *Id*.

87. Code Civ. Proc. § 1732(c).

88. See discussion of "Systemic Lack of Due Process" *supra*.

89. See Anna C. Henning & Vivian S. Chu, Congressional Research Service, Rpt. No. R40497, "Libel Tourism": Background and Legal Issues 8 (Mar. 5, 2010).

90. See generally *id*. at 2-6.

91. 2009 Cal. Stat. ch. 579 (SB 320 (Corbett)).

California's Uniform Act with an exception permitting nonrecognition of a foreign-country judgment if "[t]he judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions."[92] This exception is also included in the Tribal Court Judgment Act.[93]

In 2010, the federal government, responding to libel tourism concerns, enacted the SPEECH Act.[94] The SPEECH Act prohibits any domestic court[95] from recognizing a foreign defamation judgment unless that judgment meets specified standards for free speech protection and personal jurisdiction.[96] The SPEECH Act also places an affirmative burden on the party seeking recognition to show that the foreign court judgment meets these standards before the judgment can be recognized.[97]

For foreign defamation judgments that are not sufficiently protective of free speech, the Commission concluded that California's discretionary nonrecognition provision might cause confusion in light of the federal prohibition on recognition. Therefore, the Commission recommends amending California's Uniform Act to replace the existing discretionary defamation provision with an express incorporation of the standards for foreign defamation judgments contained in the federal SPEECH Act.[98]

By its terms, the federal SPEECH Act does not appear to apply to tribal court judgments.[99] Therefore, the Commission recommends continuing California's

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92. Code Civ. Proc. § 1716(c)(9); see also 2009 Cal. Stat. ch. 579, § 1.

93. See Code Civ. Proc. § 1737(c)(9).

94. See generally Emily C. Barbour, Congressional Research Service, Rpt. No. R41417, The SPEECH Act: The Federal Response to "Libel Tourism" (Sept. 16, 2010).

The full name of the federal act is the "Securing the Protection of our Enduring and Established Constitutional Heritage Act." See Pub. L. No. 111-223 (2010).

95. The SPEECH Act defines "domestic court" to include "a court of any State." 28 U.S.C. § 4101(2).

96. 28 U.S.C. § 4102.

97. See *id.*

98. See proposed Code Civ. Proc. § 1716 *infra*.

99. The SPEECH Act defines "foreign court" as "a court, administrative body, or other tribunal of a *foreign country*," without defining foreign country. 28 U.S.C. § 4101(3). As a general matter, under American law, the federal government "has broad powers and responsibilities in Indian affairs." Cohen's Handbook, *supra* note 41, at p. 2. Tribes are more aptly characterized as "domestic" as opposed to "foreign" nations. See, e.g., Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831) ("[Tribes] may, more correctly, perhaps, be denominated domestic dependent nations [as opposed to foreign nations]."); see also U.S. Const. art. I, § 8, cl. 3 (listing foreign nations, states and tribes separately).

current discretionary exception for defamation judgments in the Tribal Court Judgment Act.[100]

RECIPROCITY

Neither of the Judgment Recognition Acts conditions recognition of a foreign or tribal court judgment on whether the foreign country or tribe would reciprocally recognize California judgments.

The legislative history for Senate Bill 406 indicates that a member of the public raised concerns about the lack of a reciprocity requirement in the Tribal Court Judgment Act. In particular, the commenter noted the difficulties she has faced in getting a California court order recognized by tribal courts.[101]

The Uniform Act commentary indicates that the Uniform Law Commission considered the inclusion of a reciprocity requirement both when originally developing the 1962 Uniform Act and when revising the Uniform Act in 2005.[102] In 2005, the Uniform Law Commission noted:

> In the course of drafting this Act, the drafters revisited the decision made in the 1962 Act not to require reciprocity as a condition to recognition of the foreign-country money judgments covered by the Act. After much discussion, the drafters decided that the approach of the 1962 Act continues to be the wisest course with regard to this issue. While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the approach of the 1962 Act, and continued in this Act, creates a stability in this area that facilitates international commercial transactions.[103]

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100. To the extent that the SPEECH Act does apply to tribal court judgments and preempts California law to the contrary, the SPEECH Act will continue to operate, independent of California's provision. See generally Barbour, *supra* note 94, at 11-13 (discussing the preemptive effect of the SPEECH Act).

101. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7-8. The commenter was seeking tribal court recognition of a California child support order. The Commission notes that child support orders are expressly excluded from the Tribal Court Judgment Act. See Code Civ. Proc. § 1731(b)(2).

102. Some states permit the extension of full faith and credit to tribal judgments, conditioned on reciprocal treatment by the tribe of state judgments. See, e.g., Okla. Stat. tit. 12, § 728; Wis. Stat. § 806.245. Although, absent reciprocity, a tribal court judgment might not be afforded full faith and credit in these states, it is not clear whether a tribal court judgment could nonetheless be recognized and enforced under other state laws (e.g., an enactment of either the 1962 or 2005 Uniform Act).

103. 2005 Uniform Act Prefatory Note.

The Uniform Law Commission identifies general benefits (stability and certainty for litigants) for not requiring reciprocity that would seem to apply to both foreign and tribal court judgments.

A reciprocity requirement seems fundamentally different than the other exceptions. Such a requirement does not concern the quality of justice in the individual foreign or tribal court proceeding.[104] Instead, a reciprocity requirement for judgment recognition addresses a political question, involving the degree of comity to extend to other sovereign entities.

As a general matter, the Commission concludes that a lack of reciprocity requirement in California law is not legally problematic, nor is out of step with the current policy direction of the majority of states.[105] Therefore, the Commission does not recommend any change to California law.

SUNSET CLAUSE

When Senate Bill 406 was amended to assign the Commission this study, the bill was also amended to provide for the repeal of the Tribal Court Judgment Act on January 1, 2018.[106] The analysis discussing the assignment of this study to the Commission states:

> Given the concerns raised on all sides, the Committee may want to consider passing the measure, but requiring that the California Law Revision[] Commission (CLRC) look at the due process requirements of both [the Tribal Court Judgment Act and the Uniform Act], using existing resources, and sunset the bill in three years, after the study is complete, to allow the Legislature, with a thoughtful and thorough review by the CLRC, to more thoroughly and knowledgably consider the concerns that have been raised on all sides.[107]

With the changes discussed above, the Commission concludes that the standards of recognition in the Judgment Recognition Acts are sound. Further, the Commission concludes that the Tribal Court Judgment Act makes helpful refinements to the standards tailored to recognition of tribal court judgments.

With the caveat that the Commission did not evaluate the *procedural* elements of the Tribal Court Judgment Act, due to the limited scope of the Commission's assignment, the Commission recommends repealing the provisions that would automatically repeal the Tribal Court Judgment Act.[108]

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104. See generally Commission Staff Memorandum 2016-13, p. 20.

105. See *id*. at 19.

106. See Code Civ. Proc. §§ 1714, as amended by 2014 Cal. Stat. ch. 243, § 2; 1714, as added by 2014 Cal. Stat. ch. 243, § 3; 1742.

107. SB 406 Assembly Judiciary Analysis, *supra* note 3, at 1-2.

108. See, e.g., proposed repeal of Code Civ. Proc. § 1742 *infra*.

TECHNICAL AND ORGANIZATIONAL CHANGES

The Commission recommends a few technical and organizational changes to achieve the following:

- Relocating the provision authorizing declaratory relief for foreign defamation judgments and making clarifying changes.[109]
- Relocating the Tribal Court Judgment Act to the same title as other California laws governing judgments from other jurisdictions.[110]
- Clarifying that the Tribal Court Judgment Act, not California's Uniform Act, governs the recognition of tribal court judgments.[111]
- Stylistic consistency.[112]

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109. See proposed amendment to Code Civ. Proc. § 1717; proposed Code Civ. Proc. § 1725 *infra*.

110. See proposed repeal of Heading of Title 11.5 (commencing with Code Civ. Proc. § 1730); proposed addition of Heading of Chapter 3 (commencing with Code Civ. Proc. § 1730) *infra*.

111. See proposed amendment to Code Civ. Proc. § 1714 (as amended by Section 2 of Chapter 243 of the Statutes of 2014) *infra*.

112. See, e.g., proposed amendment to Heading of Chapter 1 (commencing with Code Civ. Proc. § 1710.10) *infra*.

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PROPOSED LEGISLATION

Code Civ. Proc. § 1716 (amended). Standards for recognition [UFCMJRA § 4]

SEC. ___. Section 1716 of the Code of Civil Procedure is amended to read:

1716. (a) Except as otherwise provided in subdivisions ~~(b) and (c)~~ (b), (c), and (e), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

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

(1) The judgment was rendered under a judicial system that 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.

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

(c) A court of this state is not required to recognize a foreign-country judgment if any of the following apply:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(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 determined otherwise than by proceedings in that foreign court.

(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.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

~~(9) The judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.~~

(d) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b) or (c) exists.

(e) A court of this state shall not recognize a foreign-country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code.

Comment. Section 1716 is similar to Section 4 of the Uniform Foreign-Country Money Judgments Recognition Act (2005) ("2005 Uniform Act").

Paragraphs (b)(1) and (c)(8) state exceptions to recognition of a foreign-country judgment related to the due process offered in the foreign proceeding. Under both paragraphs (b)(1) and (c)(8), the focus of the inquiry "is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure." See Background from the 2005 Uniform Act *infra*. Unlike the Tribal Court Civil Money Judgment Act, this Act does not attempt to define "due process." *Compare* Code Civ. Proc. § 1732(c) *with* Code Civ. Proc. § 1714.

Paragraph (b)(2) provides that a foreign-country judgment shall not be recognized if the foreign court did not have personal jurisdiction over the defendant. Section 1717 makes clear that a foreign court lacks personal jurisdiction if either of the following applies:

(1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.

(2) The foreign court lacks personal jurisdiction under its own law.

Subdivision (c) lists grounds on which the court may decline to recognize a foreign-country judgment. With the exception of paragraphs (c)(3) and (c)(4), these grounds generally involve the fairness of the foreign proceeding. When the fairness-related grounds apply, the court has discretion to recognize the foreign-country judgment in the unusual case where countervailing considerations outweigh the seriousness of the defect underlying the applicable ground for nonrecognition. Such countervailing considerations could include, for instance, situations in which the opponent failed to raise an objection in the foreign court or the opponent's own misconduct was the primary cause of the harm suffered.

Paragraph (c)(1) provides that a court may decline to recognize a foreign-country judgment if the defendant did not receive notice of the foreign proceeding in sufficient time to enable the defendant to defend. Under this paragraph, a defect in either the timing or the content of the notice could be grounds for nonrecognition if that defect precluded the defendant from defending in the foreign court proceeding.

Paragraph (c)(2) provides that a court may decline to recognize a foreign-country judgment if fraud deprived the losing party of an adequate opportunity to present its case. The Uniform Law Commission's commentary on this provision indicates that the type of fraud that can serve as grounds for nonrecognition is limited to "extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case." See Background from the 2005 Uniform Act *infra*. The reference to "extrinsic fraud" suggests that the test established by the exception is categorical, permitting nonrecognition in cases of extrinsic, but not intrinsic, fraud. However, the language of the exception establishes a functional test, whether the fraud deprived the party of an adequate opportunity to present its case. Recent judgment recognition case law evaluates fraud by assessing "whether the injured party had any opportunity to address the alleged misconduct during the original proceeding." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 404 Reporters' Note 3 (Tentative Draft No. 1, April 1, 2014). This case law suggests that a key consideration for a court deciding whether alleged fraud could be a ground for nonrecognition is whether there was "a reasonable opportunity for the person victimized by fraud to uncover the misconduct and bring it to the [rendering] court's attention." *Id*.

Paragraph (c)(4) provides that a court may decline to recognize a foreign-country judgment if it conflicts with another final and conclusive judgment. Some commentators suggest that, where the foreign court rendering the later judgment fairly considered the earlier judgment and declined to recognize it under standards similar to those set forth in this Uniform Act, a court should

ordinarily recognize the later foreign-country judgment. However, in some situations, other law may require the recognition of one of the conflicting judgments (e.g., where one of the conflicting judgments is entitled to full faith and credit). See *id*. § 404 Comment f, Reporters' Note 6.

Former paragraph (c)(9) is not continued. Federal law includes specific standards governing the recognition of foreign-country defamation judgments. See subdivision (e) (referring to the federal SPEECH Act standards for recognition of defamation judgments).

Subdivision (e) is added to make clear that judgments that are not eligible for recognition under the federal SPEECH Act (codified at 28 U.S.C. §§ 4101-4105) shall not be recognized under this chapter.

The commentary for Section 4 of the 2005 Uniform Act is set out, in relevant part, below. The Law Revision Commission's recommendation (*Recognition of Tribal and Foreign Court Money Judgments*, __ Cal. L. Revision Comm'n Reports __ (2016)) does not reproduce all parts of the Uniform Law Commission's commentary. The omission of any part of the Uniform Law Commission commentary does not necessarily imply disapproval of the omitted commentary.

Background from the 2005 Uniform Act

Source: This section is based on Section 4 of the 1962 [Uniform Foreign Money Judgments Recognition] Act [hereafter, "1962 Act"].

1. This Section provides the standards for recognition of a foreign-country money judgment. Section [1719] sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See*, *e.g*. Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment "the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the state where it was rendered.") Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor's collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under res judicata and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. [Subdivision (a) of Section 1716] places an affirmative duty on the forum court to recognize a foreign-country money judgment unless one of the grounds for nonrecognition stated in [subdivision (b), (c), or (e)] applies. [Subdivision] (b) states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in [subdivision] (b) exists, then it must deny recognition to the foreign-country money judgment. [Subdivision] (c) states eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. [Subdivision] (d) places the burden of proof on the party resisting recognition of the foreign-country judgment to establish that one of the grounds for nonrecognition [stated in subdivision (b) or (c)] exists.

4. The mandatory grounds for nonrecognition stated in [subdivision (b) of Section 1716] are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in [paragraphs] (c)(1) through (6) are based on subsection 4(b)(1) through (6) of the 1962

Act. The discretionary grounds stated in [paragraphs] (c)(7) and (8) are new [to the 2005 Uniform Act].

5. Under [paragraph (b)(1) of Section 1716], the forum court must deny recognition to the foreign-country money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S.113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. Kam-Tech Systems, Ltd. v. Yardeni, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under [paragraph] (b)(1), so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton*:

> Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. [Omitted]

7. [Paragraph (c)(2) of Section 1716] limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic fraud does not provide a basis for denying recognition under [paragraph] (c)(2), as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in [paragraph (c)(3) of Section 1716] is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the judgment is based" is repugnant to public policy. Based on this "cause of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy);

Guinness PLC v. Ward, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); The Society of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf*. Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). [Paragraph] (c)(3) rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf*. Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although [paragraph] (c)(3) of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in [paragraph] (c)(3), which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g*., Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. [Paragraph (c)(5) of Section 1716] allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. [Paragraph (c)(6) of Section 1716] authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens*.

11. [Paragraph (c)(7) of Section 1716] is new. Under this [paragraph], the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with [paragraph] (b)(1), which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, [paragraph] (b)(1) focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g*., The Society of Lloyd's v. Turner, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); CIBC Mellon Trust Co. v. Mora Hotel Corp,. N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, [paragraph] (c)(7) allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that

bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. [Paragraph (c)(8) of Section 1716] also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like [paragraph] (c)(7), it can be contrasted with [paragraph] (b)(1), which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of [paragraph] (b)(1) is on the foreign country's judicial system as a whole, the focus of [paragraph] (c)(8) is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

[Paragraphs (c)(7) and (8) of Section 1716] both are discretionary grounds for denying recognition, while [paragraph] (b)(1) is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under [subdivision (d) of Section 1716], the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in [subdivision] (b) or (c) applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue. *Compare* Bridgeway Corp. v. Citibank, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with* The Courage Co. LLC v. The ChemShare Corp., 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section [1716] are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

[Adapted from the Uniform Law Commission's Comment to the 2005 Uniform Act § 4.]

Code Civ. Proc. § 1717 (amended). Personal jurisdiction [UFCMJRA §5]

SEC. ___. Section 1717 of the Code of Civil Procedure is amended to read:

1717. (a) <u>For the purposes of paragraph (2) of subdivision (b) of Section 1716, a foreign court lacks personal jurisdiction over the defendant if either of the following conditions is met:</u>

<u>(1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.</u>

(2) The foreign court lacks personal jurisdiction under its own law.

(b) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction under paragraph (1) of subdivision (a) if any of the following apply:

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

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

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

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

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

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

~~(b)~~ (c) The list of bases for personal jurisdiction in subdivision ~~(a)~~ (b) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision ~~(a)~~ (b) as sufficient ~~to support a foreign-country judgment~~ for the purposes of paragraph (1) of subdivision (a).

~~(c) If a judgment was rendered in an action for defamation in a foreign country against a person who is a resident of California or a person or entity amenable to jurisdiction in California, and declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable in California under Section 1716 is sought, a court has jurisdiction to determine the declaratory relief action as well as personal jurisdiction over the person or entity who obtained the foreign-country judgment if both of the following apply:~~

~~(1) The publication at issue was published in California.~~

~~(2) The person who is a resident, or the person or entity who is amenable to jurisdiction in California, either (A) has assets in California that might be subject to an enforcement proceeding to satisfy the foreign-country defamation judgment, or (B) may have to take actions in California to comply with the foreign-country defamation judgment.~~

~~This subdivision shall apply to persons who obtained judgments in defamation proceedings in a foreign country both prior to and after January 1, 2010.~~

Comment. Section 1717 is similar to Section 5 of the Uniform Foreign-Country Money Judgments Recognition Act (2005).

Subdivision (a) is added to make clear that a foreign court lacks personal jurisdiction if either of the following applies:

(1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.

(2) The foreign court lacks personal jurisdiction under its own law.

The need to evaluate personal jurisdiction under the foreign court's own law should be rare. In most cases, objections to personal jurisdiction will have been litigated or waived in the foreign court proceeding. "There is authority … for the proposition that a U.S. court generally will not look behind a foreign court's finding of personal jurisdiction under its own law." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 403 Reporters' Note 7 (Tentative Draft No. 1, April 1, 2014). Generally, the mere fact that a judgment was rendered by a foreign court suggests that personal jurisdiction was proper under foreign law. However, a California court may need to evaluate personal jurisdiction under foreign law when the issue of personal jurisdiction was neither litigated nor waived in the foreign proceeding (e.g., the defendant never appeared and a default judgment was entered).

Where a defect in the service of process would defeat personal jurisdiction under foreign law, a court may find that the foreign court lacked personal jurisdiction under foreign law on the basis of that service defect. However, where the service defect is not jurisdictional, the service defect could still lead to nonrecognition under other provisions. E.g., Section 1716(c)(1).

Subdivision (b) provides a list of bases of personal jurisdiction that are consistent with the standards governing personal jurisdiction in this state.

Subdivision (c) makes clear that the bases listed in subdivision (b) are not the exclusive bases for personal jurisdiction consistent with the standards governing personal jurisdiction in this state.

The substance of former subdivision (c) is continued in Section 1725.

Code Civ. Proc. § 1725 (added). Declaratory relief for foreign-country defamation judgments

1725. (a) If all of the following conditions are satisfied, a person against whom a foreign-country defamation judgment was rendered may seek declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable under Section 1716:

(1) The person is a resident or other person or entity amenable to jurisdiction in this state.

(2) The person either has assets in this state that may be subject to an enforcement proceeding to satisfy the foreign-country defamation judgment or may have to take actions in this state to comply with the foreign-country defamation judgment.

(3) The publication at issue was published in this state.

(b) A court of this state has jurisdiction to determine a declaratory relief action or issue a determination pursuant to this section and has personal jurisdiction over the person or entity who obtained the foreign-country defamation judgment.

(c) This section shall apply to a foreign-country defamation judgment regardless of when it was rendered.

Comment. Section 1725 continues the substance of former Section 1717(c).

TECHNICAL AND ORGANIZATIONAL REVISIONS

Heading of Title 11 (commencing with Section 1710.10) (amended).

SEC. ___. The heading of Title 11 (commencing with Section 1710.10) of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11: ~~SISTER STATE AND FOREIGN MONEY JUDGMENTS~~ MONEY JUDGMENTS OF OTHER JURISDICTIONS

Comment. The heading of Title 11 (commencing with Section 1710.10) is revised to reflect the addition of the Tribal Court Civil Money Judgment Act (Chapter 3) to this Title.

Heading of Chapter 1 (commencing with Section 1710.10) (amended).

SEC. ___. The heading of Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

Chapter 1: Sister State ~~Money Judgments~~ Money Judgments

Comment. The heading of Chapter 1 (commencing with Section 1710.10) is revised for consistency with the hyphenation used within the Chapter.

Code Civ. Proc. § 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014 (amended). Definitions [UFCMJRA §2]

SEC. ___. Section 1714 of the Code of Civil Procedure, as amended by Section 2 of Chapter 243 of the Statutes of 2014, is amended to read:

1714. As used in this chapter:

(a) "Foreign country" means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) A federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village.

(4) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) "Foreign-country judgment" means a judgment of a court of a foreign country.

~~(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

Comment. Section 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014, is drawn from Section 2 of the Uniform Foreign-Country Money Judgments Recognition Act (2005).

Section 1714 is amended to make clear that the recognition of a tribal court civil money judgment is not governed by this chapter. See Section 1732(f) (defining "tribal court"). For the rules governing recognition of a tribal court civil money judgment, see Chapter 3.

Former subdivision (c) is not continued. This reflects the repeal of former Section 1742.

Code Civ. Proc. § 1714, as added by Section 3 of Chapter 243 of the Statutes of 2014 (repealed). Definitions

SEC. ___. Section 1714 of the Code of Civil Procedure, as added by Section 3 of Chapter 243 of the Statutes of 2014, is repealed.

Comment. Section 1714 Procedure, as added by Section 3 of Chapter 243 of the Statutes of 2014, is repealed. This reflects the repeal of former Section 1742.

☞ **Note.** The text of the repealed section is set out below.

1714. (a) "Foreign country" means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) "Foreign-country judgment" means a judgment of a court of a foreign country. "Foreign-country judgment" includes a judgment by any Indian tribe recognized by the government of the United States.

(c) This section is operative on and after January 1, 2018.

Heading of Title 11.5 (commencing with Section 1730) (repealed).

SEC. ___. The heading of Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure is repealed.

Comment. The heading of Title 11.5 (commencing with Section 1730) is repealed. It is continued as the heading of Chapter 3 (commencing with Section 1730).

Heading of Chapter 3 (commencing with Section 1730) (added).

SEC. ___. A heading is added as Chapter 3 (commencing with Section 1730) of Title 11 of Part 3 of the Code of Civil Procedure, immediately preceding Section 1730, to read:

CHAPTER 3: TRIBAL COURT CIVIL MONEY JUDGMENT ACT

Comment. The heading of Chapter 3 (commencing with Section 1730) is added to locate the Tribal Court Civil Money Judgment Act within Title 11.

The standards of recognition for tribal court civil money judgments set forth in Section 1737 of this Act are derived from Section 4 of the Uniform Foreign-Country Money Judgments Recognition Act (2005) (hereafter, "2005 Uniform Act"). See also Section 1716.

Paragraph (b)(1) of Section 1737 provides that a tribal court money judgment shall not be recognized if the tribal court did not have personal jurisdiction over the respondent. Under this paragraph, a tribal court can lack personal jurisdiction if either of the following applies:

(1) The tribal court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.

(2) The tribal court lacks personal jurisdiction under its own law.

The need to evaluate personal jurisdiction under the tribal court's own law should be rare. In most cases, objections to personal jurisdiction will have been litigated or waived in the tribal court proceeding. "There is authority … for the proposition that a U.S. court generally will not look behind a foreign court's finding of personal jurisdiction under its own law." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 403 Reporters' Note 7 (Tentative Draft No. 1, April 1, 2014). Generally, the mere fact that a judgment was rendered by a tribal court suggests that personal jurisdiction was proper under tribal law. However, a California court may need to evaluate personal jurisdiction under tribal law when the issue of personal jurisdiction was neither litigated nor waived in the tribal court proceeding (e.g., the defendant never appeared and a default judgment was entered).

Where a defect in the service of process would defeat personal jurisdiction under tribal law, a court may find that the tribal court lacked personal jurisdiction under tribal law on the basis of that service defect. However, where the service defect is not jurisdictional, the service defect could still lead to nonrecognition under other provisions. E.g., Section 1737(c)(1).

Subdivision (c) of Section 1737 lists grounds on which the court may decline to recognize a tribal court money judgment. With the exception of paragraphs (c)(3) and (c)(4) of Section 1737, these grounds generally involve the fairness of the tribal court proceeding. When the fairness-related grounds apply, the court has discretion to recognize the tribal court judgment in the unusual case where countervailing considerations outweigh the seriousness of the defect underlying the applicable ground for nonrecognition. Such countervailing considerations could include, for instance, situations in which the opponent failed to raise an objection in the tribal court or the opponent's own misconduct was the primary cause of the harm suffered.

Section 1737(c)(1) provides that a court may decline to recognize a tribal court money judgment if the defendant did not receive notice of the tribal court proceeding in sufficient time to enable the defendant to defend. Under this paragraph, a defect in either the timing or the content of the notice could be grounds for nonrecognition if that defect precluded the defendant from defending in the tribal court proceeding.

Section 1737(c)(2) provides that a court may decline to recognize a tribal court money judgment if fraud deprived the losing party of an adequate opportunity to present its case. The Uniform Law Commission's commentary on this provision indicates that the type of fraud that can serve as grounds for nonrecognition is limited to "extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case." See Background from the 2005 Uniform Act *infra*. The reference to "extrinsic fraud" suggests that the test established by the exception is categorical, permitting nonrecognition in cases of extrinsic, but not intrinsic, fraud. However, the language of the exception establishes a functional test, whether the fraud deprived the party of an adequate opportunity to present its case. Recent judgment recognition case law evaluates fraud by assessing "whether the injured party had any opportunity to address the alleged misconduct during the original proceeding." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 404 Reporters' Note 3 (Tentative Draft No. 1, April 1, 2014). This case law suggests that a key consideration for a court deciding whether alleged fraud could be a ground for nonrecognition is whether there was "a reasonable opportunity for the person victimized by fraud to uncover the misconduct and bring it to the [rendering] court's attention." *Id*.

Section 1737(c)(4) provides that a court may decline to recognize a tribal court money judgment if it conflicts with another final and conclusive judgment. Some commentators suggest that, where the tribal court rendering the later judgment fairly considered the earlier judgment and declined to recognize it under standards similar to those set forth in this Act, a court should ordinarily recognize the later tribal court money judgment. However, in some situations, other law may require the recognition of one of the conflicting judgments (e.g., where one of the conflicting judgments is entitled to full faith and credit). See *id*. § 404 Comment f, Reporters' Note 6.

The commentary for Section 4 of the 2005 Uniform Act is set out, in relevant part, below. The Law Revision Commission's recommendation (*Recognition of Tribal and Foreign Court Money Judgments*, __ Cal. L. Revision Comm'n Reports __ (2016)) does not reproduce all parts of the

Uniform Law Commission's commentary. The omission of any part of the Uniform Law Commission commentary does not necessarily imply disapproval of the omitted commentary.

Background from the 2005 Uniform Act

Source: [Section 1737] is based on Section 4 of the 1962 [Uniform Foreign Money Judgments Recognition] Act [hereafter, "1962 Act"].

1. [Section 1737] provides the standards for recognition of a [tribal court] money judgment. …

2. [Omitted]

3. … [Subdivision (b) of Section 1737] states three mandatory grounds for denying recognition to a [tribal court] money judgment. If the forum court finds that one of the grounds listed in [subdivision (b) of Section 1737] exists, then it must deny recognition to the [tribal court] money judgment. [Subdivision (c) of Section 1737] states [nine] nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. [Subdivision (d) of Section 1737] places the burden of proof on the party resisting recognition of the [tribal court] judgment to establish that one of the grounds for nonrecognition exists.

4. [Omitted]

5. Under [paragraph (b)(3) of Section 1737], the forum court must deny recognition to the [tribal court] money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S.113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure … is similar to U.S. procedure, but rather on the basic fairness of the [tribal court] procedure. Kam-Tech Systems, Ltd. v. Yardeni, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under [paragraph (b)(3) of Section 1737], so long as the essential elements of impartial administration and basic procedural fairness have been provided in the [tribal court] proceeding. As the U.S. Supreme Court stated in *Hilton*:

> Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. [Omitted]

7. [Paragraph (c)(2) of Section 1737] limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an

adequate opportunity to present its case, then it provides grounds for denying recognition of the [tribal court] judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the [tribal court] proceeding. Intrinsic fraud does not provide a basis for denying recognition under [paragraph (c)(2) of Section 1737], as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in [paragraph (c)(3) of Section 1737] is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the judgment is based" is repugnant to public policy. Based on this "cause of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the … cause of action comes within this exception. *E.g.*, Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); Guinness PLC v. Ward, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); The Society of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf.* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). [Paragraph (c)(3) of Section 1737] rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although [paragraph (c)(3) of Section 1737] of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the [tribe's] law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the [tribal court] judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in [paragraph (c)(3) of Section 1737], which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.*, Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. [Paragraph (c)(5) of Section 1737] allows the forum court to refuse recognition of a [tribal court] judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the [tribal court] issuing the … judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the … litigation resulting in the [tribal court] judgment.

10. [Paragraph (c)(6) of Section 1737] authorizes the forum court to refuse recognition of a [tribal court] judgment that was rendered … solely on the basis of personal service when the forum court believes the original action should have been dismissed by the [tribal] court … on grounds of *forum non conveniens*.

11. … Under [paragraph (c)(7) of Section 1737], the forum court may deny recognition to a [tribal court] judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with [paragraph (b)(3) of Section 1737], which requires that the forum court refuse recognition to the [tribal court] judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, [paragraph (b)(3) of Section 1737] focuses on the [tribe's] judicial system … as a whole, rather than on whether the particular judicial proceeding leading to the [tribal court] judgment was impartial and fair. *See, e.g.*, The Society of Lloyd's v. Turner, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); CIBC Mellon Trust Co. v. Mora Hotel Corp,. N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, [paragraph (c)(7) of Section 1737] allows the court to deny recognition to the [tribal court] judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the [tribal court] judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the [tribe's] judicial system … as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular [tribal court] judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. [Paragraph (c)(8) of Section 1737] … allows the forum court to deny recognition to the [tribal court] judgment if the court finds that the specific proceeding in the [tribal] court was not compatible with the requirements of fundamental fairness. Like [paragraph (c)(7) of Section 1737], it can be contrasted with [paragraph (b)(3) of Section 1737], which requires the forum court to deny recognition to the [tribal court] judgment if the forum court finds that the entire judicial system … where the [tribal court] judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of [paragraph (b)(3) of Section 1737] is on the [tribal] judicial system as a whole, the focus of [paragraph (c)(8) of Section 1737] is on the particular proceeding that resulted in the specific [tribal court] judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular [tribe] that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the [tribal court] judgment was entered was denied fundamental fairness in the particular proceedings leading to the [tribal court] judgment.

[Paragraphs (c)(7) and (8) of Section 1737] both are discretionary grounds for denying recognition, while [paragraph (b)(3) of Section 1737] is mandatory. Obviously, if the [tribe's] entire judicial system … fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that [judicial system] would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the [tribal court] judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the [tribal court] judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the [tribal court] judgment …, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. [Omitted]

[Adapted from the Uniform Law Commission's Comment to the 2005 Uniform Act § 4.]

Code Civ. Proc. § 1730 (amended). Short title

SEC. ___. Section 1730 of the Code of Civil Procedure is amended to read:

1730. This ~~title~~ chapter shall be known and may be cited as the Tribal Court Civil Money Judgment Act.

Comment. Section 1730 is amended to update a cross-reference.

Code Civ. Proc. § 1731 (amended). Scope

SEC. ___. Section 1731 of the Code of Civil Procedure is amended to read:

1731. (a) This ~~title~~ chapter governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this ~~title~~ chapter, the Code of Civil Procedure shall apply.

(b) This ~~title~~ chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B).

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code).

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this ~~title~~ chapter shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

Comment. Section 1731 is amended to update cross-references.

Code Civ. Proc. § 1732 (amended). Definitions

SEC. ___. Section 1732 of the Code of Civil Procedure is amended to read:

1732. For purposes of this ~~title~~ chapter:

(a) "Applicant" means the person or persons who can bring an action to enforce a tribal court money judgment.

(b) "Civil action or proceeding" means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) "Due process" includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) "Good cause" means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this ~~title~~ chapter.

(e) "Respondent" means the person or persons against whom an action to enforce a tribal court money judgment can be brought.

(f) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) "Tribal court money judgment" means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

Comment. Section 1732 is amended to update cross-references.

Code Civ. Proc. § 1733 (amended). Location for filing

SEC. ___. Section 1733 of the Code of Civil Procedure is amended to read:

1733. (a) An application for entry of a judgment under this ~~title~~ chapter shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this ~~title~~ chapter pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

Comment. Section 1733 is amended to update cross-references.

Code Civ. Proc. § 1741 (amended). Application of chapter

SEC. ___. Section 1741 of the Code of Civil Procedure is amended to read:

1741. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3) applies to all actions commenced in superior court before ~~the effective date of this title~~ January 1, 2015, in which the issue of recognition of a tribal court money judgment is raised.

(b) This ~~title~~ chapter applies to all actions to enforce tribal court money judgments as defined herein commenced in superior court on or after ~~the effective date of this title~~ January 1, 2015. A judgment entered under this title shall not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this ~~title~~ chapter.

Comment. Section 1741 is amended to update cross-references and to specify the effective date of the Act.

Code Civ. Proc. § 1742 (repealed). Repeal of title

SEC. ___. Section 1742 of the Code of Civil Procedure is repealed.

Comment. Section 1742, which would have automatically repealed the Tribal Court Civil Money Judgment Act on January 1, 2018, is repealed. Conforming changes to reflect this repeal are made to Section 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014, and Section 1714, as amended by Section 3 of Chapter 243 of the Statutes of 2014.

☞ **Note.** The text of the repealed section is set out below.

1742. This title shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.