

ENGLISH COMMON LAW ON THE RECOGNITION
AND ENFORCEMENT OF FOREIGN JUDGMENTS:
TIME FOR A REVIEW?

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The English common law rules for the recognition and enforcement of foreign judgments contain narrow grounds of indirect jurisdictional review and require that the judgment be final and conclusive and be for a fixed sum of money. The present article aims to provide a summary of the current state of the law and to draw attention to some parallel developments, both in case law and legislatively.

The recognition and enforcement of judgments in civil and commercial matters has taken a significant place among Professor Silberman's many distinguished contributions to private international law, both in the United States and internationally, most notably as the co-reporter with Professor Lowenfeld of the American Law Institute's 2006 "Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute." This article is based on a presentation given in April 2023 at a symposium at New York University held in her honor.

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I. INTRODUCTION

When it comes to the enforcement of foreign judgments in civil and commercial matters, English law¹ adopts rules that largely crystallized almost two hundred years ago. Although some statutory regimes were put in place in the early decades of the twentieth century—firstly within the context of the then-British Empire,² and later to give effect to some bilateral

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1. For convenience, reference is made to England (and English law), rather than to England and Wales.

2. *See, e.g.*, Administration of Justice Act 1920, 10 & 11 Geo. 5 c. 81, pt. II (Eng.) (dealing with reciprocal enforcement of judgments among the United Kingdom and other crown dominions).

conventions with mainly European countries³—those regimes largely replicated the substance of the common law rules and merely provided some streamlining of procedural requirements by way of registration mechanisms. For judgments from large parts of the world, including the United States, it is common law that governs the recognition and enforcement of foreign judgments. In these jurisdictions, the common law affords recognition (subject to the usual defenses) only to judgments given by a court of competent jurisdiction which were final and conclusive. Enforcement is then further restricted as the judgment must be for a fixed sum of money. Jurisdiction is judged indirectly, by the narrow criteria set by English law—essentially that the defendant must have been present in the territory of the foreign court at the time the proceedings were commenced or have submitted to (or “attorned”⁴) its jurisdiction.

These criteria—the narrow, indirect jurisdiction rules, finality, and need for a fixed sum—merit a review at this juncture. They have not been updated to reflect the rapidly globalizing nature of commerce, nor comparable developments in Europe or elsewhere. Proposals developed at an international level with input from the United Kingdom, in both the Commonwealth and the Hague Conference on Private International Law, have shown a move away from the narrowness of the common law and are now ripe for consideration within the United Kingdom. The aim of this Essay is to provide a brief summary of the current law in England, to provide some points of comparison with other systems of law and to draw attention to the legislative proposals. The merits of reform, and the issue of whether any reform should be undertaken by the traditional incremental development of the common law or by legislation, are both beyond its scope. So, too, is the related issue of judicial estoppel arising from the decision of a foreign court, and the

3. *See, e.g.*, Foreign Judgments (Reciprocal Enforcement) Act 1933, 23 Geo. 5 c. 13 (Eng.) (“An Act to make provision for the enforcement . . . of judgments given in foreign countries which accord reciprocal treatment to judgments given in the United Kingdom”).

4. Attornment is not a concept usually used in English law in this context (although it is in bailment and the sale of goods); but it would seem to be a better term to capture those cases where the defendant’s submission to the jurisdiction is based upon its own appeal to the court’s jurisdiction as, for example, in the case of a counterclaim.

particular case of the recognition of foreign court's decisions on their own jurisdiction.⁵

II. THE CHANGING EUROPEAN DIMENSION

The effect of English common law in this area has been somewhat masked in recent decades by the United Kingdom's membership in what is now the European Union. As an E.U. Member State, the United Kingdom had the benefit of the Brussels-Lugano system, providing uniform jurisdictional rules along with streamlined provisions for the recognition and enforcement of judgments from other member states.⁶ This regime, which had its origins in the early years of the European Economic Community, was designed to facilitate the cross-border pursuit of debts between member states. It was the first major example of a double convention containing both uniform jurisdictional rules and rules providing for the recognition and enforcement of judgments, usually without any jurisdictional review in the receiving state. Significantly, for present purposes, it enabled the recognition and enforcement of interim measures and non-money judgments. Given the extent of economic relations between the United Kingdom and the European Union, the Brussels-Lugano system had for several decades a more prominent role than common law in relation to the recognition of foreign judgments.⁷

5. On this latter topic, see Richard Garnett, *Recognition of Jurisdictional Determinations by Foreign Courts*, 15 J. PRIV. INT'L L. 490 (2019).

6. The principal current instrument is Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, informally called, variously, the "Brussels Regulation (recast)" or "Brussels Regulation Ibis" or "Brussels IA Regulation." 2012 J.O. (L 351) 14–15. Idiosyncratically, in U.K. legislation, it was referred to as the "Judgments Regulation." It replaced an earlier Regulation dating from 2001 which, in turn, replaced the Brussels Convention of 27 September 1968. It covers all the E.U. Member States as between themselves. *Id.* at 19–20. The other instrument in question is the Lugano Convention on the same topic of 2007, itself a replacement of an earlier 1988 version, which largely replicates the terms of the 2001 version of the Brussels Regulation and which today binds the E.U. member States with Switzerland, Norway and Iceland. 2007 J.O. (L 339) 12–15. Together, the regime is informally called the "Brussels-Lugano regime."

7. The largest share of the United Kingdom's trade in goods and services is with the European Union. In 2020, the European Union accounted

But with the departure of the United Kingdom from the European Union (hereinafter, Brexit), the Brussels-Lugano regime ceased to apply in, and in relation to, the United Kingdom on 31 December 2020 (apart from a transitional provision covering then pending proceedings). So far as concerns non-consumer claims based on choice of court agreements, the gap created by Brexit is partly filled by the Hague Choice of Court Convention of 2005,⁸ which facilitates the recognition and enforcement of some judgments from its Contracting States. The United Kingdom became a party to that convention as an E.U. member state in 2015 and renewed its membership independently following Brexit. Current signatories are the E.U. member states and a handful of others. However, the Hague Choice of Court Convention only applies to contracts concluded after 1 October 2015 and there are several extensive subject-matter exclusions.⁹ So far, the United Kingdom has not ratified the Hague Judgments Convention of 2019,¹⁰ although in time that may further facilitate the recognition and enforcement of civil and commercial judgments. The bilateral conventions concluded by the United Kingdom from the 1930s

for 42 percent of total exports from the United Kingdom and 50 percent of imports. The United Kingdom's next biggest trading partner is the United States, which in 2020 represented 21 percent of the United Kingdom's total exports of goods and services and 13 percent of total imports. HOUSE OF COMMONS LIBRARY, *THE GEOGRAPHICAL PATTERN OF UK TRADE, 2021-22*, HC CBP 7593, at 4 (U.K.).

8. Convention on Choice of Court Agreements, art. 8, June 30, 2005, 44 I.L.M. 1294 [hereinafter Hague Choice of Court Convention].

9. English law is clear that the Convention applies without interruption since 1 October 2015. Private International Law (Implementation of Agreements) Act 2020, c. 24, § 1(4), sch. 5, para. 7 (Eng.). This position has been endorsed informally by other interested parties, but the European Commission (neither a judicial nor a legislative body) has expressed the view that contracts choosing a U.K. forum concluded before 1 January 2021 are now not to be treated as falling within the Convention. European Commission, Directorate-General Justice and Consumers, Notice to stakeholders: Withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law, at para. 3.3, https://ec.europa.eu/info/publications/civil-justice-judicial-cooperation-civil-and-commercial-matters_en [<https://perma.cc/D2BB-P9P6>] (last updated Aug. 27, 2020). It is not known whether this view will be adopted by other Contracting States.

10. Status Table for the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, HAGUE CONF. ON PRIV. INT'L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137> [<https://perma.cc/W5W2-JNJJ>] (last updated Sept. 1, 2023).

through the 1960s with seven other European states were superseded by the Brussels-Lugano regime, and it is controversial whether they have survived in a vestigial form such that, once again, they may be relied on.¹¹

III. THE INDIRECT JURISDICTION RULES

The criteria English courts use to evaluate the court of origin's jurisdiction (requiring either the presence¹² of the defendant within the foreign court's territorial reach or the defendant's submission to that court's adjudicatory jurisdiction) is settled law.¹³

The traditional approach is not without its critics,¹⁴ and there have been both judicial and legislative moves away from it

11. The controversy relates to Belgium, Austria, France, Italy, the Netherlands, and the Federal Republic of Germany; but the legislation giving domestic effect to those conventions remains in place. This includes the Foreign Judgments (Reciprocal Enforcement) Act 1933, 23 Geo. 5 c. 13 (Eng.) and subordinate legislation. The treaty with Norway—the only one which fell within the Lugano regime rather than the Brussels regime, and hence was not covered by the transitional provisions in the Withdrawal Agreement between the United Kingdom and the European Union—has been updated to provide for the continued application of the provisions of the Lugano Convention relating to recognition and enforcement of judgments in relation to proceedings commenced before 1 January 2021. The Reciprocal Enforcement of Foreign Judgments (Norway) (Amendment) (England and Wales and Northern Ireland) Order 2020, SI 2020/1338, art. 2, ¶ 2 (Eng.).

12. Older cases suggested that residence, rather than presence, was sufficient to found jurisdiction and this is the test adopted for individuals in the Foreign Judgments (Reciprocal Enforcement) Act 1933: whether a corporate defendant has a principal place of business or a place of business through which the relevant transaction was effected. § 4(2)(a)(iv)–(v). It has been accepted since the decision in *Adams v. Cape Industries Plc* [1990] Ch 433 at 436, that residence without presence is not sufficient to satisfy the jurisdictional test, although the point has not been definitively settled. Earlier cases also suggested that being a subject of the state of origin was a further ground, but this is no longer accepted as good law.

13. DICEY MORRIS & COLLINS ON THE CONFLICT OF LAWS ¶ 14R-058 (Lord Collins of Mapesbury, Jonathan Harris et al. eds., 16th ed., 2022).

14. See, e.g., Andrew Dickinson, *Schibsby v. Westenholz and the Recognition and Enforcement of Judgments in England*, 134 LAW Q. REV. 426 (2018) (arguing that this approach, solidified in the late 19th century, disrupted a more flexible and circumstantial approach which was hitherto emerging in the English common law).

around the Anglo-common law world.¹⁵ Perhaps the most decisive move away from it has come from the Supreme Court of Canada. In its break-through judgment in the *Morguard* case, the court departed from traditional common law rules and upheld the recognition in British Columbia of an Alberta judgment where the defendant was neither present in Alberta when the claim commenced nor submitted to the jurisdiction of its courts.¹⁶ The judgment was obtained by a mortgagee of land in Alberta against the mortgagor and was for the balance due under the mortgage following foreclosure and sale of the mortgaged property. The Supreme Court of Canada's judgment, delivered by Justice LaForest, pointed to a number of factors which might have been the decisive criteria for the recognition of the sister-province's judgment, with the result that the test, whatever it now was, was less than clear. Also, while Canadian law treated the recognition of judgments from other provinces on the same basis as the recognition of foreign judgments, the fact is that some of the reasoning in *Morguard* drew attention to the constitutional status of Canada as a single country and the exigencies of inter-provincial recognition of judgments, leaving it unclear whether the same approach was to be adopted for international recognition.¹⁷ Both aspects, however, were clarified in a subsequent decision, *Beals v. Saldanha*,¹⁸ in which the majority's judgment described the test established by *Morguard* as being whether the foreign court,

had a real and substantial connection with either the subject matter of the action or the defendant. A substantial connection with the subject matter of the action will satisfy the real and substantial connection test even in the absence of such a connection with the defendant to the action.¹⁹

15. See, e.g., Peter Kutner, *Recognition and Enforcement of Foreign Judgments - The Common Law's Jurisdiction Requirement*, 83 RABELS ZEITSCHRIFT 1, 2 (2019) (discussing divergent interpretations of common law and consequent bases of jurisdiction accepted in different countries). The term "Anglo-common law" is used to specifically identify those systems of law more closely or more recently derived from English law, as opposed to the common law as developed in the United States.

16. *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 1078 (Can.).

17. *Id.* at 1099–102.

18. *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416 (Can.).

19. *Id.* at para. 23.

Attempts have been made in other Anglo-common law countries to persuade the courts to depart from the traditional common position and follow the Canadian lead, although it seems that these have not so far been successful.²⁰

So far as legislative moves are concerned, work has been carried out within the Commonwealth to draft legislation that allows a wider range of indirect jurisdictional bases than exist under the traditional common law rules. These efforts have resulted in a Model Law, which was adopted as a draft in 2017.²¹ Clause 5 of the Model Law contains a version of the traditional Anglo-common law heads of jurisdiction based on ordinary residence (individuals) or various forms of presence, but also rules based on other links with the state or origin, namely the performance of contractual obligations, wrongful acts forming the basis of a non-contractual obligation, the presence of real property, the presence of a trust, and the provision and marketing of goods and services in product liability cases.²² Similar, but more detailed, heads of jurisdiction are included in the Hague Judgments Convention.²³

It is, perhaps, ironic that the narrowness of the indirect jurisdictional rules which apply to the recognition of foreign judgments under English common law stands in contrast to the ever-widening scope of the rules which apply to define the circumstances in which English courts will assume jurisdiction

20. See Kutner, *supra* note 15, at 67 and the cases cited there (examining the British, Irish, Barbadian, Hong Kong, and South African cases, in all of which the Canadian approach was rejected either by highest courts or courts of first instance).

21. Model Law on the Recognition and Enforcement of Foreign Judgments (Commonwealth office of Civil and Criminal Justice Reform 2018). See also Commonwealth Secretariat, *Improving the Recognition of Foreign Judgments: Model Law on the Recognition and Enforcement of Foreign Judgments*, 43 Commonwealth L. Bull. 545 (2017) (describing the background and relative advantages of the Model Law, including its relationship with The Hague Convention of Choice of Court Agreements).

22. Model Law on the Recognition and Enforcement of Foreign Judgments § 5(1)(g)–(k) (Commonwealth office of Civil and Criminal Justice Reform 2018).

23. See Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters art. 5, July 2, 2019 [hereinafter Hague Judgments Convention] (entered in force Sept. 1, 2023) (listing thirteen different bases for recognizing and enforcing a judgment).

over persons outside England.²⁴ An application to bring proceedings against such persons must come within one or more “gateways” and the assumption of jurisdiction is then subject to a low-threshold merits test and an assessment of whether England is the “appropriate forum.”²⁵ The list of gateways is so extensive²⁶ that the “appropriate forum” test has effectively become the sole criterion against which an assertion of international jurisdiction is judged.

IV. FINALITY OF THE FOREIGN JUDGMENT

It has been accepted since at least the end of the nineteenth century that, in order to be recognized and enforced at common law in England, a foreign judgment must be final and conclusive. In *Nouvion v. Freeman*,²⁷ a Spanish judgment given in executory proceedings was conceded to be final and conclusive as far as those proceedings were concerned but would have potentially been reversible by the same court in plenary

24. Separate rules govern the allocation of jurisdiction and the recognition and enforcement of judgments, as between the three territorial jurisdictions of the United Kingdom (England and Wales, Scotland, and Northern Ireland). Civil Jurisdiction and Judgments Act 1982, c.27, §§ 16–19 (UK). Ironically, the intra-U.K. jurisdictional rules, and the Scottish law of international jurisdiction are both modeled on (a modified version of) the Brussels Convention and have survived the Brexit broom that has swept through other aspects of this area of the law.

25. Civil Procedure Rules 1998, SI 1998/3134, ¶ 6.37(3), which states that England must be “the proper place” to bring the claim, a term which has been judicially interpreted to mean “clearly or distinctly the appropriate forum for the trial of the action.” DICEY, *supra* note 13, ¶ 12R-001 (summarizing the law as laid out in *Spiliada Maritime Corp v. Cansulex Ltd.* [1987] AC (HL) 460). For cogent criticism of the way in which the law operates in practice, see the dissenting judgment of Lord Leggatt JSC in *FS Cairo (Nile Plaza) LLC v. Brownlie* [2021] UKSC 45, [195]–[208] (appeal taken from EWCA (Civ.) 996) (U.K.). The gateway regime does not apply to claims falling within the Hague Choice of Court Convention 2005, or otherwise governed by a choice of forum clause, or to claims concerning consumer contracts and individual contracts of employment, all of which are cases involving statutory bases of jurisdiction. Civil Procedure Rules, ¶ 6.33; Civil Jurisdiction and Judgments Act §§ 15A–15E.

26. Practice Direction 6B to the Civil Procedure Rules 1998 ¶ 3.1. The list, which now runs to 25 sub-paragraphs with numerous sub-sub-paragraphs, was most recently amended in October 2022.

27. *Nouvion v. Freeman* [1899] 15 App. Cas. (HL) 1 (appeal taken from Eng.).

proceedings. Even though it was an executable final judgment in Spain, unless and until reversed in plenary proceedings, the House of Lords held that it was not final and conclusive in the sense required by English common law.

The finality criterion was carried over into the 1933 Act, which originally applied only to judgments that were final and conclusive as between the judgment creditor and the judgment debtor. But by a 1982 amendment, that provision was modified to read, “it is either final and conclusive as between the judgment debtor and the judgment creditor *or requires the former to make an interim payment to the latter*.”²⁸ The effect of the amendment was to enable interim payments to be recognized and enforced if they were included among the judgments which the particular Order in Council identified in respect of the foreign country in question. English law being a dualist system, the underlying conventions to which the Orders in Council give effect do not form part of English domestic law. The extension to interim payment orders applies in respect of Canada, which has a bilateral convention that came into force in 1987 (post-dating this amendment) and in which the definition of “judgment” is not confined to final decisions.²⁹ It seems likely that it is Canada alone to which the amended scope applies. By contrast, the convention with Australia, dating from 1990, extends only to “any judgment, decree, rule, order or *other final decree for the payment of money*.”³⁰ The older bilateral conventions characteristically include the words “by which the rights of the parties are finally decided” (or words to the same effect) and while these do not form part of domestic law, there seems little

28. Civil Jurisdiction and Judgments Act 1982, c.27, § 35(1), sch.10 (UK) (emphasis added), which came into effect on 14 November 1986.

29. The Reciprocal Enforcement of Foreign Judgments (Canada) Order 1987, SI 1994/1901, ¶ 4, which refers to “any decision, however described (judgment, order, and the like), given by a recognized court of Canada in a civil or commercial matter”. The underlying convention refers to “any judgment given by a court of a Contracting State”, subject to certain exclusions. Canada-United Kingdom Civil and Commercial Judgments Convention Act, R.S.C. 1985, c C-30, art. 2(1).

30. The Reciprocal Enforcement of Foreign Judgments (Australia) Order 1994, SI 1987/1901, ¶ 4(a) (UK) (emphasis added). The underlying convention uses the same words. Agreement Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, U.K.-Austl., art. 1(c), 23 Aug. 1990, 1856 U.N.T.S. 85 (entered into force Sept. 1, 1994).

doubt that the courts would interpret the orders as giving effect only to those judgments covered by the conventions.³¹

The amendment to the 1933 Act to permit its extension to interim payment orders was not dictated by the United Kingdom's accession to the Brussels Convention, and may be taken as showing a willingness on the part of Parliament to reduce the rigidity of the common law rule in this respect. It took place at a time when the accession to the Brussels Convention was introducing the recognition and enforcement of non-final orders from other European countries, not just in respect of interim payments but also provisional orders of other kinds. Article 24 of the Brussels Convention³² expressly permitted applications to be made for "such provisional, including protective, measures as may be available under the law of [the Contracting States]," and Article 25 contained a wide definition of "judgment" which was plainly not confined to final decisions. By contrast, the Hague Judgments Convention provides by Article 3(1)(b) that "[a]n interim measure of protection is not a judgment."

V. FIXED SUM OF MONEY

Allied to the idea that a judgment had to be final if it was to be recognized and enforced was the idea that it had to be for a fixed sum of money. Whatever the origin of this rule—and the principle seems to be rooted deep in the differences between law and equity, and between actions for debt and assumpsit³³—it seems to be based on the principle that the foreign judgment

31. Whether the same would apply to the territories to which the Foreign Judgments (Reciprocal Enforcement) Act 1933 was extended without a formal bilateral convention, such as the Channel Islands and the Isle of Man, is perhaps open to more doubt.

32. Now, in unamended form, Commission Regulation 1215/2012, art. 35, 2012 O.J. (L 351) 1, 13. Interim orders made under this Article without jurisdiction over the substance of the dispute must have a "real connecting link" with the state where they are granted. Case C-391/95, *Van Uden Maritime BV, trading as Van Uden Africa Line v. Kommanditgesellschaft in Firma Deco-Line and Another.*, 1998 E.C.R. I-7091.

33. See *Sadler v. Robins* (1808) 170 Eng. Rep. 948, 949; 1 Camp. 253, 257 (refusing to enforce a judgment because the sum to be paid was indefinite, thus it "[could not] be the foundation of an assumpsit"); *Carpenter v. Thornton* (1819) 106 Eng. Rep. 582; 3 *Barnewall & Alderson* 52 (finding no action at law was maintainable for an equitable claim).

evidences an implied contract to settle the judgment debt.³⁴ English law now regards a sum as fixed if the sum due at the date of issue of the proceedings can be determined by a simple arithmetical process.³⁵

Although in the mists of history, equitable orders might have been afforded recognition and enforcement, the contemporary position is clearly that no order for specific performance, injunction, or other form of declaratory, mandatory, or prohibitive relief will be recognized or enforced in England. That said, a definitive ruling on the parties' rights may found an estoppel that has a decisive effect in fresh proceedings in England on the underlying cause of action.³⁶

This applies, too, in most of the Commonwealth but, again, Canada has proven to be heterodox. Its Supreme Court in *Pro-Swing Inc. v. Elta Golf Inc*³⁷ held that the time had come for Canadian courts to depart from the traditional common law rules and to enforce non-money judgments. While to some extent their reasoning turned on inter-provincial considerations, much of the judgment is devoted to the policy considerations justifying such a development, and in particular the need, as they saw it, for the common law to develop (albeit incrementally) to meet modern societal conditions. It is notable that this development in Canadian common law was rooted firmly in equitable principles. As the majority judgment put it,

For present purposes, it is sufficient to underscore the need to incorporate the very flexibility that infuses equity. However, the conditions for recognition and enforcement can be expressed generally as follows: the judgment must have been rendered by a court of competent jurisdiction and must be final, and it must be of a nature that the principle of comity requires the domestic court to enforce. Comity does not require receiving courts to extend greater judicial assistance to foreign litigants than it does to its own litigants, and the discretion that underlies equitable orders can be

34. *See* *Nouvion v. Freeman* [1889] 15 App. Cas. (HL) 1 (appeal taken from Eng.), where the point was conceded.

35. *Beatty v. Beatty* [1924] All ER Rep. 314 at 318–19, per Scrutton LJ, or “a simple sum in arithmetic” per Sargant LJ.

36. *Pattni v. Ali* [2006] UKPC 51, [2007] 2 AC 85 [27] (appeal taken from Isle of Man).

37. 2006 SCC 52; [2006] 2 S.C.R. 612 (Can.).

exercised by Canadian courts when deciding whether or not to enforce one.³⁸

Attempts in other parts of the Anglo-common law world to depart from the traditional common law rules have largely failed.³⁹ For example, such a move has been decisively resisted by the U.K. Supreme Court.⁴⁰ In *Rubin v. Eurofinance SA*,⁴¹ the claimants sought the recognition and enforcement of two judgments, given respectively by the U.S. Bankruptcy Court for the Southern District of New York and by the Supreme Court of New South Wales, in proceedings to adjust or set aside prior transactions, such as preferences or transactions at an undervalue (“avoidance proceedings”). The Supreme Court’s judgment reaffirmed the traditional rule that the jurisdiction of a foreign court for this purpose was solely to be judged by the presence or submission of the defendant.⁴² But the scope of an exception to that principle for judgments *in rem* continues to exercise the courts, both in the context of insolvency proceedings, such as

38. *Id.* at ¶ 31 (Deschamps J). Ironically, the majority judgment was *obiter* on this issue as the appeal against dismissal of the application for enforcement was dismissed on the basis that the orders were ambiguous. While the minority would have allowed the appeal and restored the order for enforcement, there was unanimity on the need for Canadian law to embrace the enforcement of non-money judgments.

39. Although there are reported decisions in the Cayman Islands (*Miller v. Gianne and Redwood Hotel Inv. Corp.*, [2007] CILR 18) and Jersey (*Brunei Inv. Agency v. Fidelis Nominees Ltd.* [2008] JRC 152) rejecting the limitation to a definite sum of money.

40. But see the *obiter* comment of Lord Mance in *Pattni v. Ali* [2006] UKPC 51, [2007] 2 A.C. 85 [27], a Privy Council case on appeal from the Isle of Man, that, “their Lordships would think it clear that, where a court in state A makes, as against persons who have submitted to its jurisdiction, an *in personam* judgment regarding contractual rights to either movables or intangible property (whether in the form of a simple chose in action or shares) situate in state B, the courts of state B can and should recognize the foreign court’s *in personam* determination of such rights as binding and should itself be prepared to give such relief as may be appropriate to enforce such rights in state B.”

41. *Rubin v. Eurofinance SA* [2012] UKSC 46, [2013] 1 A.C. 236 (appeal taken from Eng.). This followed a decision of the Irish Supreme Court which had declined to give effect to a Swiss order in debt restructuring proceedings. *See id.* at [111] (summarizing *In re Flightlease (Ireland) Ltd.* [2006] IEHC 193; affirmed [2012] IESC 12).

42. *Rubin v. Eurofinance SA* [2012] UKSC 46, [2013] 1 A.C. 236 [88], [113]–[115] (appeal taken from Eng.).

those vesting property in bankruptcy trustees,⁴³ and in proceedings concerning the fate of the assets of the Central Bank of Venezuela.⁴⁴

So far, there have only been sporadic legislative changes in the Anglo-common law world to give effect to non-monetary judgments,⁴⁵ but Articles 15 and 16 of the Commonwealth Model Law contain rules to this effect in respect of certain types of non-monetary judgment—namely those ordering specific performance of a contractual obligation, the transfer of a specified item(s) of movable property, or prohibiting the judgment debtor from acting in a specified way.⁴⁶ The Hague Judgments Convention, which defines a judgment as “any decision on the merits” also applies to non-monetary judgments.⁴⁷

A particular problem with the cross-border enforcement of judgments is the situation that may arise where the methods of giving effect to the judgment in the state of origin are not known to the state addressed. In practice, with monetary judgments, the methods of the state addressed are simply adopted in giving effect to the incoming judgment without any special difficulty. However, the problem is more likely to occur, and perhaps even to be acute, in the case of non-monetary judgments. In the Brussels IA Regulation, Article 54 deals with this problem by requiring the state addressed “to the extent possible” to adapt the foreign measure or order to one known to its own system of law “which has equivalent effects attached to it and which pursues similar aims and interests.”⁴⁸ The

43. *Kireeva v. Bedzhamov* [2022] EWCA (Civ) 35 [85], [125] (currently under appeal to the Supreme Court) (citing *Cambridge Gas Transportation Corp. v. Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26, [2007] 1 AC 508).

44. *Deutsche Bank AG (London Branch) v. Central Bank of Venezuela* [2023] EWCA Civ 742.

45. See, e.g., Commonwealth Secretariat, *Improving the Recognition of Foreign Judgments: Model Law on the Recognition and Enforcement of Foreign Judgments*, 43 COMMONWEALTH L. BULL. 545, 553 (2017).

46. Model Law on the Recognition and Enforcement of Foreign Judgments § 15–16 (Commonwealth office of Civil and Criminal Justice Reform 2018).

47. Hague Judgments Convention, *supra* note 21, at art. 3(1)(b).

48. See Brussels Regulation, *supra* note 6, at art. 54. “How, and by whom, the adaptation is to be carried out should be determined by each Member State.” *Id.* at Recital 28. For detailed commentary on Article 54, see Jonathan Fitchen, *The Recognition and Enforcement of Member State Judgments*, in THE

Commonwealth Model Law contains a similar but less prescriptive rule,⁴⁹ while the Hague Judgments Convention does not contain any specific rule relating to the adaptation of a foreign non-monetary judgment.

VI. CONCLUSION

An examination of the current state of English law on the recognition and enforcement of foreign judgments, such as is sketched out in this paper, suggests that the law is out of date and in need of reform. The criteria of presence or submission, of finality and of fixed sums of money do not adequately serve the needs of contemporary commerce in a shrinking world. The problem has been somewhat suppressed for the last half century by British membership of the European Union but, following Brexit, it is time to revisit the issue. The European experience suggests that some widening of the jurisdictional criteria would be perfectly workable even if the Brussels-Lugano regime provides a less than perfect model. Extending enforcement to interim judgments and to non-money judgments, probably on a discretionary basis, would also go some way to ease the difficulties presented by the narrowness of the current criteria.

BRUSSELS I REGULATION RECAST paras. 13.482-13.501 (Andrew Dickinson & Eva Lein eds., 2015).

49. See Model Law on the Recognition and Enforcement of Foreign Judgments § 16(1) (Commonwealth office of Civil and Criminal Justice Reform 2018), which requires the application of a party for the modification to be made.