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Private International Law Concepts in Divorce

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Divorce cases with international issues appear with increasing frequency. This is consistent with anecdotal evidence and logic. The world is shrinking, globalization marches on, and the mobility of people, not to mention their sheer number, grows. International parental kidnapping, international child support problems, cross-cultural marriages, and dual citizenship¹ all present special issues that can place a family law case in the international context.²

The issues in a divorce that can have an international aspect are myriad. Some, such as international child abduction, are addressed by treaties.³ Some, such as the immigration consequences of divorce on an alien spouse, are more the product of national law.⁴ Others, such as the couple divorcing in a country different from their nationalities or former residence, may implicate the courts and national laws of more than one country. This article analyzes the last set of issues.

Private international law, sometimes referred to as conflict of laws, refers to the body of theories and rules addressing legal cases that cross borders between two sovereign states. It should be no surprise that the application of these theories and rules to family law issues is not new.⁵ It is a field of law that offers rich possibilities to the practitioner faced with an international divorce issue. It also is a vast field. Its application to family law issues alone could fill tomes.⁶ This article, therefore, of necessity presents a simplified and general overview of the topic only. It is intended to serve primarily as an introduction to the subject, and to assist with issue spotting, rather than to provide answers in any given fact pattern.

For purposes of this article, the private international law concepts are divided into two discussions: first, questions related to which of two possible legal systems will address and resolve an international divorce case; and second, questions related to how a court with an international divorce case handles conflicting laws and enforcement issues.

THE "TWO FORUMS" ISSUE

In the United States, we are familiar with the problems caused by a highly mobile society with high divorce rates, living in a federal system, where family law remains the province of the individual states.⁷ The concept of the "divisible divorce" developed in response to the situation where the courts of two different states can decide the same divorce.⁸ These same issues can arise in international cases, but with even more complexity. The key concepts in this puzzle under United States law are subject matter jurisdiction and personal jurisdiction.⁹ Subject matter jurisdiction generally is the power of a court to decide a certain type of case,¹⁰ personal jurisdiction generally is the power

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of a court to bind certain people with its decision.¹¹ Problems arise in divorce when the courts in more than one country have subject matter and personal jurisdiction.¹² The problem is rendered more complex because different legal systems recognize different bases for asserting jurisdiction.

Subject matter jurisdiction can be thought of as the link between the particular court and the question(s) it must decide in a case.¹³ The courts in common law countries generally are able to decide divorce cases based on at least one of the spouses being domiciled or maintaining a habitual residence within the geographic jurisdiction of the court.¹⁴ Sometimes this is expressed in a statutory minimum residence requirement.¹⁵ The link, therefore, is between the court and the personal relationships and legal status of its residents.¹⁶ The courts in other legal systems, however, recognize different links or bases for subject matter jurisdiction. These can include the place of marriage, the common citizenship of the spouses, the domicile or residence of the spouses at the time of marriage, or even the religious affiliation of the spouses.¹⁷

Different legal systems recognize different bases for asserting jurisdiction.

Two scenarios arise, therefore, under which the courts in two different countries can properly assert jurisdiction over the subject matter of the same divorce case. In one scenario, the spouses each are domiciled (or resident) for divorce purposes in different countries. An example might be a separated couple with the husband living in New York and the wife living in London. In the second scenario, both spouses are domiciled (or resident) in a country that bases subject matter jurisdiction on domicile, yet they also satisfy a different basis for subject matter jurisdiction used in a second country. An example of this scenario might be a Muslim couple married in Pakistan and living in Washington, DC, for work reasons.

Personal jurisdiction, in contrast, may be thought of as the link between the forum, the litigation and the parties to the lawsuit.¹⁸ In the United States, a court may obtain the power to bind a defendant with its ruling under a number of different circumstances.¹⁹ These bases for personal jurisdiction include domicile, service of process upon

the defendant within the geographic jurisdiction of the court (tag jurisdiction),²⁰ or the defendant's submission to the jurisdiction of the court (usually by entering an appearance and/or filing a request for substantive relief).²¹ Another basis for personal jurisdiction is long-arm jurisdiction, provided a sufficiently close nexus exists between the defendant, the court, and the subject matter of the lawsuit. These "minimum contacts" must satisfy the constitutional requirement that maintenance of the suit does not offend "traditional notions of fair play and substantial justice."²² An example of long-arm jurisdiction in a divorce case might include the last marital residence of the parties before separation.²³

In other legal systems a court may obtain the power to bind a defendant with its ruling based on links, or bases for personal jurisdiction, that are unknown or unrecognized in the United States. Some countries find citizenship in the country alone to be a sufficient basis for personal jurisdiction.²⁴ Some of these countries find bases for asserting personal jurisdiction in the United States, especially tag jurisdiction, unacceptable.²⁵ As a consequence, those countries refuse to enforce decisions by United States courts that rely on this basis for personal jurisdiction.

The consequence of these rules for jurisdiction, and of the diversity of these rules among the different legal systems of the world, is that courts in more than one country may validly (under the laws of that country) hear and decide the divorce for the same couple. Recognition of this situation and an understanding for how different legal systems approach the notions of subject matter and personal jurisdiction helps the practitioner anticipate and avoid this problem.

TWO COUNTRIES, TWO COURTS— OFF TO THE RACES

When the courts in two countries each have valid jurisdiction of a divorce case, numerous attendant questions arise. If the divorce and related issues are first decided in the foreign court, will the forum recognize and enforce the foreign decision? What law will the foreign state apply to the divorce and related issues? Assuming the answer to the first question is "yes," and the answer to the second question is "a law unfavorable to my client," what can be done? Although the last question assumes responses governed by the first two questions, it often must be

addressed prior to certainty in the outcome of the first two questions. Its answer often depends on the attorney's assessment of costs and risks to the client of a decision in the unfavorable forum. Therefore, it is addressed here first.

In the United States, the first court that has valid jurisdiction of a divorce case and that issues a final decree usually trumps.²⁶ As a result, the parties often find themselves in a race to see who will get a binding and more favorable ruling first. Delay in the unfavorable forum becomes the main strategy. If the United States is the unfavorable forum, the best tactic often is to seek either a stay or dismissal based on forum *non conveniens*. Another, more controversial tactic, is to request an injunction in the more favorable forum's court against the other party proceeding with the litigation that is pending in the less favorable jurisdiction.²⁷

Delay in the unfavorable forum becomes the main strategy.

Forum *non conveniens* is a procedure in which the court decides whether to dismiss or stay a case because another court with jurisdiction is the better place to decide the case.²⁸ The decision generally is one for which the court has great discretion.²⁹ It usually hinges on the consideration of a list of factors (whether statutory or jurisprudential), which the court must balance.³⁰ In some jurisdictions the forum *non conveniens* decision is not immediately appealable, under the collateral order doctrine.³¹ In the right case, however, an interlocutory appeal could provide the savvy attorney with another tactical opportunity to exploit for delay.

In European Community (EC) countries, in divorces among EC member states, a different rule applies. In this circumstance, the tribunal where the divorce action is first filed has exclusive jurisdiction. A party, therefore, cannot avoid the consequences of a ruling in any EC country that has valid jurisdiction by filing in a second and procedurally more efficient EC jurisdiction. In other words, it is a race to filing, not to judgment. This concept is embodied in the EC law commonly known as Brussels II.³² It is frequently referred to us as the doctrine of *lis pendens*,³³ which should not be confused with the procedural action or notice in US practice.³⁴

CONFLICTS OF LAW

Logically, when two courts in two countries have jurisdiction over the same divorce case, no problem exists unless their laws address divorce and related issues differently.³⁵ In this case, inevitably, one party will be favored in one jurisdiction and disfavored in the other. This analysis, however, requires an issue-by-issue comparison, because when the outcome may favor a party on alimony, it may disfavor that party on distribution of marital property, grounds for divorce, or child related issues. A careful analysis, therefore, is essential. Often this requires retention of competent counsel in the foreign country.

The "More Favorable Law" Issue

Where the laws are significantly different, the question arises: "Which law should apply?" This question is at the heart of private international law, and often is referred to as the "choice of law" issue. This is a complex topic about which numerous voluminous treatises have been written.³⁶ It also is an area of the law that continues to evolve.³⁷ No summary can do this topic justice. This article, therefore, valiantly present an imperfect attempt.

In times past, the theory of "choice of law" boiled down to characterizing the issue for decision, then applying a rule of selection, which would designate the applicable law when two possibilities existed.³⁸ Issues, or rights, were generally characterized as related to persons (or status), or to property, and some had to be acknowledged as mixed.³⁹ For example, suppose alimony is characterized as an issue related to personal status. A representative rule, therefore, might be the one widely adopted in common law countries: The law of the domicile of the person should apply.⁴⁰ Or the connector could be to the nationality of the person⁴¹ or even to the forum.⁴² Even disregarding the potential conflict among these three possible options, the first two beg the question of whose domicile or nationality, the payor's or the recipient's?⁴³

Taking another example, the division of a marital home can be characterized as one of real property law. The appropriate rule, as a result, might be to apply the law of the situs of the realty.⁴⁴ But digging more deeply, division of a marital home can also be characterized as an issue of marital versus non-marital property, or as an issue of equitable distribution.⁴⁵ And if so characterized, is the correct choice of law rule not more appropriately the law of the state where the parties were domiciled at the

time of acquiring the property, or even the law of the forum?⁴⁶

These examples illustrate some of the problems that arose with application of rigid and mechanistic rules to "choice of law" problems.⁴⁷ In response, different approaches developed, including governmental interest analysis and the Restatement Second "most significant relationship" test.⁴⁸ These modern approaches identify the policy interests each of the competing states has in seeing its law apply and govern the particular question at issue. The theory is that the most appropriate law to apply is the law of the state that has the most significant relationship to the issue. The subjectiveness and unpredictability of this approach are its chief drawbacks.⁴⁹ This approach does, however, allow the advocate more creativity. It may also lead to more frequent application of the *ordre public* doctrine. This doctrine allows a court to deny application of the law selected using choice of law rules when that law conflicts too much with the public policy of the forum.⁵⁰

The Proof Issue

Another element the attorney must remember in any choice of law situation is the need to prove the substance of the foreign law. This often requires identifying, engaging, and consulting with an expert in the law of the foreign jurisdiction early in the case. It also can require filing with the forum court, and serving on opposing counsel, a formal notice of intention to rely on foreign law.⁵¹ Failure to take these steps can defeat the most creative and soundest arguments for applying the foreign law.⁵²

REGISTRATION AND ENFORCEMENT OF FOREIGN JUDGMENTS—THE "IS IT WORTH IT" ISSUE

At the end of an international divorce case, all the effort and attorney fees expended to obtain a divorce decision in the most favorable forum will be for naught if the decree is unenforceable in the appropriate other jurisdiction(s). Unlike the divorce decrees of other states within the United States, the judgments of foreign countries fall outside the Full Faith and Credit Clause.⁵³ Some knowledge of the applicable concepts, therefore, and some planning based on this knowledge, will serve clients well.

The enforcement of a foreign divorce decree and its attendant rulings in the United States, absent a governing treaty, must depend on comity. Excep-

tions to this general statement include child custody⁵⁴ and support orders,⁵⁵ which have their own specialized enforcement issues. Comity is commonly thought of as the deference one sovereign gives to the laws of another sovereign, lying somewhere between mere courtesy and absolute obligation.⁵⁶ As such, it is purely discretionary, and can be difficult to predict. Nevertheless, certain basic principles, if not straightforward rules, have developed.

One such benchmark is reciprocity.⁵⁷ When two countries with similar cultures and legal traditions share a history of enforcing one another's judicial decrees, the extension of comity to a divorce judgment is more likely. Similarly, when two countries have not even enjoyed diplomatic relations for many years, much less a history of respect for the judicial pronouncements of the other, the likelihood that the courts in one of the countries will agree to enforce court orders from the other country is small.

Another factor cited by US courts when considering enforcement of a foreign divorce order is the respect of procedural due process.⁵⁸ Constitutional issues prevent a US court from enforcing terms of a foreign court order if the responding party never received adequate notice and an opportunity to be heard in the foreign proceeding.

Finally, the enforcing court typically will examine the underlying foreign court order for conformity with the public policy of the forum jurisdiction.⁵⁹ When the foreign order is based on laws or judicial precepts repugnant to the forum jurisdiction, comity will be denied.

In EC countries, the tribunal where the divorce is first filed has exclusive jurisdiction.

A logical spectrum, therefore, is easily defined for handicapping the likelihood a US court will grant comity to a foreign divorce decree. On one end are the decrees most likely to be enforced. They issue from other common law countries with similar cultural traditions, where jurisdiction and procedural due process are unchallenged, and where a history of comity already exists. At the other end are divorces granted in countries with very different legal systems and cultures, with no history of reciprocal respect for US judgments and perhaps without even formal diplomatic relations with the United States, where jurisdiction is based on concepts unrecog-

nized in the United States, notice and opportunity to be heard are suspect, and the legal principles applied run counter to widely held beliefs and policy choices made in the United States.

CONCLUSION

The international divorce case presents the divorce practitioner with questions and problems that may appear new and confusing. The likelihood that a divorce practitioner will face these questions and problems grows almost daily. The savvy attorney will want familiarity with the concepts of jurisdiction, both subject matter and personal; with strategies for slowing down litigation in an unfavorable forum; with practical solutions for investigating and proving foreign law; with the correct procedures and best arguments for making choice of law determinations; and with the mechanics and theory behind enforcement of a foreign divorce decree. In more and more cases this can mean the difference between success and failure for clients.

NOTES

1. See Richard Morin and Claudia Deane, "Growing Questions Over Dual Citizenship," *Washington Post*, January 29, 2002 at A17; and Stanley A. Renshon, "Dual Citizenship and American National Identity," ISBN 1-881290-48-4 (October 2001) (available from Center for Immigration Studies, Washington, DC).
2. See *Habibi-Fahnrich v. Fahnrich*, 1995 WL 507388, N.Y. Sup. (1995) (unreported). See also, *Malik v. Malik*, 99 Md. App. 521, 638 A.2d 1184 (1994) (Mother unilaterally removed the child from Pakistan to Baltimore, MD.); *appeal after remand*, *Hosain v. Malik*, 108 Md. App. 284, 671 A.2d 988 (1996); *Amin v. Bakhaty*, 812 So. 2d 12 (2000), *rehearing denied* (June 2001); *Lyons v. Lyons*, 227 Va. 82, 314 S.E.2d 362 (1984) (Natural mother moved the children to England and obtained custody order from English Court).
3. Hague Convention on Civil Aspects of International Child Abduction, opened for signature October 25, 1980, T.I.A.S. No. 11670 (1980).
4. See Sandra I. Murado, "Immigration Issues for the Family Law Attorney," April 30, 2004, paper presented at ABA Family Law Section Spring CLE Conference in San Juan, Puerto Rico.
5. See Friedrich K. Juenger, "Marital Property and the Conflicts of Laws: A Tale of Two Countries," 81 *Columbia Law Review* 1064 (1981). For a brief discussion of the development of private international law, especially choice of law concepts, in antiquity through to the present day in continental Europe, see Yvon Loussouarn and Pierre Bourel, *Droit International Privé* ¶ 82 *et seq.* (3d ed. 1988); for a concise description of the development from the emergence of "statutists" to the relative present day from a common law perspective, see David F. Cavers, *The Choice of Law Process* (1965).
6. See Harold Marsh, Jr., *Marital Property in Conflict of Laws* (1952).
7. See Rhonda Wasserman, "Parents, Partners, and Personal Jurisdiction," 1995 *U. Ill. L. Rev.* 813 (1995).
8. See *Williams v. North Carolina*, 317 U.S. 287, 63 S. Ct. 207, 87 L. Ed. 279 (1942), and *Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948).
9. See Wasserman, *supra* n.7.
10. Fleming James, Jr., Geoffrey C. Hazard, Jr., & John Leubsdorf, *Civil Procedure* §§2.1 & 2.22 (5th ed. 2001); see also U.S. Constitution, Art. III § 1 and § 2 and U.S. Constitution, Amendment XIV, § 1; D.C. Code Ann. § 11-1101 (Supp. 2003).
11. *James et al.*, *supra* n.10, §§ 2.1, 2.3-2.9; see also, *International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945); *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).
12. See *Amin*, 812 So. 2d 12 and *Lyons*, 227 Va. 82, 314 S.E.2d 362.
13. See sources cited *supra* n.10.
14. Seidelson, "Jurisdictional Reach and Choice-of-Law Determinations in Divorce Actions and Proceedings Incident thereto: The Illusion of Tradition and the Significance of Finality and Efficacy," 6 *Widener J. Pub. L.* 423, at 424, *citing to Sherrer v. Sherrer*, 334 U.S. 343 (1990) and *Williams*, 317 U.S. 287, 63 S. Ct. 207, 87 L. Ed. 279, among others.
15. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).
16. See *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1877),

overruled in part, *Shaffer*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683; Spector, "Toward an Accommodation of Divergent Jurisdictional Standards for the Determination of Maintenance Obligations in Private International Law," 36 *Family Law Quarterly* 273, 274-275 (2002).

17. See, e.g., Tan Yock Lin, *Conflicts Issues in Family and Succession Law* 331-336 (1993); Henri Batiffol & Paul Lagarde, *Droit International Privé* ¶ 448 (6th ed. 1976).

18. *Shaffer* at 204.

19. Wasserman *supra* n.7.

20. Spector *supra* n.16, at 278.

21. Restatement (Second) of Conflict of Laws §§ 32 & 33 (1971) (hereinafter "Restatement Second"); see also James *et al. supra* n.11, §§ 2.5-2.7.

22. *Int'l Shoe*, 66 S. Ct. at 158.

23. Md. Code Ann., Cts. & Jud. Proc. § 6-103.1 (2002); see also Williams, 317 U.S. at 296-297.

24. Spector *supra* n.16 at 277; cf. *Blackmer v. United States*, 284 U.S. 421, 437, 52 S. Ct. 252, 76 L. Ed. 375 (1932) (holding that "the United States possesses the power inherent in sovereignty to require the return to this country of a citizen, resident elsewhere, whenever the public interest requires it, and to penalize him in case of refusal").

25. Spector *supra* n.16 at 278.

26. See, e.g., Md. Code Ann., Fam. Law § 9-206 and § 10-308 (1999); D.C. Code Ann. § 16-914.01 and § 16-4601.01 *et seq.* (Supp. 2003).

27. See *Verdier v. Verdier*, 22 Cal. Rptr. 93 (Cal. Ct. App. 1962) (holding that the lower court erred in enjoining one of the parties before it from seeking a divorce in France).

28. Forum *non conveniens* allows courts to exercise equitable power to change the jurisdiction after the court determines that the interests of the litigants and witnesses warrant a different forum. See *Keller Dev., Inc. v. One Jackson Pl., Ltd.*, 890 S.W.2d 502, 505 (Tex. App.-El Paso 1994, no writ). "[I]n cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at

home." *Adams v. Bell*, 711 F.2d 161, 167 (D.C. Cir. 1983) (citation omitted).

See also, D. C. Code Ann. § 13-425 (2001) ("When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just"); James *et al. supra* n.10, § 2.20; Md. Code Ann., Cts. & Jud. Proc. § 6-104 (2002).

29. See sources cited *supra* n.28 and sources cited *infra* n.32.

30. A court is to consider the private and public interest factors announced in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947). However, the Gulf Oil Corp. factors were partially superseded by statute and apply only when a different state or country is involved as the alternate forum. See 28 U.S.C.A. § 1404; *Johnson v. G.D. Searle & Co.*, 314 Md. 521, 552 A.2d 29 (1989); Md. Code Ann., Cts. & Jud. Proc. § 6-104 (2002). For further information see, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981) *rehearing denied*, 455 U.S. 928, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982). The District of Columbia statute does not enumerate specific factors but considers the public and private interest factors. See D. C. Code Ann. § 13-425 (2001).

31. See *Van Cauwenberghe v. Biard*, 486 U.S. 517, 527-530, 108 S. Ct. 1945, 100 L. Ed. 2d 517 (1988); 28 U.S.C.A. §§1291 and 1292; cf. *Rolinski v. Lewis*, 828 A.2d 739 (App. D.C. 2003). The Supreme Court enunciated the collateral order doctrine in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949).

32. See Margaret Bennett, "Private International Law Concepts in Divorce," April 30, 2004, paper presented at ABA Family Law Section Spring CLE Conference in San Juan, Puerto Rico.

33. See Beaumont & Moir, "Brussels Convention II: A New Private Law Instrument in Family Matters for the European Union or the European Community?" 20 *Eur. L. Rev.* 268, 285 (1995); *Amin*, 812 So. 2d 12.

34. See *Black's Law Dictionary* 942-943 (7th ed. 1999); cf. *Amin*.

35. E.g., *Marriage of Welch*, 476 N.W.2d 104, 106-107 (Ct. App. Iowa 1991).

36. See, e.g., Joseph H. Beale, *A Treatise on the Conflict of Laws* (1935) (in three volumes); A.V. Dicey & John Bassett

Moore, *A Digest of the Law of England with Reference to the Conflict of Laws* (1896); Joseph Story, *Commentaries on the Conflict of Laws* (8th ed. 1883); Eugene F. Scoles *et al.*, *Conflict of Laws* (3d ed. 2000); Russell J. Weintraub, *Commentary on the Conflict of Laws* (4th ed. 2001).

37. See, e.g., sources cited, *supra* n.5; Seidelson, *supra* n.14; and Wasserman, *supra* n.7.

38. See, e.g., Marsh, *supra* n.6 at 4–5.

39. See, e.g., Cavers, *supra* n.5.

40. Cavers, *supra* n.5, at p. 5; Beale, *supra* n.36, at 274; Batiffol & Lagarde, *supra* n.17, at ¶ 435.

41. See sources cited, *supra* n.40.

42. Batiffol & Lagarde, *supra* n.17, at ¶ 435.

43. See Seidelson, *supra* n.14 at 439.

44. See Russell S. Weintraub, "Obstacles to Sensible Choice of Law for Determining Marital Property Rights on Divorce or in Probate: *Hanau* and the *Situs* Rule," 25 *Houston L. Rev.* 1113, 1116–1117 (1988). For a discussion of the separate question of the limits on exercise of jurisdiction by the *Situs* court, see *Shaffer*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683.

45. See *Marriage of Welch*, at 108–110.

46. *Id.*; see generally Weintraub, *supra* n.44; cf. *Argent v. Argent*, 396 F.2d 695, 130 U.S. App. D.C. 46 (1968).

47. See e.g., *Seth v. Seth*, 694 S.W.2d 459, 462 (Ct. App. Tex. 1985), *Marriage of Welch*, at 109.

48. See e.g., *Marriage of Welch*, at 109; see generally Wasserman, *supra* n.7. The late Brainerd Currie proposed governmental interest analysis, an approach that directs the forum court to consider the governmental policies under-

lying the laws competing for application and to apply forum law if the forum state would have an interest in the application of its policy to the facts of the case. Brainerd Currie, *Notes on Methods and Objectives in the Conflict of Laws*, in Brainerd Currie, *Selected Essays on the Conflict of Laws* 177, 183–187 (1963). The Restatement Second directs the forum court to apply the law of the state with the "most significant relationship" to the underlying occurrence and the parties, taking into account the policies of the states whose laws are competing for application. Restatement Second, *supra* n.21, §§ 6, 145.

49. See generally Seidelson, *supra* n.14; Weintraub, *supra* n.44.

50. See *Hughes v. Hughes*, 91 N.M. 339, 573 P.2d 1194 (1978); Seth, *supra* note 47, at 463.

51. Md. Code Ann., Cts. & Jud. Proc., § 10-501 *et seq.* (2001).

52. See *Marriage of Wechler*, at 110.

53. U.S. Constitution, Art. IV, Sec. 1.

54. See Patricia M. Hoff, "The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act," 32 *Family Law Quarterly* 267, 277 (1998). See also Lyons, 227 Va. at 94–100, and *Amin*, 812 So. 2d at 23, and *Hosain*, 108 Md. App. at 301–332.

55. See Gary Caswell, "International Child Support—1999," 32 *Family Law Quarterly* 525 (1998).

56. For a recounting of the history of comity, see *Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895).

57. *Id.*

58. See *Williams*, 317 U.S. at 299.

59. See *Hilton*, 159 U.S. 113; cf. *Malik*, 99 Md. App. 521, 638 A.2d 1184.