DOWNLOAD PDF PRIVATE ANECDOTES OF FOREIGN COURTS

Chapter 1 : Enforcement of foreign judgments - Wikipedia

Excerpt. Private Anecdotes of Foreign Courts eu joyed, of discovering the secret history of Northern politics, it cannot but be curious to trace the effects of foreign usages, man ners, and personal intercourse, upon the mind of an Englishwoman, transplanted from her free and native soil.

Jing Sun is among several foreign investors who bought property in Canada in recent years, but kept the extent of their wealth out of view of the tax authorities and the courts, a Globe and Mail investigation has found. The Urban Development Institute will tackle the topic for the first time in a sold-out public forum on Wednesday in Vancouver. The subject became an election issue when Conservative Leader Stephen Harper promised to collect data on foreign ownership of Canadian real estate and to consider new taxes and regulations to keep housing affordable. An in-depth look at public data â€" including land titles, tax reporting and court records â€" revealed a distinct pattern, suggesting the typical wealthy foreign family buying Vancouver real estate pays little or no income or capital gains tax. He is among several experts who said most wealthy foreign buyers are not breaking the law, but simply using tax avoidance manoeuvres or loopholes in the system. Many of the houses being snapped up are not huge mansions. Increasingly, they are family homes priced out of reach for locals whose taxes pay for public services, and some of whom earn more than the incomes reported by buyers such as Mr. Court records show Mr. When the couple broke up, Mr. Sun stopped supporting the family. The court asked for tax and other financial records, but he failed to produce any, the documents say. He said his money was loans from friends and family in China. The judge did not believe that, saying his bank would not have approved his financing if he had no wealth of his own. Supreme Court Justice Emily Burke said last year. Accountants and tax lawyers say it is common for investors from China to pay no income tax in Canada while moving their wealth to Canada through spouses and children here. The Globe discovered one in three multimillion-dollar homes bought recently in Vancouver areas popular with foreign buyers is registered to a homemaker, student or corporation â€" one indicator of how the identity of the person who actually paid can be hidden. When a spouse or child sells a property that is registered in their name, the real investor can avoid capital gains taxes â€" because the relative in Canada can claim it was their primary residence, therefore not an investment. Other revealing data came from Statistics Canada, which tracks income that households report to the CRA. That puts them in the lowest tax bracket. There is no way to tell how many are Canadian. However, statistics from Macdonald Realty and ReMax show that 70 per cent of their clients were from mainland China. The records list the occupations of non-corporate owners. Several of the houses visited by The Globe appear to be unoccupied, with cobwebs at the front entrance and mail piled up. One of the few owners who answered the door was a year-old University of British Columbia science major who did not want to be identified. It changed ownership three times in five years and is now empty. The Globe found five out of 13 properties owned by students are empty and four are rented out, suggesting they were bought as investments. A family friend picking up the mail at one house said the real owner is a business person in China who will not be in Canada for months. At another empty student-owned home, the backyard pool is filled with dirty water and garbage. Many of the properties registered to homemakers are occupied. Several family members at those homes indicated the heads of the households are transferring wealth to Canada â€" because it is seen as a small, clean, inexpensive haven. She said the couple has permanent resident status in Canada, which benefits the family, but her husband earns good money in China from his food trading business. A key question is whether foreign ownership actually is inflating the market while locals whose income tax dollars pay for roads and hospitals are squeezed out. If so, Canada would be losing affordable housing as well as much-needed provincial and federal tax revenue. The data examined by The Globe suggest the foreign buyers have a significant, disproportionate impact on home prices. One third of the properties increased more than 50 per cent in price since â€" some of those more than doubled. They were also resold at least twice in that period. The price of one property went up 40 per cent, then per cent, in five years. The average single-family home in all of Vancouver increased 21 per cent in the same time period, according to the Canadian Real Estate Association. Having trouble viewing this on mobile? In several, the judges suspected

or concluded significant overseas income was hidden. Essentially, CRA rules say a non-resident who buys and sells Canadian property must pay capital gains and other taxes on earnings from those investments. If they have a primary residence and family living in Canada, they must file resident tax returns and report all of their income. Some cases indicate that millionaires buy properties through relatives in Canada and then claim in their tax returns to be non-residents â€" which means they pay no Canadian taxes on their worldwide income. Others who file as residents appear to have grossly under-reported or failed to report their earnings. Several cases involved multiple properties in the names of spouses, children, girlfriends and corporations. The most clear-cut example of suspected tax evasion was a spousal support case against Hong Kong businessman David Ho. The court concluded Mr. The court concluded that Mr. Ho bought several properties in the Vancouver area. He put one in Ms. In that scenario, no one pays the B. Ho became a Canadian citizen years ago and signed up for B. Until recently, however, he claimed on his taxes that he was a non-resident. Supreme Court Justice Victoria Gray said. Sze told The Globe and Mail. Chen a quarter of a million dollars. In some cases, Chinese investors have said their income was from family gifts and loans, which are tax-exempt. Instead, court records say, he claimed that all the money invested in Vancouver while he was in China came from his parents. She testified at one point she owned 16 properties in B. More resources need to be pumped into the CRA â€" and more political will â€" so there is a desire to have stronger laws. Then if the Chinese government goes after the man, the assets are with the children.

Chapter 2 : Federal Courts & the Public | United States Courts

Private anecdotes of foreign courts by Govion Broglio Solari, Catherine Hyde, marquise de, or ; Bausset-Roquefort, Louis FranÃ§ois Joseph, baron de, Publication date

The court must analyse the case as pleaded and allocate each component to its appropriate legal classification, each of which will have one or more choice of law rules attached to it. The court will then apply the choice of law rules. In a limited number of cases, usually involving Family Law issues, an incidental question may arise which will complicate this process. Discussion[edit] To limit the damage that would result from forum shopping, it is desirable that the same law be applied to achieve the same result no matter where the case is litigated. The system of renvoi is an attempt to achieve that end. Forums that do not have renvoi provisions refer only to the specific provisions of relevant law. In this way, the same outcome is achieved no matter where the case is litigated so long as the second state would also have applied its own laws. But if that second country actually has choice of law rules requiring it to apply the forum law, a difference in outcome might arise depending on where the plaintiff invokes jurisdiction. Whether a difference actually emerges depends on whether the other state operates a Single Renvoi system. If those rules would send the issue back to the forum court, the forum court will accept the first remission and applies its own laws. Thus, equality of outcome is always achieved so long as the competing laws operate different systems. Some early French authorities support this approach e. But if both sets of laws operate with either no renvoi system or single renvoi systems, forum shopping will be a potential problem. Hence, there is another system called Double Renvoi or the Foreign Courts Doctrine which will also ensure parity of result so long as no other relevant law is using it. In this scenario, the forum court considers that it is sitting as the foreign court and will decide the matter as the foreign court would. In this system, there can never be more than two remissions, e. English forum refers to French law a single renvoi system so English law is applied 1st remission and France accepts the remission 2nd and final. At present, only English law uses this approach. Application of renvoi[edit] Because the doctrine is considered difficult and its results are sometimes unpredictable, its application has generally been limited to: However, there are indications in some states that it might also apply to two issues in family law , namely the capacity to marry and the formal validity of marriage. It has also been rejected for contracts by most Commonwealth countries. Article 24 of this regulation provides: In this decision the High Court considered the situation of Mrs Neilson, who had injured herself falling down the stairs in her apartment in Wuhan, China. Under Australian choice of law rules, the law of the place of the incident or lex loci delicti governs tort situations following the decision of that court in However Mrs Neilson raised Article of the General Principles in her defence, arguing that the provision of that article should apply making the relevant law for the dispute Australian law. Article provided that: If both parties are nationals of the same country or domiciled in the same country, the law of their own country or of their place of domicile may also be applied" As a consequence, the Supreme Court trial judge concluded that Art "gives me a right to choose to apply the law of Australia because both parties are nationals of Australia. On appeal to the High Court, Neilson succeeded. In six separate judgments, the majority of the High Court found in favour of Neilson on the basis that the Australian choice of law rule referred to the whole of the law of the place of the wrong. This decision has received strident criticism by Martin Davies, [2] and both the High Court and Full Court decisions have received very close attention by leading contemporary conflicts scholars including Andrew Lu and Lee Carroll, [3] Elizabeth Crawford, [4] and Mary Keyes. Because of this, the applicability of limitation laws no longer go with the local forum; rather, they too follow the lex loci delicti. US[edit] In the United States most courts try to solve conflict of laws questions without invoking renvoi. This is most likely to happen in cases involving immovable property or domestic relationships. The main difficulties[edit] There are three main difficulties in cases where renvoi may be an issue: It gives undue weight to the evidence of the experts on foreign laws. The reference to the conflicts system used in other laws may reveal differences that would have arisen in characterisation or in the choice of law rules to be applied. If these differences would lead to onward transmissions, the forum court will follow the references into third or further legal systems. This is unpopular

because it requires the parties and the court to consider evidence of multiple legal systems. There may be an "inextricable circle" between sets of laws using either single or double renvoi systems which do not have adequate safeguards built in to guarantee when to stop accepting remissions. Kuwait Insurance Co [] 1 A.

Chapter 3 : Renvoi - Wikipedia

The Northern Courts Containing Original Memoirs of the Sovereigns of Sweden and Denmark, Since , Including the Extraordinary Vicissitudes in the Lives of the Grand-Children of George the Second by John Brown.

In recent years, international civil litigation in China has been on the rise. Given the increase of foreign businesses in China, a better understanding of the Chinese judicial system becomes essential to protect foreign business interests. Jurisdiction, choice of law, and enforcement of judgments are three primary concerns of foreign parties seeking judicial relief and remedies in China. Questions commonly asked include: Fear that China lacks the rule of law and an independent judicial system gives rise to hesitancy to conduct business in China and pursue legal rights. Introduction Foreign companies doing business in China are commonly concerned about the ability of the Chinese judicial system to protect their legitimate business interests. Among these courts, 10 are maritime courts, 60 are railway courts, and 88 are military courts. One particular issue arising is whether to treat both Chinese and foreign parties equally in litigation. This reluctance is rooted in the fear that China is short of the rule of law in general and is lacking an independent judicial system. Nevertheless, foreigners and foreign companies doing businesses in China are subject to the jurisdiction of the Chinese courts. Part IV identifies flaws in the Chinese judicial system that may affect judicial independence and justice. Note that China does not follow the practice of some civil law countries, such as France, in which nationality serves as an important basis for a court to assert its jurisdiction. If the plaintiff files a lawsuit with two or more competent courts, the court with which the lawsuit was first filed shall exercise jurisdiction. In a contract dispute, parallel jurisdiction would exist between the court of locus contractus the place of a contract and the court of locus solutionis the place of a contract performance , if these jurisdictions are different. In contrast to the adversarial model of the Anglo-American judicial system, the Chinese judicial system is premised on the inquisitorial model. Under the inquisitorial system, the court controls and shapes the litigation by conducting active and independent inquiry into the merits of the case. In the eyes of many parties, jurisdiction is often overlooked. According to the Civil Code of , except where otherwise provided by law, the limitations period for civil actions is two years from the date when plaintiff knows or should have known that his rights have been infringed. This question involves several different considerations, which include, inter alia: Under the principle of judicial sovereignty, a court may only apply the law of the forum. Debates on the rational grounds for the application of foreign law aside, such application has become a common practice in almost every country in the world. China is no exception. Nevertheless, there is no unified conflict of law legislation in China. The choice-of-law rules are scattered in several laws and regulations. The most important choice-of-law rules are the Civil Law of and the Contract Law of Beijing Press and Xinghua Bookstores, the defendants published nine fairytale books that contained the cartoon figure Mickey Mouse between and On January 31, , plaintiff filed a lawsuit in Beijing No. According to the Copyright Law of China, any work of a foreigner first published outside the territory shall be protected if the work is eligible for copyright protection under an agreement between China and the foreign country, or under an international treaty to which both countries are party. On that basis, the court applied the MOU. Therefore, the Model Law, however significant, may not become applicable unless and until it is adopted by the Chinese legislature. First, the foreign law chosen by the parties shall be excluded if its application would harm the social and public interests of China. The capacity for civil conduct of a Chinese citizen residing in a foreign country shall be determined by Chinese law if such conduct occurs in China. The law of a foreign country in which the Chinese citizen resides may apply if the conduct occurs in such foreign country. If a foreigner who conducts civil activities in China is deemed to have no capacity for civil conduct under the law of his own country but has such capacity under Chinese law, he shall be regarded as having capacity for civil conduct. The capacity for civil conduct of a stateless person shall, in general, be governed by the law of the country where he resides, or the law of the country of his domicile if he does not reside in that country. The complexity involved in this regard is how the foreign law should be treated; this would also affect who will have the burden to prove the foreign law. Two contradictory approaches have governed the question concerning the determination of foreign law. One is a

common law approach, under which foreign law is treated as a matter of fact pleadable as such by evidence supplied by the parties, their attorneys, or experts. The first aspect is to enforce the judgment entered by a domestic court of a country, and the second involves recognition and enforcement of foreign judgments. In many cases, it also involves enforcement of foreign arbitral awards. In general, the enforcement is divided into a enforcement against property, and b enforcement against required activities. Enforcing a judgment against property is called execution. The petitioner may also need to furnish information about the financial status and property of the judgment debtor. If the judgment debtor fails to comply, the enforcement officer may explore other enforcement devices to compel the debtor to satisfy the judgment. Absent these treaties, the request may be made on the basis of reciprocity. If neither treaty nor reciprocity exists, a diplomatic channel is usually employed. Each year a considerable number of court judgments or orders are not enforced. It is obvious that this sluggishness in enforcing judgments, including arbitral awards, in China has become a major concern for many foreign companies. Local protectionism is the main obstacle to enforcement. As noted, since China adopts a two-instance system of adjudication, a majority of cases conclude in intermediate courts situated at the level of prefecture between county and province. The enforcement of domestic judgments normally rests with the trial courts, county courts in many cases, unless an intermediate court conducts the first instance trial. When a civil case involves different counties or prefectures, the trial court encounters local government influence driven by local interests such as the desire or policy to protect local industries or businesses. The more local interests are involved, the more difficult it is to enforce a judgment against a local party. In case of enforcing foreign judgments against a local party, such protection could become more dominant. A second factor hindering enforcement is government interference in favor of state-owned enterprises SOE. If a SOE is a judgment debtor, the enforcement of a judgment may be halted if such SOE is financially unable to satisfy the judgment or the enforcement would threaten the survival of the SOE. The interesting phenomenon is that many SOEs in China are both creditors and debtors. More importantly, a SOE may not sell or be forced to sell its assets to satisfy a court judgment. The third factor is a lack of credit-checking and asset-tracking systems. For example, when recognition and enforcement of foreign arbitral awards are requested, lower Chinese courts often arbitrarily decide to set aside the awards. For a foreign judgment to be enforced in China, it is required that the judgment be translated to the Chinese language. This issue not only troubles foreign companies, investors, and businessmen, but also becomes a popular concern among Chinese citizenry. Indeed, it is fair to say that judicial independence is a recognized principle in the Chinese Constitution and laws. The problem, however, is that the judicial power may not be exercised independently in practice. The cause is the inherent defects existing in the current judicial system. China is a communist-party-dominated socialist country, and separation of powers is not a dominant theme. But this body is required to be under the leadership of the communist party. The first one is the current organizational structure of the judicial system, which makes judicial independence extremely difficult. More importantly, the operating expenses, including salaries of the judges, are provided from the local government budget. This scenario is often seen in the adjudication of cases. Many Chinese lawyers spend much of their time trying to find easy access to the presiding judge in lieu of traditional legal analysis. The president has the power to influence the promotion and demotion of any particular judge in the court, and to supervise all judges through a reporting system. Thus, the ability of the judge or collegial panel to reach an independent decision on a case is considerably limited. Furthermore, the professional quality of judges is often very poor. For the few who have received a law degree, a substantial number did so through continuing education. Nevertheless, the deficiencies in the Chinese judicial system are cause for caution. However, it would seem unrealistic to anticipate China to fundamentally change its judicial system within a short period of time. Strategically speaking, it is important is ensure that China continues to make changes in the right direction. Further judicial reform will help attract international business in the years to come.

Chapter 4 : Private Anecdotes of Foreign Courts

Private Anecdotes of Foreign Courts, by the Author of "Memoirs of the Princesse de Lamballe;" to which are subjoined, Memoirs, Extracted from the Portefeuille of the Baron de Mâ€"; with Anecdotes of the French Court by the Prefect of the Imperial Palace.

In English law, there is a clear distinction between Recognition of foreign judgments, and enforcement of foreign judgments. Recognition means treating the claim as having been determined in favour of one of the litigating parties. This is an acknowledgment of foreign competence and of the settling of a dispute, known as res judicata. In American legal terminology, a "foreign" judgment means a judgment from another state in the United States or from a foreign country. To differentiate between the two, more precise terminology used is "foreign-country judgment" for judgments from another country and "foreign sister-state judgment" from a different state within the United States. Once a foreign judgment is recognized, the party who was successful in the original case can then seek its "enforcement" in the recognizing country. If the foreign judgment is a money judgment and the debtor has assets in the recognizing jurisdiction, the judgment creditor has access to all the enforcement remedies as if the case had originated in the recognizing country, e. If some other form of judgment was obtained, e. Foreign judgments may be recognized either unilaterally or based on principles of comity , i. In English courts, the bases of the enforcement of foreign judgments are not comity, but the doctrine of obligation. This usually requires some sort of an abbreviated application on notice, or docketing. Between one State in the United States, and a foreign country, Canada, for example, the prevailing concept is comity. The Court in the United States, in most cases, will unilaterally enforce the foreign judgment, without proof of diplomatic reciprocity, either under judge-made law or under specific statutes. Recognition will be generally denied if the judgment is substantively incompatible with basic legal principles in the recognizing country. Constitution to the same extent as a U. Exercise of jurisdiction in recognition cases[edit] If the country that issued the judgment and the country where recognition is sought are not parties to the Hague Convention on Foreign Judgments in Civil and Commercial Matters as of December , only ratified by Albania , Cyprus , Kuwait , the Netherlands and Portugal , [3] the Brussels regime all European Union countries, as well as Iceland, Norway and Switzerland [4] or a similar treaty or convention providing for the routine of registration and enforcement between states, the courts of most states will accept jurisdiction to hear cases for the recognition and enforcement of judgments awarded by the courts of another state if the defendant or relevant assets are physically located within their territorial boundaries. Whether recognition will be given is determined by the lex fori , i. The following issues are considered: There is a general reluctance to enforce foreign judgments which involve multiple or punitive damages. In this context, it is noted that the U. When it comes to seeking the enforcement of U. Further, the fact that the U. Consequently, it can be difficult to persuade some courts to enforce some U. The Hague choice of court convention provides for the recognition of judgement given by the court chosen by the parties in civil and commercial cases in all other parties to the convention. The convention has as of not entered into force. Regarding maintenance obligations, the Hague Maintenance Convention in force between Albania, Bosnia and Herzegovina and Norway , provides for recognition of all kinds of maintenance related judgements including child support. Enforcement of foreign judgments in the U. Instead, a party wishing to domesticate the foreign default judgment or foreign judgment obtained by confession must bring another action in New York State "on the judgment" where the relief sought is to have the foreign judgment domesticated in New York State. When seeking to enforce a judgment in or from a state that has not adopted the Uniform Act, the holder of the judgment files a suit known as a "domestication" action. Since the full faith and credit clause of the U. The judgment was not rendered by an impartial tribunal under procedures compatible with the requirements of due process of law; The foreign court did not have personal jurisdiction over the defendant; The foreign court did not have jurisdiction over the subject matter; The defendant did not receive notice of the proceedings in sufficient time to enable him to defend; The judgment was obtained by fraud; The judgment is repugnant to the public policy of the state where enforcement is sought; The judgment conflicts with another final and conclusive judgment; The

proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be settled; In the case of jurisdiction based only on personal service, the foreign court was an inconvenient forum for the trial; or If the judgement was obtained through an illegal transaction. If the judgement is not conclusive Recognition and Enforcement in England and Wales[edit] In England, three avenues of enforcement methods and recognition rules exist: Statutory application of foreign states which are party to bilateral treaties. Judgments operating in personam , such as those not relating to in rem property rights, are only recognised as effective against particular parties, the material question becomes whether the judgment debtor is bound to abide to the judgment. It is recognised as binding on and against the party against whom it was given only if it was delivered by a court which, according to English law, was competent to deliver a judgment. Jurisdictional, with regard to the foreign court rules rules are irrelevant. In order for a judgment to be considered Res Judicata, it must be Final and conclusive in the court which pronounced it. To be enforceable, a judgment must be recognised and must be a judgment for a fixed sum of money. English courts do not enforce foreign judgments, and a judgment creditor must bring a cause of action under English law and use the recognised foreign judgment to serve as conclusive evidence of an outstanding debt. There are two purposes for effecting recognition of a foreign judgment. Firstly, if a party defeats a foreign case, he may seek recognition of that decision to estopp a party from bringing another action against him in England. By contrast, should a party succeed in a foreign action, he may seek to enforce the action in England. The judgment creditor need not have to succeed at every point within the foreign action. It had previously been the case that if the foreign claimant had been partially successful, he was entitled to sue on the cause in action again within England. Section 34 of the Civil Jurisdiction Judgment Act was subsequently passed by parliament to remove the right to sue a second time. The Brussels Recast Regulation operates as the primary procedural scheme relating to foreign judgments, their recognition and enforcement. Recognition is automatic between member states, barring exceptions set out in Chapter III of the regulation. This is consistent with the EU principles of a single economic market where courts and government departments can be trusted to get things right. Under the Common law, recognition is limited to a certain set of criteria. As adjudication is considered a sovereign act, the common law has developed the concept of comity to determine circumstances where recognition and enforcement acknowledged and respected the foreign sovereign act sufficiently to enforce it domestically. This was pioneered in Hilton v Guyot. A judgment may therefore be reduced to four components The foreign judgment has no force, as a judgment, outside the place it was given because adjudication is an act of sovereign power; Comity favours giving effect to foreign judgments and the question then is as to which foreign judgments ought to be recognised; If the parties have had a full and proper trial before a reasonable court, the judgment is accepted at face value as res judicata If the law of the court which has adjudicated would not accept an equivalent judgment at face value, it will not enjoy reciprocity. Accepting reciprocity would allow foreign judgments to shape the English common law. By contrast, Adams v Cape Industries plc specifically rejected comity as the basis for recognition or non-recognition of judgments because it was insufficiently hard-edged for the demands. Comity for the sovereignty of courts is insufficient for enforcing recognition because does not consistently determine a stringent enough rule for when sovereignty is to be accepted as a proper application onto the parties and when it is not recognised on the grounds that the parties ought not to be bound. Where a party was present within the territory of the adjudicating court when proceedings instituted, the court will bind the party to the decision of the court so long as the adjudications are recognised as conclusive. The question of whether the judgment will be enforced will be a separate matter. Secondly, if a party is shown to have agreed with his opponent, by word or action, to abide by the judgment of the court, private agreement is sufficient for recognising the substance of the judgment as res judicata. If a wants to use the foreign judgment as a sword, then he will need to bring new proceedings in English common law using the foreign judgment as evidence to his claim. The rules cannot and do not distinguish foreign courts with a reputation for excellence and foreign courts with less rigorous standards. The matter may be subject to an ordinary appeal, but that will not be determined as a court reopening a matter. An interlocutory matter may be recognised if it represents the final word of the court on the point in issue. A difficulty arises in relation to default judgments which will often be liable to re-opening in the court in which they were entered.

Two primary definitions exist, one relating to individuals, the second relates to corporations. Academic criticism has extended from the use of presence rather than residence, however, residence on the date of when proceedings were begun creates uncertainty. It is difficult to determine whether a party who spends two years aboard is resident there. However, authority suggests that residence without presence at the material time would still suffice if the relevant time was at the service of process representing the start of legal proceedings. With regard to individuals, the court has held that it will mean that the defendant must be within the jurisdiction of a court when the proceedings were instituted, meaning service or notice that proceedings had begun. Presence at the time of the trial is not used as a defendant could simply leave the jurisdiciton upon becoming aware. By contrast, in Adams v Cape the question of whether a company was present was to analogise from the reasoning of human beings. The court must be either able to determine presence as a servants of the corporation carrying on its business from a fixed place maintained by the corporation or b a representative of the corporation carrying on the business of the corporate from a fixed place. Either of these criteria will determine the company is presence. This is designed to prevent the argument that the company is present where-ever a company officer or director is present. The difficulty of determining presence of a company derives primarily because it is difficult to apply to the margins. Travelling salesman certainly operate in jurisdictions on behalf of companies, enjoying benefit of economic markets and under the current criteria would not be considered "present". This was seen notably in Adams v Cape itself. The effect of corporate presence is that any claim relating whatsoever can be brought against the corporation, regardless of the work the corporation conducts within the jurisdiction. Not present but agreed to accept the adjudication of the foreign court The second criteria where a party may be subject to a foreign judgment recognised in England is where the defendant has accepted the foreign court. Section 33 of the Civil Jurisdiction and Judgments Act altered the previous common law approach, [29] It provided a defence to attending a foreign court for the purposes of challenging the jurisdiction of the court. In doing so, the defendant may well have the opportunity to enjoy two attempts at defending the action, first seeking to defend the action abroad and secondly operating with the confidence that they will be protected by Section 33 of the Act. Defences to English recognition[edit] Should a defendant seek to defend again recognition of a foreign judgment, several defences exist which might prevent the English court from recognising the action. The primary gateway for defending recognition in the English courts is that of Fraud, which is said to unravels all foreign judgments. A judgment will be denied recognition as res judicata and there can therefore be no question of its enforcement if any of the defences allowed by English international private law are made out. The English court does not review the merits of the foreign judgment. One cannot claim that the foreign court failed to consider facts. It is also not possible to argue that the foreign court reached the wrong decision on the facts. Disregard of arbitration or choice of court agreements [33] lack of local jurisdiction Breach of procedural fairness [35] Public Policy Prior English Judgment Common Law Enforcement[edit] The only foreign judgment which can be enforced in England is a money judgment for which a party will sue on the debt. Should a foreign court apply specific performance, a party may sue in England on the same cause of action as the foreign judgment and use the foreign judgment on the merits to seek a similar order from the English courts. It is the obligation, not the judgment that is enforced. Only final judgments for fixed sums of money can be enforced. Murthy v Sivajothi [] 1 WLR held the recognition of resjudicata. The English court only had jurisdiction to enforce the judgment if the defendant had submitted to the jurisdiction of the foreign court by voluntarily appearing in those proceedings. It was necessary, for the plaintiff to establish under English law that the defendant had expressly authorised the acceptance of the service of proceedings. On the evidence it was possible that the defendant might not have realised that the proceedings were against him personally as guarantor. Issue estoppel could in principle arise from an interlocutory judgment of a foreign court on a procedural or non-substantive issue where certain conditions were fulfilled. Express submission of the procedural or jurisdictional issue to the foreign court was required. The specific issue of fact must have been raised before and decided by the foreign court. Caution was to be exercised before any issue estoppel could in practice be found to arise No issue estoppel in fact arose because it was not sufficiently clear that the specific issue which arose for consideration in the UK was same as that identified and decided in the foreign court. In the Arizona courts the plaintiff had

relied upon a rule of Arizona procedural law which had no counterpart in the UK.

Chapter 5 : Full text of "Private anecdotes of foreign courts"

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Chapter 6 : INTERNATIONAL CIVIL LITIGATION IN CHINA: A PRACTICAL ANALYSIS OF THE CHINESE

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