

# Recognition of foreign judgments

## Public policy challenges

Steven Thompson QC

XXIV Old Buildings



# Recognition of foreign judgments

- Doctrine: comity, reciprocity, obligation
- Enforcement and recognition
- Enforcement at common law
- Enforcement under statute
- European Regulation

# Common law recognition

- Debt or fixed sum
- No taxes, fines or penalties
- Final and conclusive
  - Under the local system
- Might still be under (or open to) appeal
- Ousted by any available statutory route



# Resisting recognition at common law

- Foreign court jurisdiction (under English conflict rules – presence or submission)
- Fraud
- Public policy
- Natural justice
- Not because of error of law or fact: no re-examination on the merits

# Resisting recognition: lack of jurisdiction

- English conflict of law rules
  - Voluntary presence (not residence) at time of commencement – probably not if forced or tricked
  - For corporations, a fixed place of business from which business is carried out
  - Submission: counterclaim, appearance, agreement
  - “cognovit clauses”, “confessions”
- May differ from foreign court’s rules

# Resisting recognition: fraud

- Foreign judgment impeachable for fraud
  - Fraud on the part of the winning party
  - Fraud on the part of the court
- Must be operative (not just ‘tainted by’)
- Lower test from challenge to domestic judgment
  - No need to have been raised before
  - No requirement for fresh evidence

# Resisting recognition: public policy

- Public policy changes over time
- Standards of morality
- Maintenance, alimony and dowry cases
- Judgment obtained in disobedience of anti-suit injunction / arbitration clause
- Res judicata
- Exemplary, punitive, excessive damages
- Human Rights Act – statutory rule



# Resisting recognition: natural justice

- Foreign judgment impeachable if obtained in proceeding opposed to natural justice
- Most commonly, lack of notice to defendant
- Opportunity to defend
- Failure to follow own processes
- But bar is high: notice can be waived
- Does not extend to minor rules of evidence or procedure
- Human Rights Article 6

# Brexit

- Brussels recast is reciprocal and will go
- The end of the world?
- Resurrection of 1930 statute
  - Austria, Belgium, France, Germany, Italy, Netherlands, Norway
- Lack of civil justice cooperation in deal
- Common law enforcement available

