Full Faith and Credit for Judgments

1. start out with law on the preclusive effect of judgments in state where judgment is rendered
   1. assume P sues D concerning property damages in an accident
      1. D wins
      2. P can attack directly on appeal
      3. or through motion to rendering court to set aside j
   2. BUT assume these are not done
      1. What will effect of j be?
   3. Assume P sues again
      1. Barred
   4. Assume instead the j was for P
      1. No direct attack again…
   5. P brings a suit on the j
      1. D makes collateral attack
      2. D may not challenge on the merits
      3. Indeed cannot challenge on grounds of lack of jur, except if defaulted
   6. This is the effect of claim preclusion
   7. Assume that P tries to sue again for personal inj in accident
      1. P is claim precluded from suing again
      2. J is merged in claim
      3. Like a joinder rule
         1. varies
            1. in fed ct law is any cause of action concerning the same transaction
            2. sometimes more limited
      4. goal is finality and efficiency
   8. assume that P2 now sues D for negl in connection with same accident
      1. not claim precluded bc different P
      2. no one not a party or in privity with a party can be bound
      3. but D was a party
      4. some states still have a mutuality requirement
         1. but others have given it up
         2. Parklane Hosiery
2. What does **FF&C** require wrt judgments of other states?
   1. State courts must give FF&C to js by other states
   2. Basically same rule applies (by statute or jud doctrine) to js of territories and federal js
   3. Generally – must be given same precl effect they have in the state in which they were rendered
      1. With a few exceptions
3. Fauntleroy v Lum
   1. K for gambling in cotton futures
   2. Made in Miss betw Miss domiciliaries
      1. Such Ks are illegal in Miss
      2. Submitted to arbitration in Miss
      3. P then sued in Miss to enforce arbitr award
      4. Found out illegal
      5. So sued in MO
         1. got j
         2. in effect MO ct made wrong choice of law decision
         3. or made wrong decision about what Miss law requires
         4. If wrong choice of law decision, then MO decision was itself a violation of FF&C, bc MO has no Pac Empl interest
      6. P then brought suit on J in Miss
      7. Miss SCt held not required under FF&C to enforce
         1. viol of laws embodying public policy in that state
   3. one issue is whether the Miss dismissal was simply for lack of jur
   4. The main argument urged by the defendant to sustain the judgment below is addressed to the jurisdiction of the Mississippi courts. The laws of Mississippi make dealing in futures a misdemeanor, and provide that contracts of that sort, made without intent to deliver the commodity or to pay the price, "shall not be enforced by any court." The defendant contends that this language deprives the Mississippi courts of jurisdiction, and that the case is like Anglo-American Provision Co. v. Davis Provision Co., 191 U. S. 373. There, the New York statutes refused to provide a court into which a foreign corporation could come, except upon causes of action arising within the state, etc., and it was held that the State of New York was under no constitutional obligation to give jurisdiction to its supreme court against its will. One question is whether that decision is in point.
      1. the Miss statute prohibiting such Ks might be understood as simply prohibiting jurisd for suits concerning such Ks
         1. Ct rejects idea that it was about jur
            1. Miss statute says the contracts “shall not be enforced by any court”
            2. The case quoted concerned a statute plainly dealing with the authority and jurisdiction of the New York court. The statute now before us seems to us only to lay down a rule of decision. The Mississippi court in which this action was brought is a court of general jurisdiction, and would have to decide upon the validity of the bar if the suit upon the award or upon the original cause of action had been brought there. The words "shall not be enforced by any court" are simply another, possibly less emphatic, way of saying that an action shall not be brought to enforce such contracts.
         2. plus even if it was a rule of jurisd
            1. the suit was to enforce a j
            2. simply a suit to collect a debt
            3. NOT a suit to enforce such a K anymore
      2. But consider the issue of limiting jurisd for suits on js
         1. Anglo-Am Provision v Davis
            1. Holding: NY could refuse jurisd to out of state corporate Ps for suits on judgments rendered out of state between out of state corporationss where the original cause of action arose out of state
            2. we shall return to this case later

to what extent can a state limit jurisdiction for enforcing js

esp can a state do it for reasons tied to public policy

* 1. simple conclusion in Fauntleroy
     1. j of a state court has same effect in another state that it would have in rendering state
        1. true even if choice of law decision was wrong
     2. if its choice of law decision was in violation of FF&C should have done challenged the decision in MO
        1. appeal to US SCt

1. Conclusion
   1. No PPE to enforcement of a j
   2. Recognition is required under FF&C
2. Does it make sense to have broad allowance for public policy in const’l restrictions on choice of law (think of Allstate) and narrow restrictions for recogn of js
   1. But extra interest when j is involved
      1. Finality interest
3. Yarborough v Yarborough
   1. Yarboroughs – domiciled in Ga – get a divorce
   2. Ga allows for final determination of child-support oblig’s through a lump-sum payment
      1. Paid to trust, with grandfather as trustee
   3. Child in SC w/ grandfather
   4. sues in SC for more $ for education
   5. SC court gets PJ over D’s property in SC (also personally served)
      1. Refuses to give earlier Ga j full FF&C
   6. SCt reverses
      1. Various challenges rejected
         1. claimed that it was not a final decree even in Ga – but it was
            1. NOTE that it would be modifiable in SC if it were modifiable in Ga
         2. claimed not binding upon child bc she was not party to suit
            1. she was domiciled there
            2. and party by virtue suit for divorce
            3. even though no guardian ad litem
   7. But what about idea that child support could never really be final
      1. could argue that Ga j is in violation of due process
      2. and that she cannot be bound bc she really had no opportunity to challenge in Ga
      3. but then not valid in Ga too
      4. not really an exception to FF&C
   8. BUT if it is final in GA and that is const’l then is final in SC
   9. Q - is SC treating the Ga judgment any worse than its own js? NO
      1. Given Ga j the same precl effect SC j would get
      2. So why isn’t that enough under FF&C?
      3. Must give Ga j the same precl effect as Ga would
   10. stone’s dissent?
       1. Claims that this is an excessive imposition upon the domestic interests of SC
       2. Gives other examples of alleged exceptions to FF&C
          1. example of not bound by determination of sanity
             1. but that is because it is intrinsically not something that can be determined permanently
             2. true in rendering state too
          2. talks about exception for real property js made in state other than situs of property
             1. will talk about later
          3. js about crimes and penalties
             1. in fact wrt penalties things have now changed
4. notice that 2nd Rest suggests Stone’s approach, but little support in case law
5. what about giving *greater* effect than in rendering state
   1. assume state A has mutuality req for issue precl and state B does not
      1. D is found negl in state A
      2. in state A, a new P cannot take advantage of this b/c need mutuality
      3. can state B give it issue precl effect?
         1. due process worries – D could not haver anticipated…?
         2. BUT is it contrary to FF&C?
         3. unclear
6. Foreclosure of jurisdictional issues
7. Durfee v Duke
   1. Nebraska action to quiet title to bottom land on MO river
   2. Neb ct held that it had juris bc land in Neb
   3. Held for plaintiffs
   4. 2nd suit by Ds brought in Mo ct, removed to fed ct in MO
   5. DCt held issue of location of land was res judicata
   6. Ct App reversed
   7. SCt reversed Ct App
      1. Issue of jur, PJ or SMJ, are entitled to FF&C if fully and fairly litigated
      2. True, even though this is a q of land,
8. BUT what if the property really was in MO
   1. Ct had no jur, so how could its adjud be binding?
   2. In effect it has jur to determine jur no matter what
   3. But isn’t that a viol of due process?
      1. even if it is it must be attacked in first litigation
      2. after all, there was a viol of due process in Fauntleroy (MO ct applied MO rather than Missi law, but no possibility to challenge now)
9. Also need final answer b/c otherwise would have competing judgments
10. Usually do not even need jurisdiction to be actually litigated
    1. Often waivable
    2. Eg PJ
    3. Only challengeable if there was no waiver
       1. Eg b/c D defaulted
11. SMJ is more complicated
    1. SMJ in Durfee v Duke was actually litigated so an easier case
       1. But even then some exceptions
          1. kalb v Feuerstein
             1. State ct took jur over an action concerning a debtor (foreclosure proceeding) – farmer lost his farm
             2. State j was not given FF&C in bankruptcy action in fed ct that was pending
             3. as dictum – SCt said
             4. even if State ct *found* that it had jur over an action despite bankruptcy, the bankruptcy ct could ignore that
          2. Why?
             1. juris in bankruptcy ct is clear
             2. *exclusive* SMJ in bankruptcy ct
             3. all need to be brought together

strong federal interest

* 1. in some cases, SMJ can be waived
     1. eg action in fed ct that has no federal SMJ
     2. not challenged and ct says nothing sua sponte
     3. lack of SMJ can be brought up on appeal
     4. but it is generally thought that a collateral attack is not possible

1. what happens if there is a j, a second ct erroneously does not give it FF&C and issues another j?
   1. which j is controlling
   2. last
   3. WHY?
      1. Encourages challenge on FF&C grounds
2. Real Property
3. Clarke v Clarke
   1. Mr & Mrs Clarke lived in SC
   2. Mrs Clarke died owning much pers & real prop, incl land in CT
   3. Will directed it should be divided betw husband and two children equally
   4. one child (Julia) died before probate
   5. Father, as executor of wife’s will, brought suit in SC courts for permission to sell CT land
      1. SC ct determined that will created equitable conversion of all property
      2. Should become personalty (that makes it something whose disposition is subject to SC law)
      3. allowed sale
   6. Father as administrator of Julia’s estate brings ancillary proceedings in CT to determine disposition of proceeds of land
      1. issue is share in deceased child’s estate
      2. CT law – goes to surviving child
      3. SC law - goes equally to father and child
   7. CT ct claimed that it was not bound by decision of SC ct concerning equitable conversion of land
      1. gave all proceeds to Nancy – the remaining child
   8. Father argued that this did not give FF&C to SC j that will worked an equitable conversion
   9. SCt held for Nancy
   10. The SC decision not entitled to FF&C bc land was in CT, only CT cts have jur

How to make this compatible with Fauntleroy?

* + 1. Miss law actually applied, but if MO law wrongly applied by MO ct, Missouri j must be given FF&C in Miss
    2. By analogy, even though SC law should not be applied, it was and SC judgment should be binding

BUT can argue that in Fauntleroy the MO ct had jurisd (tagging)

* + 1. here claim is that SC court did not have jur, b/c property was in CT
    2. This is but to contend that what cannot be done directly can be accomplished by indirection, and that the fundamental principle which gives to a sovereignty an exclusive jurisdiction over the land within its borders is in legal effect dependent upon the nonexistence of a decree of a court of another sovereignty determining the status of such land. Manifestly, however, an authority cannot be said to be exclusive, or even to exist at all, where its exercise may be thus frustrated at any time.

1. Problem – how to make this compatible with Durfee v Duke
   * 1. even if there was jurisd only in CT
     2. shouldn’t we think the assertion of jur in SC is res judicata, since it has already been litigated (or waived)?
     3. Isn’t that was Durfee v Duke says
     4. shouldn’t the surviving child, if she didn’t like the decision that there was jur in SC, have challenged it there?
   1. BUT in Durfee there was a factual issue that had to be decided about jur
      1. Here it was clear on face that property was in CT
   2. so the idea is that
      1. unless it was the result of a decision by the rendering ct that the property is located in its jurisdiction (which would be binding in a state that disagrees)
      2. a decision by ct of B to take jur over land in A need not be given FF&C in state A
   3. basically rude exception to FF&C
2. Fall v Eastin
   1. Falls got divorced in Wash
   2. Ct directed Mr Fall to deed property in Neb to Mrs Fall
   3. Also a commissioner for the Ct actually executed a deed in Neb
   4. BUT Mr Fall deeded it to his sister (eastin) and goes to Cal
      1. Sister knew about the Wash decree
   5. Wife now sues sister
   6. SCt of Neb refuses to give FF&C to the commissioner’s deed and recognizes sister’s ownership
   7. SCT agrees
   8. NOTE: not as if wife has no recourse - he has disobeyed an injunction and she can get contempt proceedings against him or even can get damages
   9. Ct accepts that a j in personam is entitled to FF&C
      1. Neb ct must recognize that husband has an oblig to deed property
      2. Could even have brought suit in Neb to compel him to deed it
         1. and could get damages in Neb ct
      3. BUT cannot actually be deeded by a Wash ct
         1. nor can a Wash commissioner deed it
   10. NOTE: Neb ct also claims right not to recognize deed by appeal to a Neb law on divorce proceedings that says that ct may not enjoin the transfer of property
   11. Fall not having executed a deed, the court's conclusion was, to quote its language, that "neither the decree nor the commissioner's deed conferred any right or title upon her." This conclusion was deduced not only from the absence of power generally of the courts of one state over lands situate in another, but also from the laws of Nebraska providing for the disposition of real estate in divorce proceedings. In Cizek v Cizek it was held that portion of the decree which set off the homestead to the wife was absolutely void and subject to collateral attack, for the reason that no jurisdiction was given to the district court in a divorce proceeding to award the husband's real estate to the wife in fee as alimony.
       1. Green: this is wrong – it would suggest a right to refuse to recognize even a Wash in personam j ordering transfer
   12. extra issue
       1. perhaps transfer to sister was invalid though bc she knew of Wash decree
       2. still owned by husband
       3. this is addressed by J Holmes’s concurrence
       4. The real question concerns the effect of the Washington decree. As between the parties to it, that decree established in Washington a personal obligation of the husband to convey to his former wife. A personal obligation goes with the person.
       5. But the Nebraska court carefully avoids saying that the decree would not be binding between the original parties had the husband been before the court. The ground on which it goes is that to allow the judgment to affect the conscience of purchasers would be giving it an effect in rem. It treats the case as standing on the same footing as that of an innocent purchaser. Now, if the court saw fit to deny the effect of a judgment upon privies in title, or if it considered the defendant an innocent purchaser, I do not see what we have to do with its decision, however wrong
       6. Holmes point is that Neb is free to allow husband to engage in what appears to be fraudulent conveyance
       7. That is not a violation of FF&C
   13. SO – if you are in non-situs state the j of that state must clearly apply to person, not to land
       1. do not try to get it to deed land

Return to Clarke in light of Fall v Eastin

1. difference from Fauntleroy, as we saw, was that there was no jur over property
2. but why couldn’t one say there was jur over the persons?
3. SCt in Clarke said, in effect, no in personam juris
   1. only a CT ct could appoint the executor of a trust or a guardian ad litem for this minor’s interests in CT land
      1. Nancy B. Clarke, one of the parties to the suit in South Carolina, and whom the Connecticut court has held inherited, to the exclusion of the father, under the laws of Connecticut, the whole of the real estate belonging to her sister, was a minor. She was therefore incompetent, in the proceedings in South Carolina, to stand in judgment for the purpose of depriving herself of the rights which belonged to her under the law of Connecticut as to the real estate within that state… It cannot be doubted that the courts of a state where real estate is situated have the exclusive right to appoint a guardian of a nonresident minor, and vest in such guardian the exclusive control and management of land belonging to said minor, situated within the state.
      2. But that is certainly not true now
         1. A state can have jur to determine rights with respect to land out of the state, including for minors, by getting in personam jur
   2. so why no obligation in CT to respect the in personam obligations created by the j in SC?
      1. Here is an unusual case bc equitable conversion seems to be changing the character of the land – directly affects it
         1. like changing title
         2. so is an in rem action