There is a possible analogy that the domicile requirement which corresponds to a domicile sufficient for the Belgian courts to accept the foreign divorce as valid (barring questions of public policy) is similar to the domicile requirement which the United States courts apply where only one party appears. The bona fide nature of the domicile of that party becomes the issue in the determination of the *in rem* jurisdiction.

The result therefore reached by the Court of Appeals of New York in the cases of *Rosenstiel v. Rosenstiel* and *Wood v. Wood* would not be followed on the theory that the sole purpose of the "residence" was to obtain a divorce and therefore an act of fraud, and no further inquiry would be necessary to determine whether the grounds violated the Belgian public policy.

GERMANY

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Recognition of foreign divorce decrees in Germany depends, in the first place, on the nationality of the parties to the decrees. Three situations have to be distinguished, namely, decrees in which both parties are Germans, decrees in which one party is German, and decrees in which both parties are non-German.

1. If both parties to a Mexican divorce decree are Germans, article 17 of the Introductory Law to the German Civil Code has to be observed. German law applies as to the substantive grounds of the divorce because "divorce is governed by the laws of the country of which the husband is a subject at the time when the divorce petition is filed." Under subdivision 4 of article 17, a divorce in Germany may not be granted by virtue of a foreign law (Mexican law) unless a divorce would be permitted both by foreign law and by German law. Divorce by consent is no ground under German law and for that reason alone, Mexican divorces between German nationals or where the plaintiff is a German national would not be

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recognized in Germany. The recognition of the divorce decree in these cases rests then on the grounds on which the divorce was granted. Subject to the jurisdictional limitations discussed below, the decree will be recognized if the divorce would also be granted on the same grounds under German law.

2. Where one party is of German nationality, a Mexican divorce decree may be recognized if the defendant in the Mexican suit is a non-German or if the defendant's residence is, or the last common residence of the spouse was, outside of Germany, or if the defendant asks for recognition in Germany pursuant to a judicial-administrative procedure before the German Land Ministry of Justice, as established by the statute of October 25, 1941. Until 1941, a foreign, including a Mexican decree in which one party was of German nationality, could not be enforced unless reciprocity of recognition was assured.[1]

3. Where both parties are non-Germans, a Mexican decree would be recognized in Germany if both parties are Mexicans; such a decree is even exempted from the administrative procedure establishing its recognition. A Mexican decree concerning two non-Germans is also certain to be recognized if the marital domicile was Mexico and if it is recognized by the husband's national country (art. 606b German Code of Civil Procedure and art. 17 EGBGB, above). If therefore the husband is an American domiciled in New York, the German courts would take cognizance of the *Rosenstiel* and *Wood* decisions and presumably conclude that Mexican divorces are recognized in the State of New York.[2] If none of these conditions are fulfilled, reciprocity between Germany and Mexico has to be established. In other words, it has to be shown that German divorce decrees are regularly recognized in Mexico. According to Bulow-Arnold, *Internationaler Rechtsverkehr* [1960], Mexico, at page 958.5, such reciprocity does not exist.[3] Reciprocity may now be waived under the procedure established under the 1941 statute. It is doubtful whether

[1] On the enforcement of American judgments in Germany in general, see Steefel in 1964 *Proceedings of the Section of International Comparative Law* at page 239, *et seq.*, and Harder, "Die Vollstreckung Deutscher Urteile In Den Vereinigten Staaten, Insbesondere In New York," in *Festschrift Zum 70.* Geburtstag Von Peter Pfeiffer [1965] at pages 508 to 518.

[2] See, however, Bronstein, "Mexican Divorces In The Light Of Recent Decisions," Bar Bulletin New York County Lawyers Association 1966 at page 101, *et seq.*

[3] Compare also Landgericht Leipzig dated April 13, 1938 in *Zeitschrift für Standesamtswesen* 1939, page 275.

such a waiver could be obtained by the German authorities because of the public policy considerations discussed below under 4(b).

4. Even if the foregoing requirements are met, German courts can refuse recognition of a Mexican decree if they find that (a) the Mexican court would not have jurisdiction according to German law (Code of Civil Procedure art. 328 par. 1 no. 1), or (b) if the decree is contrary to German public policy (art. 30 EGBGB).

(a) The former requirement refers to jurisdiction in the international sense, *i.e.*, according to the conceptions of the forum where recognition is sought.[4] Significantly enough, Judge Scileppi, in his dissenting opinion to the *Rosenstiel* and *Wood* decisions, heavily relied on Professor Rabel's views, an authority on German and American conflict of laws alike. Most probably, the German courts would deny jurisdiction in the international sense where Mexican "quickies" are involved and the divorce is on a one-day appearance or of the mail order variety. It is on this very ground that German courts [5] have refused recognition of a Nevada decree, finding even an allegation of a six-week residence as a jurisdictional sham. Under a very recent decision, in which all judges of the German Supreme Court participated, the importance of international jurisdiction has been stressed and leave for appeal and certiorari been granted as a matter of right, where lack of international jurisdiction is pleaded—in contrast to alleged defects of venue which are not appealable under German procedural law.[6]

(b) Before affirming recognition, the German courts will closely examine whether the Mexican decree affects German public policy. Even when non-Germans are involved, it is probable that a Mexican decree would not be admitted in Germany if it is a mail order decree and there is no appearance or representation by both parties. There are two German precedents, namely, a decision of the Landgericht Detmold of 1930 (IPR spr. 1930 Nr. 152) and of the Court of Appeals of Hamburg of 1935 (JW 1935 at page 3488 with comment by Jonas at JW 1936 at page 283). In both cases the German courts refused to recognize the Mexican decree because of the shocking manner in which it was obtained by German standards, namely,

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[4] 1 Rabel, *The Conflict of Laws: A Comparative Study* (2d, 1958 page 531).

[5] KG IPR spr. 1932 Nr. 147 = JW 32, 3822.

[6] Great Senate, German Supreme Court of June 14, 1965 NJW 1965 at page 1665 and comment thereto by Mayer NJW 1965 at page 1650 and Cohn NJW 1966 at page 287.