

## Aleem v. Aleem: a Divorce from the Proper Comity Standard—Lowering the Bar That Courts Must Reach to Deny Recognizing Foreign Judgments

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## Recent Decisions

### THE COURT OF APPEALS OF MARYLAND

#### ***ALEEM v. ALEEM*: A DIVORCE FROM THE PROPER COMITY STANDARD—LOWERING THE BAR THAT COURTS MUST REACH TO DENY RECOGNIZING FOREIGN JUDGMENTS**

RAJNI K. SEKHRI\*

In *Aleem v. Aleem*,<sup>1</sup> the Maryland Court of Appeals denied comity<sup>2</sup> to Irfan Aleem's Pakistani divorce, *talaq*, and by doing so found that his wife was entitled to half of his pension under Maryland law, despite contrary Pakistani law.<sup>3</sup> In so holding, the court erred in its substantive comity discussion because it failed to demonstrate that Pakistan's title-based property disposition scheme was repugnant to Maryland public policy.<sup>4</sup> In denying comity to Irfan's *talaq* based on a property division analysis, the *Aleem* court lowered the threshold that Maryland courts must pass in order to deny comity to judgments of foreign nations.<sup>5</sup> Instead, the court could have arrived at the same result without engaging in a flawed comity discussion by grounding its decision in the State's jurisdictional authority to equitably divide the Aleems' marital property.<sup>6</sup>

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1. 404 Md. 404, 947 A.2d 489 (2008).

2. The Supreme Court of the United States has defined comity as one nation recognizing "the legislative, executive or judicial acts of another nation." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

3. *See Aleem*, 404 Md. at 424–25, 947 A.2d at 501–02.

4. *See infra* Part IV.A.

5. *See infra* Part IV.B.

6. *See infra* Part IV.C.

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## I. THE CASE

On July 16, 1980, in Karachi, Pakistan, twenty-nine year old Irfan Aleem and eighteen year old Farah Aleem entered into a marriage arranged by their families.<sup>7</sup> Per Pakistani custom, Farah signed a “marriage contract.”<sup>8</sup> After they wed, the couple relocated to England for four years so that Irfan could complete his doctoral studies at Oxford University.<sup>9</sup> The couple then moved to the United States, where they have resided in Maryland for over twenty years.<sup>10</sup> They remain nationals of the Islamic Republic of Pakistan.<sup>11</sup> While married, Irfan worked at the World Bank.<sup>12</sup>

On March 3, 2003, Farah filed a complaint in the Circuit Court for Montgomery County, Maryland, seeking a limited divorce<sup>13</sup> from her husband.<sup>14</sup> Irfan then filed an Answer and Counterclaim.<sup>15</sup> Four months later, Irfan went to the Pakistan Embassy in Washington, D.C., where he performed *talaq*, the procedure for divorce under traditional Muslim law, by signing and notarizing a “Divorce Deed” before two witnesses.<sup>16</sup>

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7. *Aleem v. Aleem*, 175 Md. App. 663, 666, 931 A.2d 1123, 1125 (2007), *aff'd*, 404 Md. 404, 947 A.2d 489 (2008).

8. *Aleem*, 404 Md. at 408, 947 A.2d at 491. Aside from providing that Irfan owed a deferred dower of 51,000 rupees, *id.* at 410–11, 947 A.2d at 493–94, the marriage contract did not otherwise include an express or implied waiver of either Irfan’s or Farah’s respective property rights, *id.* at 411, 947 A.2d at 494.

9. *Aleem*, 175 Md. App. at 666, 931 A.2d at 1125. Notably, “[t]he parties never lived together in Pakistan.” *Id.*

10. *Id.*

11. *Id.* at 664, 931 A.2d at 1124.

12. *Id.* at 667, 931 A.2d at 1126. During this time, Farah was mainly a homemaker, and her tasks included caring for Irfan, the couple’s children, and the household. *Id.* After resolving her immigration limitations and receiving permission from the World Bank to work, Farah worked in Virginia for four and one-half years. *Id.* Now a permanent resident of Maryland with her own green card, she currently works for Profitable Association in Washington, D.C. *Id.*

13. *Id.* A limited divorce “ends the legal relationship of marriage by court order but does not address financial support, property distribution, or care and custody of children.” BLACK’S LAW DICTIONARY 516 (8th ed. 2004).

14. *Aleem*, 175 Md. App. at 667, 931 A.2d at 1126.

15. *Id.* Irfan’s Answer did not raise any jurisdictional objections. *Id.*

16. *Id.* at 665, 668, 931 A.2d at 1124, 1126. The “Divorce Deed” stated:

Now this deed witnesses that I the said Irfan Aleem, do hereby divorce Farah Aleem, daughter of Mahmood Mirza, by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good.

1. I Divorce thee Farah Aleem.

2. I Divorce thee Farah Aleem.

3. I Divorce thee Farah Aleem.

After three trials, the circuit court held that Irfan's *talaq* would not receive comity and granted an absolute divorce to Farah.<sup>17</sup> The trial judge refused to allow Irfan to apply for a divorce based on *talaq*, finding the idea "offens[ive to the court] in terms of how a divorce is granted."<sup>18</sup> The court then arranged an equitable division of the parties' marital property and ordered Irfan to pay Farah 50% of his monthly pension from the World Bank until the death of either party.<sup>19</sup>

Irfan then moved to alter the court's judgment.<sup>20</sup> Under Pakistani law, he contended, a wife cannot claim money, property, or assets that are titled in her husband's name on the date of divorce, unless the marriage contract grants that right.<sup>21</sup> Irfan stressed that his World Bank pension was an asset, and that the written marriage agreement did not expressly give Farah a right to it.<sup>22</sup> The circuit court denied Irfan's motion, and he appealed.<sup>23</sup>

The Court of Special Appeals of Maryland affirmed the decision of the circuit court, holding that the circuit court correctly declined to apply Pakistani law when determining Farah's right to marital property titled under Irfan's name.<sup>24</sup> The court agreed with Irfan that

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*Id.* at 668, 931 A.2d at 1126. Farah was served this deed, a letter from Irfan regarding notice under § 7.1 of the Muslim Family Laws Ordinance, 1961 of Pakistan, and a check for \$2,500. *Id.*

17. *Id.* at 670–71, 931 A.2d at 1127–28. An "absolute divorce" is a "total divorce of husband and wife, dissolving the marriage tie and releasing the parties wholly from their matrimonial obligations." BLACK'S LAW DICTIONARY 515 (8th ed. 2004). The court granted Farah an absolute divorce based on a two-year separation. *Aleem*, 175 Md. App. at 671, 931 A.2d at 1128.

18. *Aleem*, 175 Md. App. at 670, 931 A.2d at 1127. The Court of Special Appeals did not explain why the trial court found Irfan's *talaq* offensive. *See id.* (finding, without explanation, that *talaq* "offends the notions of this Court").

19. *Aleem*, 175 Md. App. at 664, 671, 931 A.2d at 1124, 1128; *see also* *Aleem v. Aleem*, 404 Md. 404, 422, 947 A.2d 489, 500 (2008) (defining "[m]arital property" as property parties acquire during their marriage). Irfan's pension would be drawn from his Staff Retirement Plan, *Aleem*, 175 Md. App. at 671, 931 A.2d at 1128, and was valued at approximately one million dollars, *Aleem*, 404 Md. at 407 n.2, 947 A.2d at 490 n.2. The court considered his pension marital property because Irfan worked at the World Bank during his marriage. *Aleem*, 175 Md. App. at 671 n.5, 931 A.2d at 1128 n.5. Marital property also included "real property valued at \$850,000, personal property valued at approximately \$80,000, and two or more vehicles." *Aleem*, 404 Md. at 407 n.2, 947 A.2d at 491 n.2.

20. *Aleem*, 175 Md. App. at 671, 931 A.2d at 1128.

21. *Id.* at 671–72, 931 A.2d at 1128.

22. *Id.* at 672, 931 A.2d at 1128–29. Rather, under the marriage contract, Irfan claimed that he owed his wife only a deferred dower of 51,000 rupees, or approximately \$2,500. *Aleem*, 404 Md. at 410–11 & n.5, 947 A.2d at 493–94 & n.5.

23. *Aleem*, 175 Md. App. at 672, 931 A.2d at 1129. Specifically, Irfan argued that the circuit court was required to receive evidence relating to his *talaq* divorce. *Id.*

24. *Id.* at 683, 931 A.2d at 1135.

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under a silent marriage contract governed by Pakistani law, the “default” rule is that a wife has no right to property titled in her husband’s name.<sup>25</sup> Under Maryland law, however, the “default” rule is that a wife has a right to that property, even when premarital or post-marital agreements are silent as to this issue.<sup>26</sup> The court found that these “default rules” conflicted to such a degree that granting comity to Irfan’s *talaq* contravened Maryland public policy.<sup>27</sup> The court explained that Maryland public policy requires “fair[ ] and equitabl[e]” distribution of property upon divorce.<sup>28</sup>

The Court of Appeals of Maryland granted certiorari to determine whether the Court of Special Appeals had ignored “fundamental principles of international comity and conflicts of laws” in its decisions (1) to refuse to recognize Irfan’s *talaq* because Pakistan and Maryland apply different “default rules” in dividing marital property between spouses, and (2) to rule that Pakistan lacked jurisdiction to dissolve the marriage because the parties resided in Maryland on diplomatic visas.<sup>29</sup>

## II. LEGAL BACKGROUND

Maryland courts presume that foreign judgments are entitled to comity unless a judgment is repugnant to Maryland public policy.<sup>30</sup> Under Pakistani law, a husband may divorce his wife by initiating *talaq* against her, after which property will either follow the possessor of its title or be awarded in accordance with the parties’ marriage contract.<sup>31</sup> By contrast, a Maryland court will equitably divide marital property upon divorce, unless the parties enter into a valid agreement that excludes marital property subject to distribution.<sup>32</sup>

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25. *Id.* at 681, 931 A.2d at 1134.

26. *Id.*

27. *Id.*

28. *Id.* at 683, 931 A.2d at 1135 (quoting Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304, 2305).

29. *Aleem v. Aleem*, 404 Md. 404, 408, 947 A.2d 489, 491 (2008) (internal quotation marks omitted).

30. *See infra* Part II.A.

31. *See infra* Part II.B.

32. *See infra* Part II.C.

A. *Maryland Courts Presume that a Foreign Judgment Is Entitled to Comity Unless that Judgment Is Repugnant to the State's Public Policy*

The Full Faith and Credit Clause of the United States Constitution,<sup>33</sup> which requires U.S. courts to recognize judgments of sister states,<sup>34</sup> is inapplicable to judgments of foreign countries.<sup>35</sup> Thus, while Maryland affords full faith and credit to judgments from other states as long as the rendering court had jurisdiction over the subject matter and the parties,<sup>36</sup> the judiciary need not grant comity to foreign judgments that are contrary to Maryland public policy.<sup>37</sup>

Maryland has codified its principles of comity, including the public policy exception, in the Maryland Uniform Foreign Money-Judgments Recognition Act ("Act").<sup>38</sup> The Act provides that, with certain exceptions, a foreign judgment that "grants or denies recovery of a sum of money" is enforceable in the same manner as a sister state's judgment would be enforceable under the Full Faith and Credit Clause.<sup>39</sup> The Act offers both mandatory and discretionary exceptions to granting comity.<sup>40</sup> For example, the Act states that "[a] foreign

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33. U.S. CONST. art. IV, § 1.

34. *Id.* The Full Faith and Credit Clause states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." *Id.* Before the American Revolution, states deemed judgments from other states as foreign and could review both the jurisdiction of their sister states as well as the merits of their judgments. *Hilton v. Guyot*, 159 U.S. 113, 181 (1895). Following the Revolution, the United States required states to grant full faith and credit to one another's judgments. *Id.* ("Full faith and credit should be given to the judgments of one of the States of the Union in the courts of another of these States.") (quoting Articles of Confederation, art. 4 § 3 (U.S. 1777)).

35. *Hilton*, 159 U.S. at 227 ("The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered . . . in any other foreign country . . . are not entitled to full credit and conclusive effect when sued upon in this country.")

36. *Telnikoff v. Matusevitch*, 347 Md. 561, 577 n.13, 702 A.2d 230, 238 n.13 (1997).

37. *Wolff v. Wolff*, 40 Md. App. 168, 177-78, 389 A.2d 413, 418 (1978) (quoting *Litvaitis v. Litvaitis*, 295 A.2d 519, 521-22 (Conn. 1972)).

38. Uniform Foreign Money-Judgments Recognition Act, MD. CODE ANN., CTS. & JUD. PROC. §§ 10-701-10-709 (LexisNexis 2006) (effective 1963). *See Andes v. Versant Corp.*, 878 F.2d 147, 149 (4th Cir. 1989) (explaining that, while the Full Faith and Credit Clause of the U.S. Constitution does not apply to foreign judgments, a foreign money judgment "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit" in Maryland (quoting Uniform Foreign Money-Judgments Recognition Act § 10-703)); *Telnikoff*, 347 Md. at 575-76, 702 A.2d at 237 (observing that Maryland has codified its principles underlying comity in the Act).

39. Uniform Foreign Money-Judgments Recognition Act § 10-703.

40. *Id.* § 10-704; *see infra* notes 41-42 and accompanying text; *see also Telnikoff*, 347 Md. at 609, 702 A.2d at 254 (Chasanow, J., dissenting) ("Thus, the Act provides four mandatory reasons why a judgment cannot be recognized and five discretionary reasons why a state

judgment is not conclusive” if fraudulently obtained or if the granting foreign court lacks personal or subject matter jurisdiction.<sup>41</sup> The Act permits Maryland courts to take a discretionary approach when recognizing foreign judgments in other situations, explaining that “[a] foreign judgment need not be recognized” where, *inter alia*, the judgment is “repugnant to the public policy of the State.”<sup>42</sup>

Maryland’s stance on comity is rooted in the Supreme Court of the United States’ decision in *Hilton v. Guyot*.<sup>43</sup> In *Hilton*, a French manufacturing firm sued its trading partners, who were citizens of the United States and of the State of New York, in a French court over disputed commercial dealings.<sup>44</sup> The defendants then sold their property located in France, rendering the plaintiff unable to collect on its judgment.<sup>45</sup> Because the defendants were citizens of New York, the plaintiff was able to recover its judgment in a New York court.<sup>46</sup> When the defendants appealed to the Supreme Court, however, the

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may refuse to recognize a foreign judgment.” (citing *Ingersoll Milling Mach. Co. v. Granger*, 833 F.2d 680, 688 (7th Cir. 1987)).

41. Uniform Foreign Money-Judgments Recognition Act § 10-704(a). The Act states the following mandatory exceptions to granting comity to a foreign money judgment:

(a) . . . A foreign judgment is not conclusive if:

- (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant;
- (3) The foreign court did not have jurisdiction over the subject matter; or
- (4) The judgment was obtained by fraud.

*Id.*

42. *Id.* § 10-704(b)(2). The Act provides the following discretionary exceptions to affording comity to a foreign money judgment:

(b) A foreign judgment need not be recognized if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
- (2) The cause of action on which the judgment is based is repugnant to the public policy of the State;
- (3) The judgment conflicts with another final and conclusive judgment;
- (4) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be settled out of court; or
- (5) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

*Id.* § 10-704(b).

43. 159 U.S. 113 (1895).

44. *Id.* at 114–15. The firm conducted business in cities including New York and Paris. *Id.* at 114.

45. *Id.* at 116.

46. *Id.* at 114, 122. Refusing to admit any evidence the defendants offered, the New York court directed a verdict for the plaintiffs in the amount of the French judgment. *Id.* at 122.

Court reversed the judgment of the New York court and declined to hold the French judgment conclusive.<sup>47</sup>

The *Hilton* Court first defined comity as “one nation allow[ing] . . . the legislative, executive or judicial acts of another nation.”<sup>48</sup> Then, the Court explained that granting comity is “neither a matter of absolute obligation . . . nor of mere courtesy.”<sup>49</sup> While judgments rendered in foreign countries “are not entitled to full credit and conclusive effect” in the United States,<sup>50</sup> foreign judgments serve as prima facie evidence of the merit of the plaintiff’s claim.<sup>51</sup> The Court stressed that comity is grounded in “mutuality and reciprocity,” and found that France failed to comport with these principles because a French court would not have recognized a United States judgment before holding a trial on the merits.<sup>52</sup> The Court reversed the French judgment and ordered a new trial.<sup>53</sup>

In 1979, Maryland wrestled with comity in *Wolff v. Wolff*,<sup>54</sup> in which a resident of England asked the Circuit Court for Montgomery County, Maryland, to enforce the alimony provisions of an English divorce decree.<sup>55</sup> Her husband, a Maryland resident, contended that the court lacked personal and subject matter jurisdiction.<sup>56</sup> Before dismissing the husband’s jurisdictional challenges, the *Wolff* court stressed that a foreign judgment is presumed valid absent evidence to the contrary, and that comity entitles a foreign divorce decree to “full force and effect” in another nation.<sup>57</sup> The court explained that because Maryland considers the obligation to pay alimony sound public policy, state courts should be able to equitably enforce the alimony

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47. *Id.* at 228–29.

48. *Id.* at 164.

49. *Id.* at 163–64.

50. *Id.* at 227.

51. *Id.*

52. *Id.* at 228.

53. *Id.* at 229.

54. 40 Md. App. 168, 389 A.2d 413 (1978), *aff’d*, 285 Md. 185, 401 A.2d 479 (1979) (per curiam).

55. *Id.* at 169, 389 A.2d at 414.

56. *Id.*

57. *Id.* at 177–78, 184, 389 A.2d at 418–19, 422 (quoting *Litvaitis v. Litvaitis*, 295 A.2d 519, 522 (Conn. 1972)). While the *Wolff* court observed that equity courts have jurisdiction to enforce alimony provisions of foreign divorce decrees, the court also permitted the husband to demonstrate that the English decree itself was illegal. *Id.* at 184, 389 A.2d at 422. The court explained that the United States will not afford comity to foreign divorce decrees where the following factors apply: (1) the foreign court lacked jurisdiction; (2) the foreign proceedings denied due process of law; or (3) the divorce decree offends a state’s public policy. *Id.* at 178, 389 A.2d at 419.



provisions of a foreign divorce decree.<sup>58</sup> Thus, the *Wolff* court held that comity principles entitled the Maryland circuit court to exercise jurisdiction over the foreign judgment.<sup>59</sup>

Following *Wolff*, Maryland addressed comity issues specific to Pakistani family law in the twin cases of *Malik v. Malik (Malik I)*<sup>60</sup> and *Hosain v. Malik (Malik II)*.<sup>61</sup> The parties in *Malik I*, both citizens of Pakistan, married in Pakistan in 1982 and had a child soon thereafter.<sup>62</sup> In 1990, the mother fled Pakistan with the child.<sup>63</sup> Although a Pakistani court awarded custody to the father, he was unable to locate the mother and child until two years later when he found them in Baltimore County, Maryland.<sup>64</sup> Once discovered, the mother requested an order for custody of the child in a Maryland circuit court.<sup>65</sup> The trial judge determined that the circuit court had jurisdiction to determine custody, and refused to grant comity to the Pakistani custody order.<sup>66</sup> On appeal, the Court of Special Appeals remanded the case to determine whether the Pakistani court had applied Maryland's "best interest of the child" standard.<sup>67</sup> The *Malik I* court held that, unless the Pakistani court had applied law so contrary to Maryland public policy as to undermine the outcome of the case, the Pakistani custody order was "presumed to be correct."<sup>68</sup> On remand, the circuit court granted comity to the Pakistani custody order.<sup>69</sup>

In *Malik II*, the Court of Special Appeals affirmed the circuit court's decision to recognize the Pakistani judgment.<sup>70</sup> The court concluded that the Pakistani court applied the "best interest of the child" standard, and that Pakistani child custody law did not contravene Maryland public policy.<sup>71</sup> The *Malik II* court rejected the

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58. *Id.* at 182, 389 A.2d at 421.

59. *Id.* at 178, 389 A.2d at 419. The Court of Appeals adopted the *Wolff* opinion as its own and affirmed the judgment of the Court of Special Appeals. *Wolff v. Wolff*, 285 Md. 185, 186, 401 A.2d 479, 479 (1979) (per curiam).

60. 99 Md. App. 521, 638 A.2d 1184 (1994).

61. 108 Md. App. 284, 671 A.2d 988 (1996).

62. *Malik I*, 99 Md. App. at 523-24, 638 A.2d at 1185.

63. *Id.* at 524, 638 A.2d at 1185.

64. *Id.*, 638 A.2d at 1186.

65. *Id.*

66. *Id.*

67. *Id.* at 536, 638 A.2d at 1191.

68. *Id.* The *Malik I* court reasoned that a Maryland court should not decline to enforce a Pakistani custody order merely because Pakistani law has a parental preference when determining custody and Maryland does not. *Id.* at 535, 638 A.2d at 1191.

69. *Hosain v. Malik (Malik II)*, 108 Md. App. 284, 293, 671 A.2d 988, 992 (1996).

70. *Id.* at 332, 671 A.2d at 1011.

71. *Id.* at 315, 671 A.2d at 1003.

mother's argument that the Pakistani doctrine governing child custody, which strongly prefers paternal custody, was so "repugnant" to Maryland law as to deny comity.<sup>72</sup> The court justified its recognition of Pakistani custody law by reasoning that a Maryland court would not refuse to enforce custody awards from states that still employ a parental preference in custody disputes.<sup>73</sup>

One year later, the Maryland Court of Appeals decided the State's leading case on comity, *Telnikoff v. Matusevitch*.<sup>74</sup> In *Telnikoff*, Matusevitch wrote an allegedly libelous letter in response to an article that Telnikoff authored.<sup>75</sup> After a newspaper published the letter, Telnikoff obtained a libel judgment against Matusevitch in a British court.<sup>76</sup> Telnikoff then attempted to enforce his judgment in Maryland.<sup>77</sup> The Court of Appeals declined to grant comity, explaining that England's defamation laws contravened Maryland's public policy of freedom of the press.<sup>78</sup> The court disapproved of Telnikoff's ability to recover under the English judgment without proving that Matusevitch acted maliciously, or even negligently, which is the minimum standard under Maryland defamation law.<sup>79</sup> Under Maryland's Uniform Foreign-Money Judgments Recognition Act,<sup>80</sup> the court found Telnikoff's English libel judgment "repugnant" to State public

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72. *Id.* at 316–17, 671 A.2d at 1003–04. Under Pakistan's Islamic doctrine of child custody, *Hazaniit*, a mother has custody of her male child until he is seven years old and of her female child until she reaches puberty. *Id.*, 671 A.2d at 1004. Once the child reaches the requisite age, the father and his male relatives control custody. *See id.* at 316, 671 A.2d at 1004. The *Malik II* court found that *Hazaniit* is only one factor a Pakistani court considers when determining the welfare of the child. *Id.* at 317–18, 671 A.2d at 1004.

73. *Id.* at 318, 671 A.2d at 1004–05. The court explained that Pakistan's child custody doctrine is "no more objectionable than any other type of [parental] preference." *Id.*, 671 A.2d at 1005. For example, four states—Alabama, Florida, Mississippi, and Tennessee—maintained a maternal preference in child custody disputes. *Malik v. Malik (Malik I)*, 99 Md. App. 521, 535, 638 A.2d 1184, 1191 (1994).

74. 347 Md. 561, 702 A.2d 230 (1997).

75. *Id.* at 564–67, 702 A.2d at 232–33.

76. *Id.* at 568, 571, 702 A.2d at 233–35.

77. *Id.* at 571–72, 702 A.2d at 235.

78. *Id.* at 599–600, 602, 702 A.2d at 249, 251. The court observed that England's libel laws are so advantageous to plaintiffs that persons who receive negative press in publications in the United States choose to file libel actions in England "even when the plaintiffs and the publication have little connection to that country." *Id.* at 601–02, 702 A.2d at 250 (quoting RODNEY A. SMOLLA, *LAW OF DEFAMATION* § 1.03[3] (1996)).

79. *Id.* at 598–99, 702 A.2d at 249. In addition, the court disapproved of Telnikoff's ability to obtain a libel judgment absent proof that Matusevitch's letter included a false statement of fact, which Maryland law requires, or even a defamatory fact statement. *Id.* at 599, 702 A.2d at 249.

80. Uniform Foreign Money-Judgments Recognition Act, MD. CODE ANN., CTS. & JUD. PROC. §§ 10-701–10-709 (LexisNexis 2006).

policy.<sup>81</sup> Drawing from *Hilton*, the majority explained that although foreign judgments merit a “degree of deference and respect” under principles of comity, courts will not recognize foreign judgments that are inconsistent with the State’s public policies.<sup>82</sup>

*B. Marriage and Divorce in Pakistan*

In Pakistan, marriage is a contract.<sup>83</sup> In order to marry, potential spouses must fulfill the requirements of a valid contract, such as having the required contractual capacity.<sup>84</sup> The Muslim Family Laws Ordinance, 1961 (“Ordinance”), governs marriage and divorce in Pakistan.<sup>85</sup> The Ordinance applies to all Muslim citizens of Pakistan.<sup>86</sup> Thus, under the Ordinance, “Pakistani law” and “Muslim law” may be read as synonymous.<sup>87</sup> A couple in Pakistan cannot register a Muslim marriage unless the marriage accords with the Ordinance.<sup>88</sup>

The Ordinance permits a husband to divorce his wife by using *talaq* against her.<sup>89</sup> Under traditional Muslim law, a man uses *talaq* by thrice announcing that he repudiates his wife.<sup>90</sup> No formalities are necessary, and a husband may use *talaq* “without showing cause and without recourse to a court of law.”<sup>91</sup> This is called a “bare *talaq*” and is instantly effective and irrevocable,<sup>92</sup> although Pakistan also requires the husband to send notice of his *talaq* to a chairman of an arbitration council to reconcile the parties.<sup>93</sup> The parties are not required to at-

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81. *Telnikoff*, 347 Md. at 600, 702 A.2d at 249 (quoting Uniform Foreign Money-Judgments Recognition Act § 10-704(b)(2)).

82. *Id.* at 574–75, 702 A.2d at 237.

83. A HANDBOOK ON FAMILY LAW IN PAKISTAN 35 (Cassandra Balchin ed., 1994).

84. *Id.*

85. See Muslim Family Laws Ordinance, 1961, § 3(1), reprinted in KEITH HODKINSON, MUSLIM FAMILY LAW: A SOURCEBOOK 96, 96 (1984) [hereinafter Muslim Family Laws Ordinance] (“The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with those provisions.”); *In re Fatima*, (1986) A.C. 527, 531 (H.L.) (“In Pakistan the law relating to divorce is the Islamic law as modified by the Muslim Family Laws Ordinance 1961.”).

86. Muslim Family Laws Ordinance, *supra* note 85, § 1(2).

87. See *id.* (providing that the Ordinance “extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be”).

88. *Id.* § 3(1).

89. *Id.* § 7(1).

90. *In re Fatima*, (1986) A.C. 527, 531 (H.L.).

91. *Id.*

92. *Id.*

93. Muslim Family Laws Ordinance, *supra* note 85, § 7(1), (4). A husband who does not give notice of his *talaq* to the chairman is subject to imprisonment for up to one year, a fine of up to 5,000 rupees, or both. *Id.* § 7(2).

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tend the arbitration council, however.<sup>94</sup> If the parties do not wish to reunite, their divorce will become effective ninety days from the date the chairman received notice of the *talaq*.<sup>95</sup>

Under Pakistani law, property follows the possessor of its title upon divorce.<sup>96</sup> Spouses may inherit property from each other, but neither acquires a marital interest in the other spouse's property.<sup>97</sup> This principle is due to the influence of the *Holy Quran*<sup>98</sup> to improve the status of women in early Muslim society<sup>99</sup> by granting a woman the right to own and manage her own property even upon divorce.<sup>100</sup>

The Pakistani title-based property scheme has been upheld in the United States, notably in the New Jersey case, *Chaudry v. Chaudry*.<sup>101</sup> The Chaudrys, both citizens of Pakistan, married in Pakistan in 1961.<sup>102</sup> In 1966, the family moved to New Jersey after the husband obtained a job there as a psychiatrist.<sup>103</sup> Along with their two children, the wife returned to Pakistan in 1968 with the intention of permanently residing there.<sup>104</sup> In 1974, the husband obtained a Pakistani divorce, *talaq*, against his wife.<sup>105</sup> Before a Pakistani court confirmed the husband's *talaq*, the wife sued for divorce in New Jersey and demanded equitable distribution of marital property.<sup>106</sup> Finding that the validity of the divorce had been "amply litigated" in Pakistan, the New Jersey Superior Court upheld the husband's *talaq*.<sup>107</sup> The court found that the Chaudrys' marriage lacked sufficient "nexus" to New Jersey for its courts to award the wife equitable distribution of property because the wife and children resided there for merely two years.<sup>108</sup> The *Chaudry* court added that the wife was also foreclosed

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94. *In re Fatima*, (1986) A.C. 527, 532 (H.L.).

95. *Id.* This ninety-day period is suspended if the wife is pregnant. *Id.*

96. JOHN L. ESPOSITO WITH NATANA J. DELONG-BAS, *WOMEN IN MUSLIM FAMILY LAW* 23 (2d ed. 2001).

97. *Id.*

98. The *Holy Quran*, the source text for Islam, is a collection of divine revelations from the early seventh century. HODKINSON, *supra* note 85, at 3.

99. ESPOSITO, *supra* note 96, at 4. The primary areas of *Quranic* reform included marriage, divorce, and inheritance in Muslim society. *Id.*

100. *Id.* at 23.

101. 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

102. *Id.* at 1003.

103. *Id.* at 1004. From 1963 to 1966, the Chaudrys lived in Connecticut with their children. *Id.*

104. *Id.* The wife claimed that her husband had reassured her he would permanently rejoin the family in Pakistan after he completed his medical examination, at which time his visa would expire. *Id.*

105. *Id.*

106. *Id.* at 1005–06.

107. *Id.* at 1005.

108. *Id.* at 1006.

from equitable division of property because the parties married in Pakistan, where they negotiated their marriage contract, which did not contain a provision granting the wife an interest in her husband's property.<sup>109</sup>

C. *Maryland Courts Subject Marital Property to Equitable Distribution upon Divorce Absent a Valid Agreement to the Contrary*

Under Maryland law, a spouse can file for either a limited divorce<sup>110</sup> or an absolute divorce.<sup>111</sup> A limited divorce “ends the legal relationship of marriage . . . but does not address financial support, property distribution, or care and custody of children.”<sup>112</sup> A court may grant a limited divorce temporarily or indefinitely.<sup>113</sup> An absolute divorce dissolves the marriage completely, “releasing the parties wholly from their matrimonial obligations.”<sup>114</sup>

Upon annulment or absolute divorce, a Maryland court will determine which property is marital property.<sup>115</sup> “Marital property” is property that one or both spouses acquired during the marriage, regardless of how it is titled.<sup>116</sup> After valuing the marital property,<sup>117</sup> the court takes into account several factors, such as the monetary and nonmonetary contributions each party made to the family, the duration of the marriage, and any other factor that the court considers “necessary or appropriate” so that the court can “arrive at a *fair and equitable* monetary award or transfer of an interest in property.”<sup>118</sup> Maryland public policy is that “the property interests of the spouses

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109. *Id.*

110. MD. CODE ANN., FAM. LAW § 7-102 (LexisNexis 2006).

111. *Id.* § 7-103.

112. BLACK'S LAW DICTIONARY 516 (8th ed. 2004).

113. MD. CODE ANN., FAM. LAW § 7-102(c).

114. BLACK'S LAW DICTIONARY 515 (8th ed. 2004).

115. MD. CODE ANN., FAM. LAW § 8-203(a).

116. *Id.* § 8-201(e)(1).

117. *Id.* § 8-204(a).

118. *Id.* § 8-205 (emphasis added). The court considers the following factors:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;

should be adjusted fairly and equitably.”<sup>119</sup> If the parties do not wish for a court to classify their property as “marital” and thus subject to equitable distribution, they may exclude that property by valid agreement.<sup>120</sup> Maryland is one of several United States jurisdictions that allow spouses to enter into agreements preventing a court from dividing property upon divorce.<sup>121</sup>

Maryland considers pension, retirement, profit sharing, and deferred compensation plans to be “marital property,” and these plans may be excluded by valid agreement just like other types of property under State law.<sup>122</sup> For example, in *Cannon v. Cannon*,<sup>123</sup> after discussing Maryland’s standard for evaluating premarital agreements,<sup>124</sup> the Court of Appeals upheld a premarital contract that classified retirement benefits as “separate property of the other party.”<sup>125</sup>

If a foreign court grants an annulment or divorce, Maryland may nevertheless exercise its statutory authority to equitably distribute marital property under Maryland law if the following twin prongs are

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(9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;

(10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and

(11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

*Id.* § 8-205(b).

119. Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304, 2305. This portion of the Act remains uncodified.

120. MD. CODE ANN., FAM. LAW § 8-201(e)(3)(iii) (explaining that “marital property” does not include property “excluded by valid agreement”).

121. Compare *id.* (providing that parties may agree to exclude property as non-marital), with COLO. REV. STAT. ANN. § 14-10-113(2)(d) (West 2005) (explaining that “marital property” may be excluded by valid agreement of the spouses), and N.H. REV. STAT. ANN. § 458:16-a(II)(k) (2007) (noting that property is subject to equitable distribution upon divorce unless the value of that property is “allocated by a valid prenuptial contract”), and TENN. CODE ANN. § 36-3-501 (2005) (providing that spouses may enter into binding prenuptial agreements regarding property owned by either party).

122. MD. CODE ANN., FAM. LAW § 8-204.

123. 384 Md. 537, 865 A.2d 563 (2005).

124. See *id.* at 553–69, 865 A.2d at 572–81. The *Cannon* court explained that a contesting party can attack a premarital agreement on the basis of “fraud, duress, coercion, mistake, undue influence, or a party’s incompetence.” *Id.* at 554, 865 A.2d at 572. The court added that parties to a premarital agreement have a “confidential relationship,” which requires each party to make a “frank, full, and truthful financial disclosure.” *Id.* at 570–71, 865 A.2d at 582–83.

125. *Id.* at 545, 547 n.3, 865 A.2d at 567, 568–69 n.3. The premarital agreement also included provisions that, *inter alia*, preserved personal property to each party according to title, mutually waived alimony if the Cannons divorced, and preserved Mr. Cannon’s right over the home. *Id.* at 548, 865 A.2d at 569.

met: “(1) I of the parties was domiciled in [Maryland] when the foreign proceeding was commenced; and (2) the court in the other jurisdiction lacked or did not exercise personal jurisdiction over the party domiciled in [Maryland] or jurisdiction over the property at issue.”<sup>126</sup> For example, in *Randolph v. Randolph*,<sup>127</sup> the wife filed for divorce against her husband in Maryland, requesting that the court determine the parties’ marital property and grant a monetary award.<sup>128</sup> The husband, who was domiciled in Virginia, obtained a divorce in Virginia while the Maryland divorce action was pending.<sup>129</sup> The Maryland circuit court found that the Virginia divorce “did not resolve any of the other issues between the parties” and granted a monetary award under Maryland statute.<sup>130</sup> The Court of Special Appeals held that the trial court had jurisdiction to make an award even in light of the Virginia divorce.<sup>131</sup> Thus, Maryland courts have the statutory ability to resolve subsequent issues that arise after a foreign court grants a divorce.<sup>132</sup>

### III. THE COURT’S REASONING

In *Aleem v. Aleem*, the Court of Appeals of Maryland affirmed the judgment of the Court of Special Appeals and held that, because the *talaq* that Irfan Aleem performed under Pakistani law was not entitled to comity, the court could categorize his pension as marital property subject to equitable distribution under Maryland law.<sup>133</sup> Writing for the unanimous court, Judge Cathell first drew from *Hilton v. Guyot*, noting that the United States is not obliged to grant comity to foreign law.<sup>134</sup> The court explained that because the Full Faith and Credit Clause of the United States Constitution is inapplicable to foreign judgments,<sup>135</sup> a state need not grant comity to a foreign judgment that

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126. See MD. CODE ANN., FAM. LAW § 8-212.

127. 67 Md. App. 577, 508 A.2d 996 (1986).

128. *Id.* at 579, 508 A.2d at 997.

129. *Id.* at 580, 508 A.2d at 997.

130. *Id.* The trial court granted a monetary award to the wife under § 8-205 of Maryland’s Family Law Article. *Id.*

131. *Id.* at 583–84, 508 A.2d at 999. The *Randolph* court remanded the case and directed the circuit court to first determine the value of the marital property at issue before “grant[ing a] monetary award as it then deems appropriate.” *Id.* at 587, 508 A.2d at 1001.

132. See *supra* note 126 and accompanying text.

133. See *Aleem v. Aleem*, 404 Md. 404, 424–26, 947 A.2d 489, 501–02 (2008).

134. *Id.* at 413, 947 A.2d at 495 (quoting *Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895)). The court highlighted the *Hilton* principle that the United States will not recognize a foreign judgment altering an individual’s marital status, “such as a decree . . . dissolving a marriage,” that is contrary to public policy. *Id.* (quoting *Hilton*, 159 U.S. at 167).

135. *Id.* at 415, 947 A.2d at 496 (quoting *Andes v. Versant Corp.*, 878 F.2d 147, 149 (4th Cir. 1989)).

conflicts with that state's public policy.<sup>136</sup> The court acknowledged that it relied on the doctrine of comity between states to support its position on comity between Maryland and foreign countries, adding that "[t]he doctrine . . . is the same in both instances."<sup>137</sup>

Next, the court observed that Maryland public policy requires the State to equitably distribute property that spouses acquire during marriage.<sup>138</sup> By contrast, courts applying Pakistani law do not equitably divide marital property unless the initial marriage contract provides for this division.<sup>139</sup> The *Aleem* court found that Pakistani law establishing title-based division of marital property clashes with Maryland law providing equitable distribution upon divorce.<sup>140</sup>

The court also examined *talaq* itself, a protocol available only to a husband unless the marriage contract extends this right to the wife.<sup>141</sup> Thus, the court held, *talaq* contradicts the Constitution of Maryland, which ensures equality of rights regardless of sex.<sup>142</sup> Because enforcing *talaq* would conflict with Maryland constitutional provisions, the court explained, *talaq* violates Maryland public policy.<sup>143</sup>

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136. *Id.* at 415–16, 947 A.2d at 496 (quoting *Jaffe v. Accredited Sur. & Cas. Co.*, 294 F.3d 584, 591 (4th Cir. 2002)). The court relied on precedent to support this point. *See, e.g., id.* at 419–20, 947 A.2d at 499 (“[C]ourts will nonetheless deny . . . those foreign judgments which are inconsistent with the public policies of the forum state.” (quoting *Telnikoff v. Matusевич*, 347 Md. 561, 574, 702 A.2d 230, 237 (1997))).

137. *Id.* at 418, 947 A.2d at 498. The court's proposition is curious because the two comity doctrines are not identical. Comity between states is governed by the Full Faith and Credit Clause, *see* U.S. CONST. art. IV, § 1, which the *Aleem* court itself explicitly noted is inapplicable to foreign judgments. *Id.* at 415, 947 A.2d at 496 (“The Full Faith and Credit Clause of Article IV § 1 of the Constitution of the United States does not apply to foreign judgments.” (quoting *Andes*, 878 F.2d at 149)). Indeed, “the public policy exception [is what] distinguishes the recognition of foreign judgments from the recognition of judgments rendered by other jurisdictions within the United States.” *Telnikoff*, 347 Md. at 577 n.13, 702 A.2d at 238 n.13; *see also supra* Part II.A.

138. *Aleem*, 404 Md. at 421, 947 A.2d at 499–500. The court drew from the uncodified preamble to Chapter 794 of the Acts of 1978, which states that “the property interests of the spouses should be adjusted fairly and equitably.” *Aleem v. Aleem*, 175 Md. App. 663, 683, 931 A.2d 1123, 1135 (2007) (emphasis removed) (quoting Act of May 29, 1978, ch. 794, 1978 Md. Laws 2304, 2305).

139. *Aleem*, 404 Md. at 422, 947 A.2d at 500.

140. *Id.* at 424, 947 A.2d at 502. Maryland's Family Law Article allows courts to consider any factor “necessary or appropriate . . . to arrive at a fair and equitable monetary award or transfer of an interest in property” upon divorce. MD. CODE ANN., FAM. LAW § 8-205(b)(11) (LexisNexis 2006).

141. *Aleem*, 404 Md. at 421–22, 947 A.2d at 500. The marriage contract in this case granted no such right to Farah. *Id.* at 422, 947 A.2d at 500. The court also observed that it appears a husband may use *talaq* without notifying his wife. *Id.*

142. *Id.* at 422, 947 A.2d at 500–01 (“Equality of rights under the law shall not be abridged or denied because of sex.” (quoting MD. CONST. Declaration of Rights, art. 46)).

143. *Id.* at 422–23, 947 A.2d at 500–01.



The *Aleem* court also sought to preserve Maryland public policy arising from due process rights, opining that *talaq*, as a general procedure, lacks due process for the wife.<sup>144</sup> The court found that *talaq* strips the wife of her due process rights when she files a divorce action and seeks her share of marital property because her husband can perform *talaq* at the embassy of a country operating under Islamic law before the wife can fully litigate her divorce action under Maryland law.<sup>145</sup> The court reasoned that this “deprivation of due process” also violates Maryland public policy.<sup>146</sup>

Thus, the *Aleem* court agreed with the Court of Special Appeals, declining to recognize Pakistani law that provides that, absent an agreement to the contrary, property is distributed via title upon divorce.<sup>147</sup> Reiterating that Maryland public policy requires fair and equitable division of marital property upon divorce and mandates sufficient due process, the *Aleem* court refused to grant comity to Irfan’s *talaq*.<sup>148</sup>

The *Aleem* court concluded its discussion by ruling that the Court of Special Appeals did not disregard “fundamental principles of international comity and conflicts of laws” by refusing to recognize the Pakistani divorce, or by finding that Pakistan lacked jurisdiction to dissolve the marriage because the parties resided in Maryland on diplomatic visas.<sup>149</sup>

#### IV. ANALYSIS

In *Aleem v. Aleem*, the Court of Appeals declined to grant comity to Irfan Aleem’s *talaq*, and entitled his wife to half of his pension under Maryland’s equitable distribution scheme.<sup>150</sup> In reaching this outcome, the court erred in its substantive comity discussion because it failed to establish that Pakistan’s property disposition scheme is repugnant to Maryland public policy.<sup>151</sup> Thus, in refusing to recognize Irfan’s *talaq* under its comity analysis, the *Aleem* court lowered the standard that Maryland courts must meet in order to deny comity to for-

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144. *Id.* at 423, 947 A.2d at 501.

145. *Id.* A husband can only perform *talaq* in Maryland, however, if he is a citizen of a country in which Islamic law has also been adopted as civil law. *Id.*

146. *Id.* The court promptly dismissed Irfan’s argument that Pakistan has a Council of Arbitration available to the wife, explaining that the procedure applies only if the parties wish to reconcile, which was not the case here. *Id.*

147. *Id.* at 425, 947 A.2d at 502.

148. *Id.* at 425–26, 947 A.2d at 502.

149. *See id.* at 408, 426, 947 A.2d at 491, 502.

150. *See id.* at 424–25, 947 A.2d at 501–02.

151. *See infra* Part IV.A.

eign judgments.<sup>152</sup> Instead of engaging in its flawed comity discussion, the court could have reached the same result under the State's jurisdictional authority to equitably divide marital property upon divorce.<sup>153</sup>

A. *The Aleem Court Failed to Establish that Pakistan's Property Division Scheme Is Repugnant to Maryland Public Policy*

In granting Farah a marital interest in Irfan's pension, the *Aleem* court erred in its substantive analysis to deny comity to Irfan's *talaq*. The court failed to show that Pakistan's title-based property scheme was repugnant to Maryland public policy,<sup>154</sup> the State's standard to deny comity to a foreign judgment. Additionally, the court erred when criticizing Irfan's *talaq* on the grounds of gender equality because *talaq* itself was not at issue and, more importantly, *talaq* does not discriminate between the sexes vis-à-vis property disposition.<sup>155</sup>

1. *Pakistan's Title-Based Property Disposition Scheme Is Not Repugnant to Maryland Public Policy*

In analyzing the effect of *talaq* on property disposition upon divorce, the *Aleem* court failed to reach the high bar Maryland has set for refusal to recognize a foreign judgment. To overcome the presumption of granting comity to a foreign judgment, that judgment must be repugnant to Maryland public policy.<sup>156</sup> Pakistan's default title-based property distribution scheme, an approach that Maryland law explicitly permits couples to achieve by contract, does not meet this standard.

In addition to case law, the "repugnant" factor is found in Maryland's Uniform Foreign Money-Judgments Recognition Act.<sup>157</sup> Although the Act excludes matrimonial or family law judgments from

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152. See *infra* Part IV.B.

153. See *infra* Part IV.C.

154. See *infra* Part IV.A.1.

155. See *infra* Part IV.A.2.

156. See *infra* notes 157–165 and accompanying text; see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 117(c) (1971) (explaining that foreign judgments will usually be enforced "except in situations where the original claim is repugnant to fundamental notions of what is decent and just in the State where enforcement is sought").

157. See Uniform Foreign Money-Judgments Recognition Act, MD. CODE ANN., CTS. & JUD. PROC. § 10-704(b)(2) (LexisNexis 2006) (explaining that a court may decline to recognize a foreign judgment if, *inter alia*, "[t]he cause of action on which the judgment is based is repugnant to the public policy of the State" (emphasis added)).

the umbrella of foreign judgments,<sup>158</sup> Maryland courts nevertheless have applied principles from the Act to foreign family law judgments. In *Wolff v. Wolff*,<sup>159</sup> the Court of Special Appeals found that because the Act was meant to “promote principles of international comity,”<sup>160</sup> it did not prevent the Maryland circuit court from recognizing the alimony provisions of an English divorce decree.<sup>161</sup> Similarly, in *Malik I*,<sup>162</sup> the Court of Special Appeals directed the circuit court to apply the repugnancy factor in determining whether to extend comity to Pakistan’s custody order.<sup>163</sup> The circuit court recognized the Pakistani judgment,<sup>164</sup> and the Court of Special Appeals in *Malik II* affirmed on the grounds that the custody order was not “‘repugnant to Maryland public policy.’”<sup>165</sup>

The *Aleem* court would not have contravened the public policy of Maryland, or the rest of the nation, had it recognized Pakistan’s title-based property division scheme triggered by Irfan’s *talaq*. In *Telnikoff v. Matusevitch*,<sup>166</sup> the Court of Appeals found that granting comity to an English libel judgment under the Uniform Foreign Money-Judgments Act would be “repugnant” only because the defamation laws of Maryland and England are “totally different . . . in virtually every significant respect.”<sup>167</sup> In this case, however, the laws of Maryland and Pakistan on property disposition are not so dissimilar as to render Pakistani law repugnant to Maryland public policy. Under Pakistani law, a couple may avoid the “default” title-based rule by contracting

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158. *Id.* § 10-701(b) (defining “foreign judgment” as “any judgment of a foreign state granting or denying recovery of a sum of money” and excluding “judgment[s] for taxes, fine, or penalty, or a judgment for support in matrimonial or family matters”).

159. 40 Md. App. 168, 389 A.2d 413 (1978), *aff’d*, 285 Md. 185, 401 A.2d 479 (1979).

160. *Id.* at 175, 389 A.2d at 417. The *Wolff* court reasoned that because the Act did not preclude a court from recognizing a foreign judgment in situations not enumerated by the statute, *see id.* at 171–72, 389 A.2d at 415–16, the legislature intended for the Act to be read expansively, *id.* at 172, 389 A.2d at 416.

161. *Id.* at 171, 389 A.2d at 415.

162. 99 Md. App. 521, 638 A.2d 1184 (1994).

163. *Id.* at 534–35, 638 A.2d at 1191.

164. *Hosain v. Malik (Malik II)*, 108 Md. App. 284, 293, 671 A.2d 988, 992 (1996).

165. *Id.* at 316, 671 A.2d at 1003 (quoting *Malik I*, 99 Md. App. at 534, 638 A.2d at 1191).

166. 347 Md. 561, 702 A.2d 230 (1997).

167. *Id.* at 572–73, 598, 702 A.2d at 236, 248. The court noted that these dissimilarities stemmed from “historic and fundamental public policy differences concerning freedom of the press and speech.” *Id.* at 598, 702 A.2d at 248. Troubled, the court pointed out that English law did not require Telnikoff to prove that Matusevitch’s allegedly libelous letter contained a false statement of fact, which Maryland law requires. *Id.* at 599, 702 A.2d at 249.

around it,<sup>168</sup> even though Irfan and Farah chose not to do so.<sup>169</sup> Similarly, under Maryland law, a couple may contract around Maryland's "default" equitable distribution rule by entering into a valid agreement that excludes property as marital property subject to equitable distribution.<sup>170</sup> The fact that a Maryland couple may achieve the same title-based property result by contract as a Pakistani couple achieves by "default" contravenes the argument that the Pakistani law is repugnant to State public policy.<sup>171</sup>

Moreover, in *Malik II*,<sup>172</sup> the Court of Special Appeals found that Pakistani family law, even when assuming an opposing stance from Maryland law, does not justify the denial of comity to Pakistani legal schemes.<sup>173</sup> In upholding a child custody order governed by Pakistan's parental preference doctrine,<sup>174</sup> the *Malik II* court first explained that not only does Maryland lack a parental preference, but even when the State once applied such a preference, Pakistan's current child custody doctrine "[c]ertainly . . . is not a preference rule applied in Pakistan the same way Maryland courts once applied the maternal preference."<sup>175</sup> Despite this disparity between child custody schemes, the court refused to hold Pakistan's child custody doctrine

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168. *Aleem v. Aleem*, 404 Md. 404, 422, 947 A.2d 489, 500 (2008) (explaining that under Pakistani law, "there is no equitable division of marital property . . . unless the marital 'contract' so provides" (emphasis added)).

169. *See id.* at 411, 947 A.2d at 494.

170. MD. CODE ANN., FAM. LAW §§ 8-201(e)(3)(iii), 8-205(b)(11) (LexisNexis 2006). While a court may determine "marital property" and then transfer ownership of that property to the other spouse to arrive at a "fair and equitable" award upon divorce, *see id.* § 8-205(b)(11), marital property does not include property "excluded by a valid agreement" between spouses, *id.* § 8-201(e)(3)(iii).

171. *Cf. Kramer v. Bally's Park Place*, 311 Md. 387, 389-90, 393, 535 A.2d 466, 467, 469 (1988) (finding that Maryland's public policy against gambling debts was insufficient to preclude enforcement of a New Jersey gambling contract and explaining that "the public policy [of another state] must be very strong and not merely a situation in which Maryland law is different from the law of another jurisdiction"); *Bethlehem Steel Corp. v. G.C. Zarnas & Co.*, 304 Md. 183, 187, 190-91, 498 A.2d 605, 607-09 (1985) (finding that Maryland public policy prevented the court from enforcing an indemnity provision in a Pennsylvania contract because Maryland statute expressly voided the type of contract at issue, while Pennsylvania "tolerated" such provisions under its common law).

172. 108 Md. App. 284, 671 A.2d 988 (1996).

173. *See id.* at 316-17, 671 A.2d at 1003-04 (explaining that although Pakistan strongly prefers paternal custody and Maryland lacks a parental preference, the Pakistani doctrine governing child custody was not "repugnant" to State public policy); *see also infra* notes 175-176 and accompanying text.

174. *See supra* note 72 and accompanying text.

175. *Id.* at 317-18 & n.9, 671 A.2d at 1004-05 & n.9 (citation and quotation marks omitted).

repugnant to Maryland public policy.<sup>176</sup> It is curious that the *Malik II* court upheld Pakistan's child custody doctrine, which is historically and presently contrary to Maryland law, while the *Aleem* court declined to recognize Pakistan's title-based scheme, the result of which a couple may accomplish under present Maryland law.

While the *Telnikoff* court warned that "recognition of English defamation judgments could well lead to a wholesale circumvention of fundamental public policy in Maryland and the rest of the country,"<sup>177</sup> such a concern is not raised by this case. If the *Aleem* court had granted comity to Irfan's *talaq* and found that Pakistani law governed distribution of the parties' marital assets,<sup>178</sup> then his pension would not have been marital property subject to equitable distribution.<sup>179</sup> Instead, under Pakistani law, Irfan's pension would have followed title so that Farah could not claim it.<sup>180</sup> This title-based result would not circumvent Maryland public policy, however, because Maryland explicitly authorizes title-based disposition of property upon divorce.<sup>181</sup>

Maryland would not have been alone in refusing to invoke the public policy exception when determining whether to grant comity to a Pakistani divorce where property would follow title. For example, in *Chaudry v. Chaudry*,<sup>182</sup> the New Jersey Superior Court held that public policy would not preclude the court from granting comity to the husband's *talaq*,<sup>183</sup> and that the wife was not entitled to equitable distribution of property.<sup>184</sup> The court found that the Pakistani marriage contract had no provision that gave the wife an interest in her hus-

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176. *Id.* at 317, 671 A.2d at 1004 ("This, however, does not mean that [Pakistan's child custody doctrine] is therefore 'repugnant to Maryland public policy.'").

177. *Telnikoff v. Matusевич*, 347 Md. 561, 601, 702 A.2d 230, 250 (1997). The court underscored that Maryland public policy strongly encourages the unfettered expression of ideas and opinions. *Id.* at 602, 702 A.2d at 251 (quoting *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988)).

178. The *Aleem* court would have been statutorily entitled to apply Maryland law, however. See *infra* Part IV.C.

179. See *Aleem v. Aleem*, 404 Md. 404, 411, 947 A.2d 489, 494 (2008).

180. See *id.* ("[U]pon the dissolution of the marriage, the property follows the possessor of its title.").

181. See MD. CODE ANN., FAM. LAW §§ 8-201(e)(3)(iii), 8-205(b)(11) (LexisNexis 2006) (providing that "marital property," which is subject to equitable division, does not include property "excluded by valid agreement"); *Cannon v. Cannon*, 384 Md. 537, 561, 865 A.2d 563, 577 (2005) (explaining that the 1978 Marital Property Act of Maryland "allow[s] parties to agree 'what property is not to be considered marital property or family use personal property' and thus 'control the distribution of property upon divorce'" (quoting *Frey v. Frey*, 298 Md. 552, 562, 471 A.2d 705, 710 (1984))); see also *supra* Part II.C.

182. 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

183. See *id.* at 1005. Hanif performed *talaq* at a Pakistani consulate in New York. *Id.* at 1004.

184. *Id.* at 1006.

band's property.<sup>185</sup> Additionally, aside from Maryland, many jurisdictions allow parties to enter into valid agreements to prevent a court from dividing property upon divorce.<sup>186</sup> Thus, Pakistan's title-based property disposition scheme embedded in Irfan's *talaq* is not repugnant to Maryland public policy.<sup>187</sup>

## 2. *The Aleem Court's Criticism of Talaq Was Improperly Broad*

In denying comity to Irfan's *talaq*, the *Aleem* court inappropriately broadened its analysis and criticized Irfan's *talaq* as a general protocol rather than properly focusing on the *effect* of *talaq* on property disposition between spouses. Irfan asked the Court of Appeals to determine whether the lower court should have granted comity to his *talaq* when Pakistan and Maryland use "different default rules" for property disposition upon divorce.<sup>188</sup> The *Aleem* court reiterated that the central issue in this case was whether Irfan's pension plan was "marital property" subject to equitable distribution, thus entitling Farah to half of it.<sup>189</sup> Instead of focusing on Pakistan's "default rules" for property disposition, however, the court also examined the much broader institution of *talaq* itself.<sup>190</sup> The court explained that Irfan's *talaq* contravened Maryland public policy because it violated state constitutional provisions<sup>191</sup> and deprived the wife of due process.<sup>192</sup>

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185. *Id.* The court reasoned enforcing the contract under Pakistani law would not violate public policy, since the Chaudrys married and negotiated the contract in Pakistan. *Id.*

186. See JOHN DEWITT GREGORY ET AL., PROPERTY DIVISION IN DIVORCE PROCEEDINGS: A FIFTY STATE GUIDE § 13.01 (2003) ("In the overwhelming majority of states, both antenuptial and separation agreements are enforceable, whether they provide for spousal support after divorce or for settlement of the spouses' property rights or both."); see, e.g., COLO. REV. STAT. ANN. § 14-10-113(2)(d) (West 2005) (providing that spouses may exclude "marital property" by valid agreement); N.H. REV. STAT. ANN. § 458:16-a(II)(k) (2007) (noting that property is subject to equitable distribution upon divorce unless the value of that property is "allocated by a valid prenuptial contract"); TENN. CODE ANN. § 36-3-501 (West 2005) (providing that parties may enter into binding prenuptial agreements concerning property owned by either spouse).

187. Indeed, the *Aleem* court never expressly classified Irfan's *talaq* as "repugnant" in its opinion. See *Aleem v. Aleem*, 404 Md. 404, 404–26, 947 A.2d 489, 489–502 (2008). Moreover, the circuit court explained that it "[did] not find anything suspect about [the Aleems' marital] contract," but that nothing in the contract prevented dividing the property at issue. *Aleem v. Aleem*, 175 Md. App. 663, 681, 931 A.2d 1123, 1134 (2007).

188. *Aleem*, 404 Md. at 408, 947 A.2d at 491 (internal quotation marks omitted).

189. *Id.* at 411–12, 947 A.2d at 494. *But see id.* at 408 n.13, 947 A.2d at 491 n.13 ("These questions raise broader issues than questions limited to the Pakistani marriage contract [in this case].").

190. See *id.* at 421–23, 947 A.2d at 500–01.

191. *Id.* at 422–23, 947 A.2d at 500–01 (explaining that *talaq* violates the Maryland Declaration of Rights guarantee of equality between the sexes because, under Islamic law, only a husband may utilize *talaq* against his wife unless he gives her permission to do so in the marriage contract).

The court, however, should not have analyzed Pakistani law so broadly because neither *talaq* as a procedure nor the validity of Irfan's particular *talaq* was at issue. The Court of Special Appeals pointed out that it was unnecessary to decide whether Maryland would recognize *talaq* as a divorce, because this case concerned only whether the Pakistani divorce served "as a bar to the equitable division of [Irfan's] pension."<sup>193</sup> Likewise, the Court of Special Appeals observed that its evaluation of Pakistani law applied only to enforcing Irfan's *talaq* on property rights under Maryland law, not whether a court would recognize Irfan's *talaq* as a divorce.<sup>194</sup> Thus, the *Aleem* court's evaluation of *talaq* was unnecessarily broad and has no bearing on whether the court should have granted comity to Irfan's *talaq*.

Even if it had been appropriate to analyze *talaq* itself, the court's criticism of this protocol under the lens of gender equality undermines its discussion on property disposition: *Talaq* does not discriminate between the sexes when it comes to division of property upon divorce.<sup>195</sup> Although a Pakistani wife cannot divorce her husband unless he gives her permission to do so in the marriage contract—a principle that undisputedly violates Maryland public policy—property will follow title regardless of whether the owner is the husband or the wife, as the *Aleem* court itself explained.<sup>196</sup> Because title, not gender, controls upon divorce, the effect of *talaq* on property disposition is not repugnant to Maryland's public policy of gender equality.<sup>197</sup>

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192. *Id.* at 423, 947 A.2d at 501 (noting that *talaq* violates a wife's due process rights because she would never be able to succeed on a divorce action when her husband could simply perform *talaq* before she could fully litigate her claim).

193. *Aleem v. Aleem*, 175 Md. App. 663, 678, 931 A.2d 1123, 1132 (2007). The court explained that this inquiry was unnecessary because neither Irfan nor Farah objected to the dissolution of their marriage. *Id.* at 678 & n.8, 931 A.2d at 1132 & n.8.

194. *Id.* at 678 & n.8, 931 A.2d at 1132 & n.8; *see also supra* note 193 and accompanying text.

195. *See Aleem*, 404 Md. at 411, 947 A.2d at 494 (explaining that property follows title upon divorce to the person who owns that property, regardless of gender).

196. *Id.*

197. Assuming, *arguendo*, that Pakistan's gender-neutral title-based property rule has a disproportionate impact on women, a court must nevertheless find that there exists invidious intent behind a law before deeming it discriminatory. Haegyung Cho, *Incarcerated Women and Abuse: The Crime Connection and the Lack of Treatment in Correctional Facilities*, 14 S. CAL. REV. L. & WOMEN'S STUD. 137, 152 (2004) (explaining that a party challenging a facially neutral gender law that has a disparate impact on one gender must prove that the law was motivated by the intent to discriminate). As a historical matter, the rule that neither spouse in a Muslim marriage acquires an interest in the other's property was the result of a *Quaranic* reform to give women the right to own, manage, and possess her property in event of divorce. ESPOSITO, *supra* note 96, at 23.

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B. *The Aleem Court Lowered the Threshold that Maryland Courts Must Pass to Deny Comity to Foreign Judgments*

In rendering its decision, the *Aleem* court made it easier for a Maryland court to deny comity to a foreign judgment in the future. Although the court properly looked to State public policy when analyzing Pakistan's property division scheme, the court failed to use the appropriate standard: A foreign judgment must be repugnant to public policy in order for a court to deny comity to that judgment.<sup>198</sup> Regarding property disposition, Irfan's *talaq* is not repugnant to Maryland public policy.<sup>199</sup> Nevertheless, the court denied comity to his *talaq* primarily because of its disagreement with Pakistan's title-based law.<sup>200</sup>

Post-*Aleem*, Maryland courts will find it easier to overcome the presumption that foreign judgments are entitled to comity<sup>201</sup> on the basis of subjective and even results-based considerations. In this case, the *Aleem* court appeared driven to rule in favor of the unquestionably sympathetic wife, Farah, even if it had to divert from the "repugnant" standard. Few would argue that after spending twenty years of her married life in Maryland, Farah was not entitled to her share of marital property under Maryland law.<sup>202</sup> Future cases, however, may not appear so dramatic. Maryland courts now enjoy a lower, more subjective threshold to cross when denying comity to foreign judgments in *all* cases, which may tempt courts to color their decisions with shades of arbitrariness in order to reach a results-based decision.<sup>203</sup> The possibility of this temptation is not unrealistic, as most American judges are already unfamiliar with foreign law.<sup>204</sup> A results-oriented trend in

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198. See *supra* notes 157–165 and accompanying text.

199. See *supra* Part IV.A.

200. See *Aleem*, 404 Md. at 425, 947 A.2d at 502 (explaining the court "shall afford no comity to those Pakistani statutes" providing that property follows title upon divorce). The court also denied comity to Irfan's *talaq* on due process grounds, but noted that this was only an "additional reason." *Id.* at 425–26, 947 A.2d at 502.

201. See, e.g., *Hilton v. Guyot*, 159 U.S. 113, 227 (1895) (explaining that, under the doctrine of comity, foreign judgments serve as prima facie evidence of the merit of the plaintiff's claim).

202. See *Aleem v. Aleem*, 175 Md. App. 663, 667, 931 A.2d 1123, 1126 (2007) (noting that while Irfan worked at the World Bank, Farah took care of him, their children, and the household).

203. Cf. Thomas L. Jipping, *Winners and Losers Versus How You Play the Game: Should Ideology Drive Judicial Selection?*, 15 REGENT U. L. REV. 1, 8–9 (2002) (explaining that a results-oriented approach vis-à-vis judicial selection invites several dangers, including "increas[ing] potential for and appearance of biased decision-making and thus erod[ing] public trust in the fundamental fairness of our justice system" (alterations in original)).

204. Curtis A. Bradley, *The Costs of International Human Rights Litigation*, 2 CHI. J. INT'L L. 457, 467 (2001) (noting that the judiciary's unfamiliarity with international law is coupled



comity cases would be particularly alarming because it would allow the Maryland judiciary to deny comity to those foreign judgments that failed to seriously contravene notions of fundamental justice in the State.<sup>205</sup>

The denial of comity to foreign judgments is a drastic remedy because it cuts against the notion that comity is grounded in “mutuality and reciprocity.”<sup>206</sup> Because a nation grants comity to a foreign judgment by its own volition, rather than by mandate,<sup>207</sup> reciprocity is a significant consideration that nations take into account when considering whether to recognize a foreign judgment.<sup>208</sup> The lower *Aleem* threshold opens the door for enabling foreign nations to deny comity to Maryland judgments, a possibility that the Maryland Uniform Foreign-Money Judgments Recognition Act—codifying the “repugnant” factor—operated to prevent.<sup>209</sup> From the days of *Hilton*, courts have understood comity as “due regard . . . to international duty and conve-

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with the difficulty of directly researching international law questions); Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VA. J. INT'L L. 431, 451 (2004) (explaining that “[b]ecause judges are often unfamiliar with foreign contract law, recourse to ‘general rules’ of contract law inevitably reflects an American-law bias”); David F. Forte, *Islamic Law in American Courts*, 7 SUFFOLK TRANSNAT'L L. REV. 1, 31–33 (1983) (explaining that American judges are “innate[ly] cautio[us] . . . in articulating foreign law” and that they “rely heavily on expert witnesses” in cases involving Islamic legalities). Notably, the Court of Special Appeals relied solely on Irfan’s expert witnesses to inform its opinion of Pakistan’s title-based property disposition scheme. See *Aleem*, 175 Md. App. at 669–72, 931 A.2d at 1127–29.

205. Jeremy Maltby, *Juggling Comity and Self-Government: The Enforcement of Foreign Libel Judgments in U.S. Courts*, 94 COLUM. L. REV. 1978, 1990 (1994) (explaining that United States courts “reserve [the] drastic remedy [of refusing to enforce foreign judgments] for those few cases in which a foreign judgment truly threatens notions of fundamental justice in the enforcing state”).

206. *Hilton*, 159 U.S. at 228 (observing that international law is based on the concepts of “mutuality and reciprocity”).

207. See *id.* at 165–66 (stressing that comity is a “‘voluntary act of the nation by which it is offered’” and promotes a “‘friendly intercourse’” between sovereignties (quoting *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 589 (1839))).

208. *Wolff v. Wolff*, 40 Md. App. 168, 175, 389 A.2d 413, 417 (1978).

209. See Uniform Foreign Money-Judgments Recognition Act, MD. CODE ANN., CTS. & JUD. PROC. § 10-704(b)(2) (LexisNexis 2006) (explaining that a foreign judgment “need not be recognized” where, *inter alia*, the judgment is “repugnant to the public policy of the State”); *Telnikoff v. Matusevitch*, 347 Md. 561, 607, 702 A.2d 230, 253 (1997) (Chasanow, J., dissenting) (stressing that the Maryland Uniform Foreign-Money Judgments Recognition Act “gives a state discretion to subordinate its own public policy in favor of uniformity and the importance of comity among nations”); *Wolff*, 40 Md. App. at 175, 389 A.2d at 417 (noting that because reciprocity is an important consideration in determining whether courts of one nation will recognize the judgments of another nation, “the certainty of recognition of those judgments provided for by the [Maryland Uniform Foreign-Money Judgments Recognition] Act will hopefully facilitate recognition of similar United States’ judgments abroad”).

nience,”<sup>210</sup> and the *Aleem* court’s lower standard only dilutes Maryland’s interest in comity and international good will.<sup>211</sup> It is curious that the court would weaken this important interest in an analysis that rejected the Pakistani divorce doctrine unnecessarily, as *talaq* as a protocol was not even before the court.<sup>212</sup>

*Aleem*’s lowered standard is especially troublesome because it replaces a concrete standard with an ambiguous one.<sup>213</sup> Because “repugnant” no longer appears to be the standard a court must follow to deny a foreign judgment,<sup>214</sup> the Maryland judiciary may follow the *Aleem* court’s generally articulated “substantial conflict” rationale.<sup>215</sup> This standard, however, raises at least two potential concerns: (1) courts may be faced with foreign judgments that Maryland law does not already speak to, foreclosing the opportunity for conflict; and (2) “substantial” is a broad, undefined standard in itself.<sup>216</sup> The undefined *Aleem* standard will exacerbate the frustration that state courts face in foreign law cases. For example, when interpreting Muslim contracts, United States courts already tend to apply domestic principles unevenly because the vast interpretation of Muslim legal concepts clashes against the goal of Western judiciary to inject predictability in the law.<sup>217</sup> Although “repugnant” is not a bright-line term in itself, it

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210. *Hilton*, 159 U.S. at 163–64.

211. *See Telnikoff*, 347 Md. at 616, 702 A.2d at 257 (emphasizing Maryland’s interest in “international good will, comity, and res judicata fostered by recognition of foreign judgments”); Forte, *supra* note 204, at 3 (“[D]omestic courts apply principles of comity and recognize foreign law as a matter of custom.”).

212. *See supra* Part IV.A.2.

213. *Cf.* Mathieu Blackston, *California’s Unfair Competition Law—Making Sure the Avenger Is Not Guilty of the Greater Crime*, 41 SAN DIEGO L. REV. 1833, 1865–66 & n.157 (2004) (noting that undefined standards may lead to unpredictable decisions when determining “fair” business conduct); Erin Madden, *Seeing the Science for the Trees: Employing Daubert Standards to Assess the Adequacy of National Forest Management Under the National Forest Management Act*, 18 J. ENVTL. L. & LITIG. 321, 347 (2003) (explaining that governmental plans grounded on undefined standards are “arbitrary and capricious”).

214. *See supra* Part IV.A.1.

215. *See Aleem v. Aleem*, 404 Md. 404, 425, 947 A.2d 489, 502 (2008) (explaining that the “default” rules of property disposition upon divorce in Pakistan and Maryland conflicted to such a degree that the court could not grant comity to Irfan’s *talaq* without violating Maryland public policy).

216. Marianne B. Culhane & Michaela M. White, *Catching Can-Pay Debtors: Is the Means Test the Only Way?*, 13 AM. BANKR. INST. L. REV. 665, 667 (2005) (criticizing the “substantial abuse” standard in bankruptcy law as “inherently vague,” leading to “disparate [judicial] interpretation”); Mark S. Pincus, *Circuit Split or a Matter of Semantics? The Supreme Court’s Upcoming Decision on Rule 10b-5 “Scheme Liability” and Its Implications for Tax Shelter Fraud Litigation*, 76 FORDHAM L. REV. 423, 445 (2007) (criticizing the “substantial participation” test as vague and overly broad).

217. *See, e.g.,* Emily L. Thompson & F. Soniya Yunus, *Choice of Laws or Choice of Culture: How Western Nations Treat the Islamic Marriage Contract in Domestic Courts*, 25 WIS. INT’L L.J.

alleviates the danger of patchy legal application in comity cases because, as an initial matter, it establishes a high threshold for courts to meet.<sup>218</sup>

C. *By Grounding Its Decision in a Jurisdictional Analysis, the Aleem Court Could Have Reached the Same Result Without Discussing Comity*

If the *Aleem* court had focused solely on whether to apply the property laws of Maryland or Pakistan when determining Farah's right to Irfan's pension, it could have reached the same outcome without engaging in a troublesome comity analysis.<sup>219</sup> Regardless of whether Maryland would recognize Irfan's *talaq* as a divorce, which was not at issue,<sup>220</sup> Maryland had the jurisdictional authority to classify Irfan's pension as "marital property" subject to equitable distribution. A Maryland court may exercise its authority even after a foreign court grants an annulment or divorce if the following factors are satisfied: (1) one of the parties was domiciled in Maryland when the foreign action commenced; and (2) the court in the foreign jurisdiction lacked or did not exercise either personal jurisdiction over the Maryland-domiciled party or jurisdiction over the property at issue.<sup>221</sup> In this case, both conditions were met.

The Maryland circuit court met the first prong because Irfan and Farah were domiciled in the State. A "domicile" is the place in which "a person has been physically present and that the person regards as home."<sup>222</sup> When Irfan performed *talaq*, he and Farah were domiciliaries of Maryland because they had resided in the State for over twenty

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361, 369–70 (2007) (explaining that because Muslim communities interpret Islamic law quite differently, opinions on each point of law can vary widely, causing constant struggles for United States courts as they confront the dichotomy between such diversity in Muslim legal principles and the desire of the Western judiciary to engage in consistent decision-making).

218. See *Telnikoff v. Matusevitch*, 347 Md. 561, 612, 702 A.2d 230, 255 (1997) (Chasnow, J., dissenting) (explaining that the "repugnant" comity standard "'is high, and infrequently met'" (quoting *Ackermann v. Levine*, 788 F.2d 830, 841 (2d Cir. 1986))).

219. Indeed, courts rarely decline comity on the grounds of public policy; instead, judges look at a choice-of-laws analysis based on the recognizing jurisdiction's interest in the parties or the transaction itself. Arthur T. von Mehren & Donald T. Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601, 1670 (1968).

220. See *Aleem v. Aleem*, 175 Md. App. 663, 678, 931 A.2d 1123, 1132 (2007).

221. MD. CODE ANN., FAM. LAW § 8-212 (LexisNexis 2006); see also *supra* Part II.C.

222. BLACK'S LAW DICTIONARY 523 (8th ed. 2004).

years.<sup>223</sup> The lower court added that Farah was domiciled in the State because she was a permanent resident of Maryland.<sup>224</sup>

The trial court also satisfied the second statutory condition because Pakistan did not have personal jurisdiction over Farah or over Irfan's pension plan. Farah's response to the chairman of the arbitration council in Pakistan, in which she objected to jurisdiction, was insufficient to grant Pakistan personal jurisdiction over Farah.<sup>225</sup> Moreover, when Irfan filed an answer to Farah's complaint seeking a limited divorce in a Maryland circuit court, he did not raise any jurisdictional defenses relating to his person or property.<sup>226</sup>

Indeed, as the Court of Special Appeals found, Maryland had a nexus with the Aleems' marriage sufficient to require an equitable distribution of marital property.<sup>227</sup> The Aleems resided in Maryland for over twenty years, their children were born and raised in the State, and Farah had become a permanent resident of Maryland.<sup>228</sup> This case is distinguishable from *Chaudry v. Chaudry*, in which the New Jersey Superior Court upheld a Pakistani *talaq* that foreclosed equitable distribution of property to the wife because there was no "adequate nexus of the marriage to [New Jersey]."<sup>229</sup> In *Chaudry*, the wife resided in New Jersey for only two years during her thirteen-year marriage before returning permanently to Pakistan without her husband.<sup>230</sup>

Because Maryland satisfied both statutory conditions and Irfan's pension was entirely marital property, the Maryland trial court had the authority to subject Irfan's pension to equitable distribution.<sup>231</sup> The Court of Special Appeals and the Court of Appeals affirmed this

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223. *Aleem v. Aleem*, 404 Md. 404, 411, 947 A.2d 489, 494 (2008).

224. *Aleem*, 175 Md. App. at 678 n.7, 931 A.2d at 1132 n.7.

225. *Id.* at 676–77, 931 A.2d at 1131 (finding that Farah's "courteously phrased objection to jurisdiction, in the nature of a special appearance," before the arbitration council was not equivalent to a general appearance that would have allowed Pakistan to take personal jurisdiction over her).

226. *Id.* at 667, 931 A.2d at 1126.

227. *Id.* at 676, 931 A.2d at 1131.

228. *Id.*

229. *Chaudry v. Chaudry*, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978).

230. *Id.* at 1004.

231. *Aleem*, 175 Md. App. at 671 n.5, 931 A.2d at 1128 n.5 (determining that "the marital share of [Irfan's] pension was 100%" since Irfan worked at the World Bank during the marriage). See MD. CODE ANN., FAM. LAW § 8-212 (LexisNexis 2006) (explaining that if both conditions are met, a Maryland court may "exercise the powers under this subtitle"); *id.* § 8-205(b) (providing that courts may consider a variety of factors, such as the monetary and nonmonetary contributions of each party, when determining an equitable monetary award or transferring property between spouses); see also *supra* Part II.C.

point.<sup>232</sup> As the lower court explained, if a sister state had ruled that Irfan did not have to equitably divide his pension, Maryland would not have to grant full faith and credit to that aspect of the state's judgment.<sup>233</sup> Because "a law of a foreign country that [forecloses equitable distribution of property] does not require enforcement by comity,"<sup>234</sup> Maryland could have easily declined to enforce that aspect of Irfan's *talaq* that mandated distribution under Pakistan's title-based property scheme and applied Maryland law instead. Even if the *Aleem* court had recognized the Pakistani divorce, the court still had the authority to equitably divide Irfan's pension under Maryland law, just as the trial court in *Randolph v. Randolph*<sup>235</sup> granted the wife a monetary award under Maryland law after Virginia granted a divorce.<sup>236</sup> Thus, the *Aleem* court could have avoided its flawed comity discussion by grounding its decision to grant Farah half of Irfan's pension based on its own well-settled law.

## V. CONCLUSION

In *Aleem v. Aleem*, the Maryland Court of Appeals denied comity to Irfan's *talaq* and affirmed the lower court's holding that his wife was entitled to an equitable distribution of his pension under Maryland law.<sup>237</sup> In awarding Irfan's wife a marital interest in his pension under a comity analysis, the court erred because it did not demonstrate that Pakistan's property division scheme was repugnant to State public policy.<sup>238</sup> In declining to grant comity to Irfan's *talaq* based on the element of property disposition upon divorce, the court troublingly lowered the bar that future Maryland courts must reach in order to deny comity to foreign judgments.<sup>239</sup> *Aleem*'s relaxed standard creates the risk of a results-oriented trend in comity cases and allows the Maryland judiciary to easily deny recognition to foreign judgments, effectively jeopardizing the State's own judgments from being afforded comity by other nations.<sup>240</sup> If the court had relied on Maryland's

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232. See *Aleem v. Aleem*, 404 Md. 404, 426, 947 A.2d 489, 502 (2008); *Aleem*, 175 Md. App. at 676, 931 A.2d at 1131.

233. *Aleem*, 175 Md. App. at 678–79, 931 A.2d at 1132–33.

234. *Id.* at 679, 931 A.2d at 1133 (citing J.M.H., Annotation, *Conclusiveness as to Merits of Judgment of Courts of Foreign Country*, 46 A.L.R. 439, 440–41 (1927)).

235. 67 Md. App. 577, 508 A.2d 996 (1986).

236. *Id.* at 584, 508 A.2d at 999

237. *Aleem*, 404 Md. at 424–26, 947 A.2d at 501–02.

238. See *supra* Part IV.A.

239. See *supra* Part IV.B.

240. See *supra* Part IV.B.

jurisdictional authority to equitably divide marital property upon divorce, the court could have reached the same result while avoiding a defective comity analysis.<sup>241</sup>

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241. *See supra* Part IV.C.