CONFLICT OF LAWS
2000
CASES AND MATERIALS
Professor Janet Walker
## Introduction

Beals v Saldanha ................................................................. 1

### 1. Taking Jurisdiction

**(a) Presence** ................................................................. 4

(i) Individuals ............................................................. 4

Maharanee of Baroda v Wildenstein .................................... 5

Burhnam v Superior Court ............................................... 8

(ii) Corporations ............................................................ 13

Adams v Cape Industries plc ............................................. 13

UK Companies Act 1985, s. 694A ......................................... 15

SDI Simulation Group Inc. v Chameleon Technologies Inc. .... 15

Tortel Communications Inc. v Suntel, Inc. (Assets) ............... 18

(iii) Alternatives to Presence (Domicile/Residence) ............... 20

Brussels Convention - Articles 2-4 .................................. 20

**(b) Submission** .............................................................. 21

(i) Agreement .............................................................. 21

Mackender v Feldia AG .................................................... 22

Underwriters at Lloyds' Mauran ........................................ 27

Brussels Convention - Article 17 .................................... 28

(ii) Attornment ............................................................ 28

Gourmet Resources International Inc. (Trustee of) v. Paramount Capital Corp. .................................................. 29

Roglass Consultants v Kennedy .......................................... 34

Dovennuehle v Rocca Group ............................................. 35

Brussels Convention - Articles 18, 20 ............................... 37

**(c) Real and Substanceal Connection** ................................. 38

Rule 17 — Service Outside Ontario ................................... 38

Moran v. Pyle National (Canada) Ltd. ............................... 40

Diamond v Bank of London & Montreal Ltd. ............ 43

**(c) Alternate Approaches** ................................................ 45

Brussels Convention - Articles 5-15 ................................. 45

Quebec Civil Code: Book Ten ............................................ 48

Uniform Court Jurisdiction and Proceedings Transfer Act: Part 2 ................................................................. 50

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2. Determining Appropriate Forum

(a) Stays, Injunctions and Negative Declarations

(i) The Test Established
Société Nationale Industrielle Aerospatiale v Lee Kui Juk 84
Anchem Products Inc. v British Columbia (Workers’ Compensation Board) 52
Spiliada Maritime Corp. v Canuslex Ltd. 68
(ii) The Burden of Proof
Frymer v Breitschnieder 93
(iii) Personal or Jurisdictional Advantage
Jaffe v Dearing 100
Connelley v Ritz Corporation Cie 103
(iv) Jurisdiction Agreements
Ecclesiastical Jurisdiction Agreement 108
The “Angelic Grace” 108
(v) The Injunction Test Revisited
Airbus Industrie GIE v Patel (HL) 117
Hudson v Geos Language Corporation 125
(vi) Single Forum Cases/Negative Declarations
Midland Bank plc v Lakor Airways Ltd 128

(b) Multiplicity

De Dampierre v De Dampierre 131
Henry v Henry 137
Brussels Convention - Articles 21-23 143
Canadian National Railway Co v Sydney Steel Corp. 144
472900 BC Ltd v Thrifty Canada 147

(c) Exclusive Jurisdiction

Duke v. Audler 154
Brussels Convention - Articles 16.19 157
Voyage Co. Industries v Craster 157

(d) Transfer of Proceedings

28 United States Code Service §§ 1404, 1406 160
Jurisdiction of Courts (Cross-vesting) Act, 1987 (Australia) 160
Bankinvest AG v Seabrook 161
Uniform Court Jurisdiction And Proceedings Transfer Act: Part 3 170

(e) Interim Relief

Brussels Convention - Article 24 173
Aema Financial Services Limited v Feigelman 173
Republic of Haiti v Duvalier 176
United States of America v Friedland 182

PART II - JUDGMENTS

1. The Conclusiveness of Foreign Judgments
Goddard v Gray 184

2. The Requirements for Recognition and Enforcement

(a) Prima Facie Enforceability

(i) Jurisdiction of the Issuing Court
Schilsby v Westenholt 188
Morguard Investments Ltd. v De Savoye 191
Moses v Shore Boat Builders Ltd. 204
(ii) Characteristics of an Enforceable Judgment
Four Embarcadero Center Venture v Mr. Greenjeans Corp. 209
Unifoilet Pate-Port-Cartier v Zerotech Technologies Inc. 212
Silverstar Properties Ltd. v. Veinotte 217
Beatty v Beatty 226
Reciprocal Enforcement of Support Orders Act 227
Children’s Law Reform Act 231
Komorychka v. Lee 231

(b) Foreign public law exception

United States of America v Ivey 236
Foreign Extraterritorial Measures Act 247

(c) Impeachment

(i) Fraud
Beals v Saldanha 259
(ii) Natural Justice
Servotech Ltd v Hayward Burry Ltd. 269
(iii) Public Policy
Vorvaska (Formerly Missina) v Smith 272
Boardwalk Regency Corp. v Maalouf 277
Kidron v Green 282

3. Alternate Approaches/Federal and Regional Systems

Quebec Civil Code: Book Ten 287
Brussels Convention - Preamble, Articles 1, 25-30 289
Constitution of the United States of America, Article IV, Amendments V, XIV 290
Uniform Enforcement of Canadian Judgments Act 294
1. Choice of Law Methodology
   - Macmillan Inc v Bishopsgate Investment Trust plc (No 3)
   - Quebec Civil Code: Book Ten, Title One - General Provisions
   - Bernhard v Harras's Club

2. Proof of Foreign Law
   - Amosin v Mercury Bell
   - Bumper Development Corp. Ltd v Commissioner of Police of the Metropolis
   - Elder v Kertesz
   - Petkus v Becker

3. Characterization
   - Beaudoin v Trudel
   - Agnew v Uxor v Gober et Vir

4. Domicile
   - Quebec Civil Code: Book Ten, Title Two, Chapter I - Personal Status
   - Winans v Attorney General
   - Re Armesley
   - Osvath-Latkoczy v Osvath-Latkoczy
   - Patterson v Patterson
   - White v Tennant
   - Family Law Act, RSO 1990, c F.3, ss. 64, 67

5. Renvoi
   - Re Armesley
   - Re Ross
   - Ross v Ross
   - Vladi v Vladi

6. Substance and Procedure
   (a) The Basic Rule
   - Tolofson v Jensen
   - Pharmacies v Argenti
   - Hal Commodities Cycles Management v Kirsh
   (b) Examples
   (i) Parties
   - Hal Commodities Cycles Management v Kirsh
   (ii) Evidence
   - In re Cohn
   (iii) Remedies
   - Stevens v. Head
   (c) Harmonization of the Law of Procedure
   - American Law Institute, Transnational Rules of Civil Procedure

7. Foreign Public Law
   - Laane v. Estonian Cargo & Passenger Steamship Line

8. The Incidental Question and the Time Element
   - Schwabel v. Ungar (or Schwabel)
   - Starkowski v. Attorney-General

PART IV - CHOICE OF LAW - AREAS OF LAW

1. Torts
   - Tolofson v Jensen
   - Imperial Life Assurance Co. of Canada v Colmeneres
   - Amin Rasheed Shipping Corporation v Kuwait Insurance Co
   - Quebec Civil Code: Articles 3111-3113
   - "The Rome Convention", Articles 1-4, 10-19

2. Contracts
   (a) Determining the Proper Law
   (b) Applying the Proper Law
   (i) Capacity
   - Quebec Civil Code: Articles 3083-3087
   - "The Rome Convention", Article 11
   - Bondholders Securities Corp. v Manville
   (ii) Validity
   - Quebec Civil Code: Articles 3109-3110
   - "The Rome Convention", Articles 8-9
   - Elder v Kertesz
   (iii) Special Kinds of Contracts
   - Quebec Civil Code: Articles 3114-3121
   - "The Rome Convention", Articles 5-7, 16
   (iv) Harmonization of the Law of International Sales Contracts
   - International Sale of Goods Act

3. Property
   - Quebec Civil Code, Article 3097
   (a) Immovables
   - Godley v. Coles
   - Landry v. Lachapelle
4. Succession
Quebec Civil Code: Articles 3098-3101, 3107-3108

(a) Administration
Estates Administration Act
Ontario Rules of Civil Procedure (Rules 74.08, 74.09)

(b) Succession
Succession Law Reform Act
Re Vak Estate

5. Family Law

(a) Formal Validity
Quebec Civil Code: Articles 3088-3089
Bertiaume v. Lustous
McCabe v. McCabe

(b) Essential Validity
Ogden v Ogden (Otherwise Philip)
Frew (otherwise Reid) v. Reid
Marriage Act
Marriage (Prohibited Degrees) Act
Feiner v Demkowski (falsehood called Feiner)
Canada (Minister of Employment and Immigration) v Narwal

(c) Divorce and Ancillary Relief
Quebec Civil Code: Articles 3090-3096, 3122-3124
Divorce Act
Family Law Act

PART V - FEDERALISM

Beals v Saldanha (1998) 42 OR (3d) 127

INTRODUCTION

It is important for practitioners to understand the basic principles of the conflict of laws. If so, are they just a matter of common sense or are they obscure and difficult? Read the following excerpt from a recent decision of the Ontario Court (Gen Div) and see if you can discern the appropriate standard.

On January 8, 1992, the solicitor called Mr. Saldanha and in a two to three minute conversation, advised him that he had found nothing new to add to what he had previously said on December 31 in his office.

The Saldanhas were left with a clear impression that the judgment could not be enforced in Ontario. I accept their testimony that had they known that the judgment might be enforceable in Ontario, and that there was a good chance it could be set aside in Florida, they would have taken legal advice as to the relative degrees of risk, and followed the less risky path.

The Florida judgment, signed December 13, 1991, was mailed to the Saldanhas on December 16, 1991. On December 31, 1991, they went to their solicitor for his advice as to what they should do. The solicitor was a sole practitioner in Simcoe, Ontario. He testified, and I found him to be both forthcoming and frank. Except in one or two particulars, his evidence did not contradict that of the Saldanhas.

The interview took about 50 minutes. The solicitor took no notes. I find he reviewed the claim, the other documents received by the Saldanhas, and the judgment for damages, although the solicitor himself did not recollect seeing the judgment.

He consulted the Canadian Encyclopedic Digest in his office and advised the Saldanhas that he didn't think the Florida judgment was enforceable in Ontario because they had not attomed to the jurisdiction. At the Saldanhas' request, he said he would speak to another lawyer about it. He went to the County Law Library in Simcoe to see if it had a text on conflict of laws. He found none. He then discussed the problem with a colleague over lunch. The colleague confirmed the solicitor's belief that the issue was one of attomment. The solicitor did not check with a Florida attorney as to remedies available to the Saldanhas nor did he advise them to do that. He undertook no further research.