CONFLICT OF LAWS 2007
CASES AND MATERIALS- VOLUME I
Professor Janet Walker

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INTRODUCTION

The Conflict of Laws is not just an interesting subject for academics—it is also a useful subject for practitioners. The solicitor’s lack of familiarity with basic principles described in the following excerpt cost members of the Law Society of Upper Canada nearly $1 million. But are these principles just a matter of common sense or are they obscure and difficult? Read the following excerpt from the trial level in this case and see if you can discern the appropriate standards.

Beals v Saldanha

(1998) 42 OR (3d) 127 (Gen Div) rev’d on other grounds [2003] 3 SCR 416

[Jennings J.: ... The plaintiffs seek to enforce in Ontario a judgment obtained by default in the Circuit Court of Sarasota County, Florida. In the event that the plaintiffs succeed, the defendants Saldanha by third party claim seek indemnity from an Ontario solicitor consulted by them with respect to the Florida judgment. What follows are the facts as I find them to be.

...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.

The interview comprised a 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 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 degree of risk, and followed the less risky path.]

[This portion of the judgment relates to the Third Party negligence claim against the Ontario solicitor who advised the judgment debtors that the Florida judgment was not enforceable against them in Ontario.]

(3d) Party Action

The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

Both the defendants and the third party tendered expert opinion evidence as to the standard of care required of an Ontario solicitor retained in the circumstances, and for the purposes, of this case.]

Dennis O’Connor, Esq. Q.C. testified for the defendants. He is an experienced counsel of assistance. 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.

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 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 degree of risk, and followed the less risky path.]

[The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

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[The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

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[The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

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[The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

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[The Florida action related to a sale of land for approximately US$8000 from the defendant to the plaintiffs. Eventually, the value of the judgment rose to nearly Can$1,000,000 with interest and exchange rates. The full report of the facts can be found in the excerpts from the Supreme Court decision in the Part on Judgments ... The Third Party Action

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