

# LAW 363: CONFLICT OF LAWS (Private International Law)

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Course Syllabus: Spring 2012

- (1) Casebook references are to the third edition (2010) of *Private International Law in Common Law Canada: Cases, Text and Materials* (N. Rafferty, Gen. Ed)
- (2) See also R. Howell, *Canadian Telecommunications Law*, Irwin Law, Toronto (February 2011) chapter 6, pages 274-314. This chapter is recommended reading on an overall basis and assigned reading in specific contexts noted in parts of this syllabus. It is accessible electronically under a license acquired by the Priestly Law Library.

## PART ONE: GENERAL

### A. INTRODUCTION – CHAPTER 1 (pp. 3-5)

- Inter-provincial/Inter-state
- International

#### a) **Jurisdiction – *jurisdiction simpliciter***

- (i) The authority for a court to accept jurisdiction
- (ii) Determined by legislation or Rules of Court of forum

#### – *forum non conveniens*

- (i) Over the parties of the dispute
- (ii) Over the subject matter of the dispute

#### b) **Choice of Law**

- (i) Which jurisdiction's law will be applied

- To resolve substantive issues
- To resolve procedural issues

- (ii) Principal Options

*lex fori* – law of the forum

*lex loci delicti* – law of the place of the wrong or infringement

*lex situs* – law of the *situs* or location of the subject matter

**c) Recognition and enforcement of decisions of extra-territorial courts (Tribunals)**

**d) Areas of law present particular dimensions**

- Private law
  - Tort
  - Contract
  - Property
  - Trusts
  - Wills and Succession
- Public law
  - Extra-territorial “grants” or “acts of State”
  - Penal law/Criminal law
  - Administrative law/labour
  - Revenue law
  - Social policy
- Can a clear line be drawn between “private” and “public” law?
  - Family laws
  - No fault laws
  - Wills variation laws

**e) Common Law/Civil Law**

- Common law – judge made law
  - English law basis
- Recent divergence
  - Canada
  - England
- U.S. Comparison
  - Restatement (First) of Conflict of Laws (1934)
  - Restatement (Second) of Conflict of Laws (1971)
- Constitutional dimensions
- Civil law (Quebec) comparisons

**f) International Conventions/Hague Conference on Private International Law**

**g) Theoretical considerations**

**B. THEORY – CHAPTER 2** (pp. 7-26)

- Intellectual History
- Territoriality
- Comity – “Enlightened self-interest”/reciprocity  
– This theory is most often applied contextually within a “jurisdictional” analysis
- Theories
  - The below theories are principally predicated on “choice of law” analysis
  - “Vested rights” – “Foreign Created Rights”
  - “Local law theory”
  - A Theory of Justice
  - “Governmental interest analysis”
    - “Most closely connected” Proper Law (Hague Conference on Private International Law, 1984)
    - Some “principles of restraint” on local law intended to further international goals
- Choice of Law - Choices
- Hague Conference on Private International Law/Globalization, Technological universality

**C. CONFLICTS AND THE CONSTITUTION – CHAPTER 3** (pp. 29-60)

- Common law basis/civil code (Quebec)
- S. 129, *Constitution Act, 1867*
- S. 92, *Constitution Act, 1867*, provincial jurisdiction (“property and civil rights in the Province”):
  - One *situs* in Canada: *The King v. National Trust Co.*, [1933] SCR 670 (noted p. 29)
  - *Churchill Falls (Labrador) Corp. Ltd. v. AG of Newfoundland* (1984), 8 DLR (4<sup>th</sup>) 1 (SCC) (CB p. 30)
  - Notes, p. 35
  - *Morguard Investments Ltd. v. De Savoye* (1990), 76 DLR (4<sup>th</sup>) 256 (SCC) (CB p. 36)
  - *Hunt v. T&N Plc* (1993), 109 DLR (4<sup>th</sup>) 16 (SCC) (CB p. 45)

- *Tolofson v. Jensen* (1994), 120 DLR (4<sup>th</sup>) 289 (SCC) (CB p. 52)
- *British Columbia v. Imperial Tobacco Canada, Ltd.* [2005] 2 SCR 473 (CB p. 54)
- See note p. 60 (and later in this syllabus) re “class actions”
- Matters within federal jurisdiction (s. 91)
- See generally Swan, “The Canadian Constitution, Federalism and the Conflict of Laws” (1985), 63 Can. Bar Rev. 271 (On Reserve)

#### **D. PUBLIC POLICY, PUBLIC LAW CLAIMS – CHAPTER 4**

- General – (CB p. 61)
  - *United States v. Ivey* (1995), 26 OR 533; 130 DLR (4<sup>th</sup>) 674 (Ont. Gen. Div.) (CB p. 61)
- Public Policy (CB pp. 70-72)
  - Pp. 72-79 including *Kuwait Airlines Corp. v. Iraqi Airways Co.* (Nos. 4 and 5) [2002] 2 AC 883 (HL) (CB p. 73)
  - *Old North State Brewing Co. v. Newlands Services Inc.*, [1999] 4 WWR 573 (BCCA) (CB p. 555)
  - *Society of Lloyd’s v. Meinzer* (2001), 55 OR (3d) 688 (CA) (CB p. 81)
  - Notes CB p. 93
  - *Gillespie Management Corp. v. Terrace Properties* (1989), 39 BCLR (2d) 337 (CA) (CB p. 94) (see also notes pp. 95-97)
  - Notes CB pp. 99-100 (Interprovincial context)
  - [Public policy is discussed in *Beals v. Saldanha* [2003] 3 SCR 416 (December 18, 2003) (On Reserve) (CB p. 436)].
  - [Further policy dimensions are discussed in *Pro Swing Inc. v. Elta Golf Inc.* [2006] 2 S.C.R. 612, 2006 SCC (November 17, 2006) (On Reserve (CB p. 446)]
- Penal Laws
  - Notes pp. 101-107 including *Huntington v. Attrill*, [1893] AC 150 (PC) (Ont.)
- Tax Laws
  - General (CB pp. 109-110)
  - Indirect Enforcement
    - *Stringam v. Dubois* (1992), 135 Alta. R. 64 (CA) and notes CB pp. 110-115
  - Characterization (CB pp. 115-116)
    - *Re Sefel Geophysical Ltd.*, [1989] 1 WWR 251 (Alta. QB) (CB p. 116)

- *Re Matol Botanical International Ltd.* [2001] RJQ 2333 (CS) (CB p. 117)
- Other Public Laws
  - Notes CB pp. 122-124
  - *Attorney-General of New Zealand v. Ortiz*, [1984] 1 AC 1 (HL) (On Reserve) (Not assigned)
  - *United States v. Ivey* (1995) (*ibid.*)
  - See Howell, “Relevance of National Regulation in an Age of Borderless Transmission” *Copyright: Administrative Institutions*, Les Éditions Yvon Blais Inc., Cowansville (Que.) Canada: 2002, pp. 601-634 (On Reserve)
- See discussion of public policy issues in Howell, “A Reflection on Recognition and Enforcement of Foreign Judgments in the Context of Cyberspace” (2006) (Handout)

## **E. DOMICILE AND RESIDENCE – CHAPTER 5**

- General (pp. 127-129)
- Domicile (pp. 121-141)
  - *Agulian & Anr v. Gyganik* [2006] EWCA Civ. 129 (CB 129)
  - *Re Urquhart Estate* (1990), 74 OR (2d) 42 (HC) *affd.* (1991), 3 OR (3d) 699 (Div. Ct.) (CB pp. 134)
  - See generally notes pp. 137-154 (Not assigned)
  - See *Foote Estate (Re)*, 2011 ABCA 1 (On Reserve). This case provides an excellent commentary re domicile.
- Residence (General: 154-156)
  - *Canada v. Wall* (2005), 271 FTR 146 (CB p. 156)
  - *Adderson v. Adderson* (1987), 36 DLR (4<sup>th</sup>) 631 (Alta. CA) (CB p. 163)
  - *Quigley v. Willmore* (2008), 264 NSR (2d) 293 (CA) (CB p. 170)
  - *Haig v. Canada*, [1993] SCR 995 (CB p. 179)
  - *National Trust Company Ltd. v. Ebro Immigration and Power Company Ltd.*, [1954] OR 463 (HC) (CB p. 185)

## **PART TWO: JURISDICTION**

### **F. PARTIES TO AN ACTION (“STANDING TO SUE”) – CHAPTER 6**

#### **a) A “Juristic Entity”**

- *Business Corporation Act*, SBC 2002, c. 57, ss. 375 and 378 (replacing *Company Act*, RSBC 1996, c. 62 ss. 297 and 312)
- *Success International Inc. v. Environmental Export International of Canada Inc.* (1995), 123 DLR (4<sup>th</sup>) 147 (Ont. GD) (CB p. 198)
- *Bumper Development Corp. Ltd. v. Commissioner of Police of the Metropolis*, [1991] 4 All E.R. 638 (CA) (On Reserve)
- *International Association of Science and Technology for Development v. Hanza* (1995), 28 Alta. L.R. 125 (CA) (CB p. 608)
- *Re Indian Residential Schools*, [2001] AJ No. 1127 (2001: Alta. CA) (On Reserve)

#### **b) Immunity from Suit**

- Crown Immunity
- State Immunity  
[Statutory provisions – See CB p. 194 – Not assigned]

### **G. ASSUMPTION OR JURISDICTION: THE EXISTENCE OF JURISDICTION OR JURISDICTION SIMPLICITER**

#### **a) Parties within the jurisdiction**

- *Maharane of Baroda v. Wildenstein*, [1972] 2 All ER 689 (CA) (CB p. 204)
- Locating a corporation – see *Success International* (above)

#### **b) Parties outside the jurisdiction**

- (i) Constitutional Issues: *Morguard Investments Ltd. v. De Savoye* (1990), 76 DLR (4<sup>th</sup>) 256 (SCC) (above – see note CB p. 204)

- (ii) Procedural Enactments (for *ex juris* service)

- The *Court Jurisdiction and Proceedings Transfer Act* SBC 2003, c. 28 (in effect from July 2006). See Parts 1 and 2, ss 1-12 inclusive. Note especially s. 10 “Real and Substantial Connection”. [This enactment replaced BC Rules of Court, 1976 (Rule 13).]

- [See *Court Jurisdiction and Proceedings Transfer Act* s. 11 “Discretion as to the exercise of territorial competence” (relate this provision to the principle “forum non conveniens” – see later)]
- *Moran v. Pyle National (Canada) Ltd.* (1973), 43 DLR (3d) 239 (SCC) (CB p. 208)
- *Teja v. Rai* (2002), 209 DLR (4<sup>th</sup>) 148 (BCCA) [comment in class – not assigned]
- *Muscutt v. Courcelles* (2002), 213 DLR (4<sup>th</sup>) 577 (Ont. CA) (CB p. 217)
- *Stanway v. Wyeth Pharmaceuticals Inc.* 2009 BCCA 592 (CB p. 249)
- *Van Breda v. Village Resorts Limited*, 2010 ONCA 84. See Howell, *Canadian Telecommunications Law* at pp. 285-287
- *Laxton v. Anstalt* 2011 BCCA 212, (2011), 17 BCLR (5<sup>th</sup>) 354 (paras. 9-43) (On Reserve) c.f. *Josephson v. Balfour Rec. Commission* 2010 BCSC 603 (BCSC) (when a “presumed” real and substantial connection does not exist and third party proceedings) (On Reserve)
- *Dembroski v. Rhainds* 2011 BCCA 185; (2011) 17 BCLR (5<sup>th</sup>) 29 (at paras. 28-52) (re residence of the plaintiff *per se*) (On Reserve)
- *Spar Aerospace Ltd. v. American Mobile Satellite Corp.* (2002), 220 DLR (4<sup>th</sup>) 54 (SCC) (CB p. 224)
- *AG Armeno Mines and Minerals Inc., v. PT Pukuafu Indah* (2000), 77 BCLR (3d) 1, [2000] BCJ No. 1335 (CA) (CB p. 255)
- *MTU Maintenance Canada Ltd. v. Kuehne & Nagel International Ltd.* 2007 BCCA 552 (CB p. 260)
- *Harrington v. Dow Corning Corp.* (2000), 193 DLR (4<sup>th</sup>) 67 (BCCA) (CB p. 266)
- *Ward v. Canada* 2007 MBCA 123 (CB p. 275)
- Federal Court – See *Muzak Corporation v. Composers, Authors & Publishers Association of Canada Ltd.*, [1953] 2 SCR 182; (1953), 19 CPR 1 (On Reserve)
- Should jurisdiction be declined when parallel proceedings have been brought elsewhere? – see *Westec Aerospace* and *Teck Cominco* (below)

## H. FORUM NON CONVENIENS: DISCRETION TO DECLINE JURISDICTION – CHAPTER 7

### a) English Position in Transition

- *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1987] AC 460 (HL) (CB p. 283)
- *Société Nationale Industrielle Aérospatiale v. Lee Kui Jak*, [1987] 3 WLR 59 (PC) (CB p. 299)

### b) Modern Canadian Position

- *Court Jurisdiction and Proceedings Transfer Act* SBC 2003 c. 28, s. 11

- *Amchem Products Inc. v. British Columbia (WCB)* (1993), 102 DLR (4<sup>th</sup>) 96 (SCC) (CB p. 312)
  - See note CB p. 358 re *Bushell v. T&N Plc* (1992), 67 BCLR (2d) 330 (CA) and burden of proof issues
  - *Westec Aerospace Inc. v. Raytheon Aircraft Co.* (1999), 173 DLR (4<sup>th</sup>) 498 (BCCA) (On Reserve)
  - *Laxton v. Anstalt* 2011 BCCA 212; (2011), 17 BCLR (5<sup>th</sup>) 354 (at paras. 44-53) (On Reserve)
  - *Teck Cominco Metals Ltd. v. Lloyds Underwriters*, 2009 SCC 11, 303 DLR (4<sup>th</sup>) 385 (February 20, 2009) (CB p. 353) [The BCCA decision that the SCC affirmed is set out in the Case Book at p. 333 *et seq.* Our attention to this case will focus on the SCC judgment, but passages from the BCCA will be referred to in class.]
  - For recent Ontario cases see *Stuck v. Stuck* [2008] O.J. No. 2808 (SCJ)(QL) (not assigned) and *Young v. Tyco International of Canada Ltd.*, [2008] OJ No. 4046 (Ont. CA) (CB p. 323)
  - Note comments re *forum non conveniens* under “Recognition and Enforcement of Foreign Judgments” in *Braintech, Inc. v. Kostiuik* (1999), 171 DLR (4<sup>th</sup>) 46 (BCCA) (CB p. 425), *Beals v. Saldanha* [2003] 3 SCR 416 (CB p. 420-425 and 436-446) and *Canada Post Corp. v. Lepine* 2009 SCC 16. See Howell, *Canadian Telecommunications Law* at pp. 289-290 and 291-292
- c) **Class Actions:** Recall earlier cases *Harrington v. Dow Corning Corp.* and *Ward v. Canada* re class actions. In a context involving both *jurisdiction simpliciter* and *forum non conveniens*, class actions afford an interesting context. The issues were addressed by the SCC in April 2009 in *Canada Post Corporation v. Lepine* 2009 SCC 16, 387 NR 91 (April 2, 2009) (On Reserve) on appeal from the Quebec Court of Appeal, 2007 QCCA 1092 (Unofficial English Translation), August 10, 2007 (On Reserve) affirming Que. S.C. July 20, 2005. The Quebec courts would not recognize the Ontario judgment in the same matter – *McArthur v. Canada Post Corporation*, [2004] O.J. No. 1406. In the same matter proceedings were filed by John Chen in British Columbia. A settlement between the parties was presented before BCSC for approval for BC residents and before the Ontario Superior Court on behalf of the rest of Canada, including persons in Quebec. It was this approval by the Ont. SCJ that was not recognized in Quebec. [Note, the Case Book contains a brief reference to *Canada Post* at pp. 475-476, but these cases need to be dealt with more fully and are “On Reserve” in the Library.]
- d) **The Recent English Position**
- *Airbus Industrie GIE v. Patel*, [1999] 1 AC 119 (HL) (CB p. 309)
- e) **U.S. Position**
- See *Oakley v. Barry* (1998), 158 DLR (4<sup>th</sup>) 679 (NSCA) (On Reserve) discussing and comparing the positions in Canada and the United States
  - See also *Muscutt v. Courcelles*, *supra* paras. 60 to 74 (On Reserve)

I. **ANTI-SUIT INJUNCTIONS: RESTRAINT OF FOREIGN PROCEEDINGS – CHAPTER 7 (CB pp. 358 et seq.)**

a) **The English Position**

- See *Société Nationale* and *Airbus*, *supra*

b) **The Canadian Position**

- *Amchem Products Inc. v. British Columbia (WCB)* (1993), 102 DLR (4<sup>th</sup>) 96 (SCC) (CB p. 302) (discussed above)
- *Hudon v. Geos Language Corp.* (1997), 34 OR (3d) 14, [1997] OJ No. 2245 (Ont. Ct. Gen. Div.) (CB p. 358)

J. **JURISDICTION SELECTING CLAUSES:** (CB pp. 365-378)

- *Z.I. Pompey Industries v. Ecu-Line N.V.* 2003 SCC 27 (CB p. 366)
- Recall *Old North Shore Brewing* (BCCA) discussed earlier (CB p. 555)

K. **ARBITRATION CLAUSES** (CB pp. 378-393 – [NOT ASSIGNED])

**PART THREE: RECOGNITION AND ENFORCEMENT OF EXTRA-TERRITORIAL JUDGMENTS**

a) ***In rem* judgments** – see J.G. Castel and J. Walker, *Canadian Conflict of Laws*, 5<sup>th</sup> ed. Butterworths, Markham, Ont. 2002, (looseleaf), Section 14.11(a) and (b)

b) **Personal status** judgements – see Castel and Walker, *ibid.*, section 14.11(c) (generally concerns matters of matrimonial causes, legitimacy, legitimation, adoption and paternity). See generally Castel and Walker, chapter 11.

c) ***In personam* judgments**

- Pecuniary/Monetary
- Non-pecuniary/Non-monetary [see later *Pro Swing Inc. v. Elta Golf Inc.* 2006 SCC 52 (November 17, 2006) – CB p. 446]

(i) At common law – pre *Morguard*

- Introduction (CB pp. 397-398)

- “Final and Conclusive”
    - *Nouvion v. Freeman* (1889), 15 App. Cas. 1 (HL) (CB p. 399)
    - *NEC Corp. v. Steintron International Electronics Ltd.* (1985), 5 CPC (2d) 187 (Ont. HC) (CB note at pp. 403-404)
  - “Jurisdiction of the Foreign Court in an International Sense”
    - *Forbes v. Simmons* (1914), 20 DLR 100 (Alta. SC) (CB p. 404)
    - *Re Carrick Estates Ltd.* (1987), 43 DLR (4th) 161 (Sask. CA) (CB p. 482)
    - *First National Bank of Houston v. Houston E & C Inc.*, [1900] 5 WWR 719 (BCCA) (CB p. 406)
    - *Clinton v. Ford* (1982), 137 DLR (3d) 281 (Ont. CA) (CB p. 410) c.f. *Henry v. Geoprosco International Ltd.*, [1976] 1 QB 726 (CA) (CB p. 412) (A judgment of a Canadian court being enforced, as a result of voluntary submission, by the English Court of Appeal.)
- (ii) The *Morguard* Rule (From 1990)
- *Morguard Investments Ltd. v. De Savoye* (1990), 76 DLR (4<sup>th</sup>) 256 (SCC) (CB p. 36)
  - *Moses v. Shore Boat Builders Ltd.* (1994), 106 DLR (4<sup>th</sup>) 654 (BCCA) (Leave to appeal to SCC – denied) (On Reserve)
  - *Braintech, Inc. v. Kostiuk* (1999), 171 DLR (4<sup>th</sup>) 46 (BCCA) (CB p. 425)
- (iii) Extension of *Morguard* (re *in personam* monetary judgments) to foreign judgments – *Beals v. Saldanha* [2003] 3 SCR 416 (On Reserve) (CB p. 420)
- (iv) Common law “defences” (or circumstances of “non-enforcement”) to enforcement of foreign or extra-territorial judgments
- See policy limitations set out earlier (Part D of this syllabus concerning “Public Policy, Public Law Claims – Chapter 4”)
  - *Godard v. Gray* (1870), LR 6 QB 159 (CB p. 415)
  - *Beals v. Saldanha* [2003] 3 SCR 416 (Dec. 18, 2003) (On Reserve) (CB p. 420)
  - *Old North State Brewing Co. v. Newlands Services Inc.*, [1999] 4 WWR 573 (BCCA) (CB p. 555)
  - *Cabaniss v. Cabaniss*, 2010 BCCA 348; (2010), 7 BCLR (5<sup>th</sup>) 266 (paras. 51-71 re the defence of “fraud”)
- (v) See post *Beals* developments re *in personam* non-monetary judgments – *Pro Swing Inc. v. Elta Golf Inc.* 2006 SCC 52 (November 17, 2006) (CB p. 446)

- (vi) See Howell, “A Reflection on Recognition and Enforcement of Foreign Judgments in the Context of Cyberspace” (2006) (Handout)
- (vii) Legislation providing for reciprocal enforcement of judgments
- See CB pp. 476-488 for cases reviewing this topic after *Morguard Investments*:
    - *Central Guaranty Trust Co. v. Deluca*, [1995] NWTR 200 (SC) (CB p. 477)
    - *Re Carrick Estates Ltd. and Young* (1987), 43 DLR (4<sup>th</sup>) 161 (Sask CA) (CB p. 482)
    - *Owen v. Rocketinfo, Inc.* 2008 BCCA 502 (CB p. 483)
  - In British Columbia see *Court Order Enforcement Act* RSBC 1996, c. 78) and *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003 c. 29 (CB p. 488)
  - *Moss & Enochian v. Brown*, [1997] BCJ No. 1249 (SC) (Not assigned)
  - See the comments of the Manitoba Court of Appeal in *TDI Hospitality*, [1994] 9 WWR 153 (Man. CA) concerning the relationship of constitutional law, common law and provincial legislative jurisdiction. C.f. Castel and Walker, *Canadian Conflict of Laws*, 5<sup>th</sup> ed. Section 14.12
  - *Hunt v. T&N plc*, [1993] 4 SCR 289; 109 DLR (4<sup>th</sup>) 16 (SCC)
- (viii) Arbitral Awards – See generally CB pp. 492 *et seq.* (Not assigned)
- (ix) Consider the position of enforcement of decisions of administrative tribunals
- See Mazey, “The Enforcement of Labour Orders Outside the Jurisdiction of Origin” (2001), 59 U of T. Fac. LR 25. See also Castel and Walker, section 14.2
  - See Howell, “Relevance of National Regulation in an Age of Borderless Transmission”, *supra*, pp. 620-627 (On Reserve)
  - See Howell, *Canadian Telecommunications Law* at pp. 295-296

## **PART FOUR: CHOICE OF LAW**

### **A. CHOICE OF LAW METHODOLOGY – CHAPTER 9**

CB pp. 511-550

**B. INVOKING AND DETERMINING FOREIGN LAW – CHAPTER 10****a) Applicability of Foreign Law**

- i) Fact or Law – CB pp. 553-555
- ii) Effect of omission to plead or prove foreign law – CB pp. 555-
  - *Old North State Brewing Co. v. Newlands Services Inc.* (CB p. 555)
  - *Fernandez v. The Ship “Mercury Bell”* (1986), 3 FC 454 (FCA) (CB p. 560)
  - Notes, CB pp. 517-519

**b) Pleading and proving foreign law – CB pp. 566-589**

- *Bumper Development Corp. Ltd. v. Commissioner of Police of the Metropolis* [1991] 1 WLR 1362 (CA) (CB p. 567)

**c) Canadian issues**

- *Hunt v. T&N Plc*, [1993] 4 SCR 289 (CB p. 576-577 and 583-589)
- *Pettkus v. Becker* [1980] 2 S.C.R. 838, 853-54 (CB p. 558)
- Notes CB pp. 577-583 including *Nystrom v. Tarnava* (CB p. 580)

**C. LAW OF PROCEDURE – CHAPTER 11****a) Substance/Procedure Distinction**

- CB pp. 591-593
- *Tolofson v. Jensen*, [1994] 3 SCR 1022 (CB p. 593)
- *Somers v. Fournier* (2002), 60 OR (3d) 225 (CA) (CB p. 667)
- Notes CB pp. 597-607

**b) Remedies – CB pp. 542-548****D. Parties**

- *International Assn. of Science and Technology for Development v. Hamza* (1995), 28 Alta. LR (3d) 125 (CA) (CB p. 608)
- See generally notes CB pp. 615-617

**Evidence**

- Notes CB pp. 617-619
- *Ed Millar Sales & Rentals Ltd. v. Caterpillar Tractor Co.* (1988), 90 Alta. R. 323 (CA) (CB p. 620)

## **PART FIVE: TORTS**

### **A. GENERAL/HISTORICAL – CHAPTER 12**

#### **a) The Rule in *Phillips v. Eyre* (“Double Accountability”)**

- *Phillips v. Eyre* (1870), LR 6 QB 1 (Ex. Ct.) (CB p. 627)
- *McLean v. Pettigrew*, [1945] DLR 65 (SCC) (CB p. 629)
- *Chaplin v. Boys*, [1971] AC 356 (HL) (see handout) re the position in England compared with Canada

#### **b) Trends in the United States**

- *Babcock v. Jackson*, 191 NE 2d (NY Ct. Apps. 1963) (CB p. 613)
- Note re *Schultz v. Boy Scouts of America Inc.*, 480 NE 2d 679 (NY Ct. Apps. 1985) (CB p. 638)
- *Gilbert v. Seton Hall University* 332 F. 3d 105 (2d Cir. 2003) (CB p. 638)

### **B. THE CURRENT POSITION – CANADA**

#### **a) A New Direction**

- *Tolofson v. Jensen*, [1994] 3 SCR 1022 (CB p. 646) and accompanying notes
  - *Inter-provincial*
  - *International*
- *Somers v. Fournier* (2002), *supra* (CB p. 667)
- *Josephson v. Balfour Rec. Commission*, 2010 BCSC 603; (2010), 10 BCLR (5<sup>th</sup>) 369 (BCSC) (On Reserve)

#### **b) Concurrent tort and contract**

- *Herman v. Alberta (Public Trustee)*, [2002] A.J. No. 308 (QB) (QL) (On Reserve)
- See Castel and Walker, section 35.7

### **C. PARTICULAR TORTS**

- Defamation esp. re Internet – See CB pp. 686-695

- Conversion (and breach of trust) – see *Laxton v. Anstalt* 2011 BCCA 212, (2011) 17 BCLR (5<sup>th</sup>) 354 (paras. 15-26) (On Reserve)

## **PART SIX: CONTRACTS**

### **A. INTRODUCTION**

- a) **Contracts subject to uniform rules** - Determined by Conventions implemented in Canada (CB pp. 701-703)
- b) **Arbitration** (CB p. 703)

### **B. THE PROPER LAW** (CB p. 703 *et seq.*)

#### **a) Express Agreement by the Parties**

- *Vita Food Products Inc. v. Unus Shipping Co.*, [1939] AC 277 (PC) (from NS, Canada) (CB p. 704)
- *Re Pulp & Talbot Ltd.*, 2009 BCSC 1552; (2009), 2 BCLR (5<sup>th</sup>) 132 paras. 29-53 and 98-109 (BCSC) (On Reserve)

#### **b) No Agreement by the Parties: Implied/Determined by Court**

- *Imperial Life Assurance Co. of Canada v. Colmenares*, [1967] SCR 443 (CB p. 723)
- *Richardson International, Ltd. v. Mys Chikhacheva (The)* [2002] 4 FC 80 (CB p. 717)
- *Amin Rasheed Shipping Corp. v. Kuwait Insurance Co.*, [1984] AC 50 (HL) (CB p. 728)
- Notes CB pp. 737-740
- *Star Shipping AS v. China National Foreign Trade Transportation Corp.*, [1993] 2 Lloyd's Rep. 445 (Eng. CA) (On Reserve)
- See generally Castel and Walker, section 31.2c [Not assigned]

#### **d) Limits on Parties' Choice of Law**

- CB pp. 740 to 745 including *Nike Infomatic Systems Ltd. v. Avac Systems Ltd.* (1979), 105 DLR (3d) 455 (BCSC) (CB p. 741)

- e) **Applying the Proper Law** – See generally Castel and Walker, section 31.3 [Not assigned]

### **C. LAW OTHER THAN THE PROPER LAW**

#### **a) Formation**

- See CB pp. 748-754 including *Mackender v. Feldia AG*, [1967] 2 QB 590 (CA) (CB p. 748)
- b) **Capacity** (CB pp. 755-756)
- c) **Formalities**
- *Greenshields Inc. v. Johnston* (1981), 119 DLR (3d) 714 (Alta. QB) *affd.* (1981), 131 DLR (3d) 234 (Alta. CA) (CB p. 699) and notes (CB pp. 756-760)
- d) **Mandatory Rules of Legal Systems Other Than the Proper Law**
- CB pp. 761-766 including *Avenue Properties Ltd. v. First City Development Corp.* (1986), 32 DLR (4<sup>th</sup>) 40 (BCCA)
  - *Gillespie Management Corp. v. Terrace Properties* (1989), 62 DLR (4<sup>th</sup>) 221 (BCCA) (CB p. 770) [Note discussed earlier, CB p. 94]
- e) See generally Castel and Walker, sections 31.4 and 31.5 [Not assigned]

## PART SEVEN: PROPERTY

### A. TRANSFERS OF IMMOVABLES – CHAPTER 14

#### a) **Characterization – Movable or Immovable**

- Introduction (CB p. 785-786)
- *Hogg v. Provincial Tax Commission*, [1941] 3 WWR 605 (Sask. CA) (CB p. 786) and accompanying notes p. 787

#### b) **Foreign Immovables (Jurisdiction)**

- *British South Africa Co. v. Companhia de Mocambique*, [1893] AC 602 (HL) (CB p. 788) and notes
- *Hesperides Hotel Ltd. v. Muftizade*, [1979] AC 508 (HL) (CB p. 792)
- *Godley v. Coles* (1988), 39 CPC (2d) 162 (Ont. DC) (CB p. 797)
- *Ward v. Coffin* (1972), 27 DLR (3d) 58 (NBSC AD) (CB p. 799)
- See *Lee v. Li*, [2002] BCJ No. 780 (2002: BCCA) at para. 14 distinguishing issues concerning extraterritorial land from issues of fraud with respect to that land
- *Catania v. Giannattasio* (1999), 174 DLR (4<sup>th</sup>) 170 (Ont. CA) (CB p. 801)

#### c) **Foreign Judgments re Land in Forum**

- *Duke v. Andler*, [1932] 4 DLR 529 (SCC) (CB p. 804)
- *Chapman Estate v. O'Hara*, [1988] 2 WWR 275 (Sask. CA) (CB p. 808)

**d) Choice of Law Issues**

Notes CB pp. 812-813 including *Bank of Africa v. Cohen*, [1909] 2 Ch. 129 (CA) (CB p. 813)

**B. TRANSFERS OF MOVABLES – CHAPTER 15**

a) **Introduction** (CB pp. 819-820)

b) **Chattels** [No assigned reading]

**C. INTANGIBLES**

a) **Intellectual Property/Information Technology**

- Howell, “Intellectual Property, Private International Law, and Issues of Territoriality” (1997), 13 CIPR 209 (On Reserve)
- Howell, R. *Canadian Telecommunications Law*, chapter 6 at pp. 295-299; 306-311
- Howell, “Relevance of National Regulation in an Age of Borderless Transmission”, *supra* (On Reserve)
- Note the discussion (Howell, *ibid.*) re *Tyburn Productions Ltd. v. Conan Doyle*, [1991] Ch. 75 (Ch. 1990); *Pearce v. Ove Arup Partnerships*, [1997] 3 All ER 31 (Ch.) *rev.* [1999] 1 All ER 769 (CA) especially with respect to the rule in *Mocambique* (*supra*, Para. A, b); and *Lucasfilm Ltd. v. Ainsworth* [2011] UKSC 39 (July 27, 2011) [On Reserve]
- Distinguish circumstances of *infringement* from circumstances of Recognition of Scope of Copyright – see *Itar-Tass Russian News Agency v. Russian Kurier Inc.*, 153 F. 3d 82 (2d. Cir. 1998)
- Consider the position of copyright regulation through the “tariff setting system” of the Copyright Board of Canada. See Howell, *ibid.*

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