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| **THEME** | **CASE** | **RULE(S)** |
| Capacity | *Intl Assn of Science & Tech v Hamza* | If entity is a juridical person in the jurisdiction it was formed, then capacity to sue isn’t an issue |
| Capacity | *Cirque du Soleil* | Questions re: effect of corporation dissolution = law of the place of incorporation |
| Exclusionary rules: penal, revenue, other public law  Exclusionary rules: public policy | *USA v Ivey* | Restitution is not a penalty or revenue law  If forum has similar legislation, cannot argue public policy |
| Exclusionary rules: public policy | *Kuwait Airways* | Foreign law that amounts to international law breach doesn’t automatically fall under public policy exception; must assess based on forum standards |
| Exclusionary rules: public policy | *Lloyds’ v Meinzer* | Not all laws are a matter of public policy – difference between laws doesn’t automatically mean breach  Consider implications for public policy and the historical/factual context |
| Exclusionary rules: penal, revenue, other public law | *Huntington v Attrill* | Penal laws include criminal law and breaches of public law that are punished with a fine  *Lex fori* governs characterization of the foreign law, i.e. even if foreign jurisdiction considers it penal, not necessarily true |
| Exclusionary rules | *Stringam v Dubois* | Indirect enforcement of excluded category of law is also prohibited; applied to estate case |
| Personal connecting factors: change of domicile | *Agulian v Cyganik* | Domicile of origin adheres unless displaced by intentional acquisition and continuance of domicile of choice |
| Personal connecting factors: domicile | *Re Urquhart Estate* | Couchsurfing deceased still found to have domicile of choice in ON |
| Personal connecting factors: residence | *Adderson v Adderson* | “Habitual residence” means something between “residence” (very lax) and “domicile” (very strict) |
| Personal connecting factors: domicile of corporations | *National Trust v Ebro Irrigation* | Domicile of a corporation = place it was incorporated  NB: CJPTA says ordinary residence of corporation – registration enough |
| Jurisdiction *simpliciter*: common law basis (R+S) | *Morguard Investments* | Common-law basis for real and substantial connection test (constitutional basis)  Non-presumptive connecting factors cannot be combined for R+S |
| Jurisdiction *simpliciter*: presence | *Maharanee of Baroda* | Service in a jurisdiction enough to serve as basis for jurisdiction *simpliciter* under CL |
| Jurisdiction *simpliciter*  Recognition and enforcement | *Chevron Corp v Yajguaje* (non-CJPTA) | Doesn’t matter that a party is a stranger to the original judgment for purposes of grounding jurisdiction (Chevron Canada)  Presence is enough; R+S not required in addition  Fact that there was an allegation of foreign judgment rendered against it enough to ground jurisdiction; not creating a new substantive obligation (Chevron Corp) |
| Jurisdiction *simpliciter*: R+S connection | *Moran v Pyle* | Channels of trade test – foreign manufacturer knows or ought to know that:   * As a result of their carelessness, consumer may well be injured * Product would be used/consumed where P used/consumed it |
| Jurisdiction *simpliciter*: R+S connection  Forum non conveniens | *Club Resorts v Van Breda* (non-CJPTA) | List of presumptive connecting factors:   * D domiciled/resident in province * D carries on business in province * Tort committed in province * K connected with dispute made in province   FNC comes into play once jurisdiction established – must show that alternative forum is clearly more appropriate (highly discretionary)  FNC factors:   * Location of parties or witnesses * Cost of transferring case to another jurisdiction or declining the stay * Impact of transfer on conduct of litigation, or on related proceedings * Possibility of conflicting judgments * Problems with R&E * Juridical advantage (NB: this is more a choice of law issue) |
| Jurisdiction *simpliciter*: R+S connection | *Equustek v Google* | Use of “carrying on business” to ground internet tort claim  Also used R+S connection between BC and the facts |
| Jurisdiction *simpliciter*: forum of last resort | *Sekela v Cordos* | Mere inconvenience not enough; must be prevented from making claim |
| Jurisdiction *simpliciter*: material facts & evidence | *MTU v Kuehne* | Must lead evidence about allegations |
| Jurisdiction *simpliciter*: material facts & evidence | *Purple Echo v KCTS Television* | Claim may survive preliminary challenge to jurisdiction without proving that the facts are true (i.e. swearing affidavit enough); court may find it has no jurisdiction once claim is litigated on the merits |
| Forum non conveniens | *Amchem Products v BC* | Test for anti-suit injunctions:   * Apply *Van Breda* FNC analysis to foreign court’s taking of jurisdiction * If foreign court inappropriate, and would result in an injustice to a would-be litigant, issue an anti-suit injunction   Juridical (dis)advantage has to involve a legal impediment – doesn’t matter that there are actions in several jurisdictions due to the scale of the litigation |
| Forum non conveniens | *Teck Cominco v Lloyds’* | Fact that foreign court has already taken jurisdiction doesn’t preclude FNC analysis, even if foreign court took jurisdiction based on principles similar to our own |
| Forum selection clauses | *ZI Pompey v ECU Line* | Strong cause test: is the clause valid, clear, enforceable and applies to proceeding? If yes, then P must show strong cause to decline to enforce |
| Forum selection clauses | *Momentous.ca Corp* | Attornment demonstrates jurisdiction but doesn’t affect an FNC claim |
| Forum selection clauses | *Preymann v Ayus Technology Corp* | *ZI Pompey* strong cause test extends to CJPTA jurisdictions under s. 11 “fair and efficient working of the Canadian legal system as a whole” |
| Recognition and enforcement: finality and conclusiveness | *Nouvion v Freeman* | Judgments must be final and conclusive in order to enforce  If they can be varied or rescinded, they are not *res iudicata* |
| Recognition and enforcement: jurisdiction in the international sense | *Forbes v Simmons* | Presence and service in the jurisdiction is enough to ground jurisdiction in int’l sense |
| Recognition and enforcement: jurisdiction in the international sense | *First National Bank v Houston EC* | Even if litigant had no intention to attorn, actions done on his behalf can be deemed as attornment |
| Recognition and enforcement: jurisdiction in the international sense | *Clinton v Ford* | Appearance by mail and lack of jurisdictional challenge in original judgment = attornment |
| Recognition and enforcement: jurisdiction in the international sense | *Mid-Ohio Imported Car Co v Tri-K Investments* | Contesting proceedings both jurisdictionally and on the merits = attornment |
| Recognition and enforcement: jurisdiction in the international sense  Recognition and enforcement: impeachment for fraud  Exclusionary rules: public policy | *Beals v Saldhana* | R+S connection used as basis for jurisdiction in int’l sense for foreign judgments (within Canada, use *Morguard*)  Intrinsic fraud can be defence if (very rare):   * New & material facts that D could not have discovered and brought to the attn. of the foreign court through exercise of reasonable diligence, AND must be deduced from these facts that the judgment was obtained by fraud   Natural justice is a defence; includes notice & opportunity to be heard  Amount of damages not a ground for refusing to enforce on public policy grounds |
| Recognition and enforcement: jurisdiction in the international sense | *Braintech v Kostiuk* | D successfully defended R&E on basis that original court had no R+S connection |
| Recognition and enforcement: non-monetary orders  Exclusionary rules: penal, revenue, and other public law | *Pro Swing v Elta Golf* | Non-monetary judgments can be enforced in Canada, provided:   * Terms of order are clear and specific * Judgment rendered by court of competent jurisdiction and is final * Must be of a nature that the principle of comity requires domestic court to enforce   Contempt order = penal; therefore, non-enforceable |
| Recognition and enforcement: defences | *Godard v Gray* | Can’t relitigate on the merits, even if original court made mistake |
| Recognition and enforcement: *Court Order Enforcement Act* | *Central Guaranty Trust v de Luca* | Limitation period in COEA determined the case, despite lack of notice |
| Recognition and enforcement: *Court Order Enforcement Act* | *Owen v Rocketinfo* | Can’t use sister state legislation in US to get past the fact that not all US states are reciprocating states; not a “judgment” under the COEA b/c no $ payable |
| Recognition and enforcement: *Enforcement of Canadian Judgments and Decrees Act* | *Soledhin v Stern* | Fine to enforce ON judgments that were originally from Louisiana under ECJDA |
| Recognition and enforcement: arbitral awards  Exclusionary rules: public policy | *Schreter v Gasmac* | Public policy exception is NOT broader when it comes to arbitral awards  See also: Article V of Convention in *Foreign Arbitral Awards Act* |
| Immovables: characterization | *Hogg v Provincial Tax Commission* | Characterization of something as immovable done by the law of the place where the thing is situated |
| Immovables: characterization | *Re Berchtold* | If characterization is different under jurisdiction’s conflicts rules and domestic law that otherwise applies, go with conflicts characterization |
| Jurisdiction *simpliciter*  Immovables: Mocambique rule | *Mocambique* | Courts will not take jurisdiction over a foreign immovable |
| Immovables: Mocambique rule | *Hesperides Hotels v Muftizade* | No exception for conspiracy of proprietary torts, e.g. conspiracy for trespass |
| Immovables: Mocambique rule | *Godley v Coles* | Exception to *Mocambique*: cases incidentally involving a foreign immovable |
| Immovables: Mocambique rule | *Ward v Coffin* | Exception to *Mocambique*: if action is *in personam*, e.g. remedy sought is specific performance re: foreign immovable |
| Immovables: Mocambique rule, R&E | *Duke v Andler* | Will not recognize and enforce foreign judgments violating the *Mocambique* rule |
| Class actions | *Harrington v Dow Corning* | As long as one class action P has established jurisdiction, that’s enough for entire suit |
| Class actions  Forum non conveniens | *Ward v Canada (AG)* | Can’t use the fact that there’s only 1 P w/ connection to argue FNC |
| Class actions | *Kaynes v BP* | Could reasonably expect people to receive alleged misrepresentation in Canada |
| Class actions | *Airia Brands v Air Canada* | D’s argument that broadness of the class (mostly non-Canadians) was unfair to Ps was successful |
| Class actions | *Currie v McDonalds Restaurants* | Enforcement of foreign order – blocked for some Ps because of denial of natural justice |
| Class actions | *Meeking v Cash Store* | Foreign court can have jurisdiction even without notice or explicit consent based on R+S connection |
| Choice of law: renvoi | *Neilson v Overseas Projects Corp* | Australian application of renvoi to tort |
| Choice of law: torts, procedure, limitations | *Tolofson v Jensen* | Procedural issues are determined by the *lex fori*; limitations law is substantive  Tort issues governed by *lex loci delicti* |
| Choice of law: torts, procedure | *Somers v Fournier* | Substantive law: prejudgment interest, standard of care, duty owed, tortious nature of conduct, contributory and imputed negligence, defences, remoteness, heads of damage, no-fault liability schemes  Procedural law: costs, cap on non-pecuniary damages |
| Choice of law: torts | *Editions Ecosociete* | *Locus delictus* in defamation = wherever someone read it; “substantial harm to reputation” test was rejected |
| Choice of law: contracts, express choice of law | *Vita Foods v Unus Shipping* | Express choice should be respected as long as:   * Bona fide * Legal * Not contrary to public policy |
| Choice of law: contracts, implied choice of law | *Richardson Int’l v Mys Chikacheva* | Look at totality of agreements – if there are several, then choice of law in one might apply to all under implied consent  Arbitration clause, legal terminology, currency = implied consent |
| Choice of law: contracts, implied choice and proper law determined objectively | *Imperial Life v Colmenares* | Factors in favour of ON law (which won):   * Application for insurance addressed to Imperial’s head office in Ontario * Policies were prepared in ON, using a standard form from ON in conformity with provincial law * Policies couldn’t be varied except by writing at head office by two exec officers * Policies weren’t effective until certain conditions were fulfilled, which mirrored requirements under ON *Insurance Act*   Factors in favour of Cuban law:   * Policies were written in Spanish for delivery to C’s Cuban agent * C was a Cuban national at the time * Policies came into effect only on delivery of policies & payment of first premium |
| Choice of law: contracts, implied intent | *Amin Rasheed Shipping Corp* | Fact that Kuwait law wasn’t very robust didn’t explicitly weigh against it; see full CAN for all factors weighing in favour of English law  Won’t enforce K that is contrary to English law  Won’t enforce K that’s void for illegality under K’s proper law, even if not illegal under English law  Won’t enforce performance regardless of proper law if the act would be illegal in the country where it is to be performed |
| Choice of law: contracts | *Mackender v Feldia* | Issues of formation governed by the putative proper law (law to which K most closely connected) if no choice of law  If re: consent, even if choice of law exists, go with putative proper law or *lex fori* |
| Choice of law: contracts | *Greenshields v Johnson* | K is formally valid if it meets the requirements of either:   * Law of place it was made * Proper law of the contract   Land conveyancing K: could also be the law of the place where land is located |
| Choice of law: contracts  Exclusionary rules: public policy | *Avenue Properties* | Circumstances where court can substitute proper law of K w/ *lex fori*:   * Where local law is procedural * Where local legislation specifically states that certain procedures will apply, notwithstanding that proper law of K states otherwise * Where court is satisfied it would be contrary to forum public policy to apply proper law rather than forum law |
| Choice of law: contracts | *Gillespie Management Corp v Terrace Properties* | Mode of performance governed by law of the place where obligation is to be performed; i.e. if illegal there, will not be enforced |
| Choice of law: unjust enrichment/restitution | *Christopher v Zimmerman* | Common-law relationship dissolution, constructive trust sought – putative proper law or country where the enrichment occurred (but this might be the same test) |
| Choice of law: unjust enrichment/restitution | *Minera Aquiline* | Breach of confidence actions paired with constructive trusts are characterized as *in personam* actions (therefore no Mocambique rule, which was mistakenly argued here); constructive trusts are not *in rem* remedies  Proper law of the obligation = closest and most real connection |
| Choice of law: movables | *Cammell v Sewell* | Validity of transfer of movables and its effects on the property rights of any person claiming an interest are governed by the law of the country where the property is situated at the time of transfer |
| Choice of law: movables | *Winkworth v Christie* | If a legitimate transfer happens after an illegitimate transfer (e.g. collector buys piece stolen from England in Italy), then that legitimizes the transaction |
| Choice of law: trusts | Codified in *Conflict of Laws Rules for Trusts Act* | |
| Choice of law: succession | *Re Thom* | Assemble assets, set aside highest preferential share permitted under the respective jurisdictions where assets located, then divide residue according to law of the deceased’s usual or habitual residence |
| Choice of law: succession | *Re Groos* | 1904: will not invalidated by reason of change of domicile  1915: new domicile of choice means that will’s law changed from Dutch (domicile of origin) law to English (domicile of choice) law |
| Applying, pleading and proving foreign law | *Pettkus v Becker; Hunt v T&N* | Any kind of Canadian law doesn’t need to be pleaded or proven at the SCC |
| Applying, pleading and proving foreign law | *Old North Brewing v Newlands* | Too late to argue choice of law at R&E stage; hadn’t pled or proven BC law in NC original proceedings |
| Applying, pleading and proving foreign law | *Fernandez v The Mercury Bell* | Some provisions are fundamental and have sufficient degree of universality to be applied in place of proven foreign law (*Canada Labour Code*, in this case) – but really doing it because of sympathetic plaintiffs |
| Applying, pleading and proving foreign law | *Nystrom v Tarnava* | Unless the *Evidence Act* of a province provides otherwise, Canadian courts cannot take judicial notice of laws of another province [see full CAN for BC *Evidence Act*] |
| Applying, pleading and proving foreign law  Forum non conveniens | *Hunt v T&N* | Provincial superior courts can rule on the constitutionality of another province’s laws, but should only do so where a real interest is affected within its province (not in cases where it is merely incidental)  The fact that constitutionality of another province’s laws must be considered is NOT an FNC factor |