

Law 307B - Civil Procedure With Drafting

Course Outline and Readings

Date: September 8, 13

1. TOPIC

Lecture 1: An Introduction to Civil Procedure

This lecture will provide you with an introduction to Civil Procedure with Drafting. Building on your existing knowledge of Civil Procedure, you will learn foundational concepts that underpin this legal subject matter and begin to identify what you will need to know (knowledge) and be able to do (skills) when working directly with litigation files or encountering litigation in other legal/non legal contexts. During the course we will focus on the practical knowledge and skills necessary to (i) work with a litigation file, (ii) effectively and ethically represent clients who have come to you with civil disputes and issues, (iii) develop a professional approach to resolving these civil procedure matters, and (iv) critically evaluate the civil justice system. We will study the complex components that make up a modern civil justice system and identify the strong inter-relationships that exist between the substantive law you have been learning-contract, tort, property, company law, etc and the procedural law we will learn in the course as you problem solve litigation issues.

2. OBJECTIVES

By the end of this lecture, you should be able to

*be familiar with the course description, outline, and materials, methodology, and importantly the evaluation assignments

*given a civil dispute, identify pre-existing civil procedure knowledge , the foundational concepts that underpin civil procedure and the essential elements of an approach to problem solving in the litigation process

3. PREPARATION

Read Course Description, Course Outline and Readings

Date: September 15, 20

1. TOPIC

Lecture 2: The Adversarial System of Justice and the Alternatives

The adversarial system of justice has been the foundation of our Western model of civil procedure for a long time. What are its strengths? Does it have weaknesses or failings? How does it fit with your style of lawyering? How does an adversarial system of justice shape the roles of judges, lawyers, and the parties themselves? What are there alternatives to this system of justice? In this lectures we examine the adversarial system of justice in order to understand its important impact on the civil litigation process. We also consider alternatives to an adversarial model.

2. Objectives

By the end of this lecture, you should be able to

- *describe the main features of an adversarial system of justice and how these features influence the roles of judges, lawyers, and litigants
- *identify and describe the strengths and weaknesses (critiques) of an adversarial system of justice,
- *describe your own (and others) conflict style and their application in a civil litigation setting
- *describe differences and similarities between the lawyer's role as advocate and adversarial justice
- *articulate alternatives to the adversarial system including describing elements of an inquisitorial system of justice, indigenous models, and non-adversarial justice.

.

3. Preparation

Discussion Papers: Major Themes of Civil Justice Reform, pp.1-3 and Legal Culture pp1-5 at www.bcjusticereview.org

Advantages and Disadvantages of the Adversarial System in Civil Proceedings at www.lrc.justice.gov.au/2publicationsreports/P-92-CJS/consults/1-2civiladvers.pdf pp. 23-30

Canadian Bar Association Code of Professional Conduct, Lawyer as Advocate Chp IX, pg 61, Guiding Principle 1

Non-Adversarial Justice-to be assigned

Date: September 22

1. Topic

Law Firms Meeting: Registration and Problem Solving Practice Assignment #1

In this first meeting, we organize into class law firms and receive and complete Problem Solving Practice Assignment #1-**due end of this class.**

2. Objectives

By the end of this class, you should be able to

- * apply civil procedure foundation elements and the essential elements of an approach to problem solving to a realistic procedural problem
- *be able to work as a legal team to review a fact situation and propose a course of action for the client and lawyer

3. Preparation

Pre-arrange law firm groups if possible

Date: September 27, 29

1. Topic

Lecture 3: Civil Procedure and Professional Responsibility

In the civil litigation process professional responsibility and ethical issues can often arise without warning. These matters can seriously jeopardize, even end, a lawyer's career. It is the lawyer's duty to recognize these professional responsibility and ethical issues and to respond to them in a professional and ethical manner. In this lecture we will examine rules of professional responsibility that guide a lawyer in the civil litigation process, the relationship between professional and personal values, consider selected fact situations that raise ethical issues, and develop an appropriate framework to respond to ethical challenges when they arise in the context of civil litigation.

2. Objectives

By the end of this lecture you should be able to

- *identify and describe selected rules of professional responsibility that guide a lawyer in the civil litigation process
- *given selected legal fact scenarios, identify any ethical issues and apply selected rules of professional responsibility to the fact scenario following a structured framework
- *consider and articulate descriptions of professional and personal values/principles that guide or influence the application of professional legal ethics

3. Preparation

BC Professional Conduct Handbook, The Law Society of BC, Chps 1, 8
Review Select fact scenarios

Date: September 30, October 4, 6

1. Topic

Lecture 4: The Big Picture of Civil Justice: Reading Civil Procedure Cases; The Life of a Lawsuit; Rules of Court

It is essential in Civil Procedure to see the big picture of civil justice. In this lecture, we will develop experience reading and understanding civil procedure cases, the structure or stages -“the life”- of a typical lawsuit within the hierarchical structure of Canadian courts particularly BC courts including the sources and nature of court jurisdiction, and importantly become familiar with the source, objectives, and interpretation of rules of court. We pay close attention to rules of court. Rules of court generally govern every proceeding in the Supreme Court. Where do the rules come from? What are the objectives of these rules? How are they interpreted if there is a procedural dispute? We will learn how the rules of court fit with the structure a civil proceeding and identify the types of rule-related procedural problems or issues that can arise in the conduct of a civil matter.

2. Objectives

By the end of this workshop you should be able to

- *describe the structure of the Canadian court system and particularly the BC court structure
- *detail the source of a court's jurisdiction and the nature of that jurisdiction
- *describe the major stages of the litigation process
- *explain the source of rules of court and how such rules are made and amended
- *state the major objectives and purposes of rules of court
- *describe the historical and due process rationales for rules of court
- *given a present rule of court, be able to read decided cases on such rule, identify the essential elements behind the decision, and identify the interpretation principles of the rules, and be able to apply this learning to a new fact scenario

3. Preparation

Mussell v Cronhelm (1994), 87 BCLR (2nd) 197; Ausiku v Hennigan (2011) YKCA 5; Hicks v Beaver Lumber (1993) 98 BCLR (2nd) 206 (BCCA)
Supreme Court Civil Rules, Procedural Guide, pp. xxxvi-xlv; R. 1-3
Supreme Court Act RSBC 1996 c 443; Court Rules Act, RSBC 1996, c 80

Date: October 11

1. Topic

Lecture 5: Civil Justice Reforms

Over the last several decades criticisms have been directed at civil justice systems as being too slow, too costly, and too complex. For many people the costs of litigation are so high that they either abandon substantial claims or defences or appear as “pro se litigants” - unrepresented litigants. In this lecture we will examine the theories behind and the nature of recent reforms to civil justice systems with particular attention to recent reforms to the Supreme Court Civil Rules in British Columbia.

2. Objectives

By the end of this class you should be able to

*describe the major reform initiatives proposed in the report of the Civil Justice Reform Working Group

*describe major differences in the objectives and procedures between the proposed reforms and the new Supreme Court Civil Rules

3. Preparation

Effective and Affordable Justice: Report of the Civil Justice Reform Working Group to The Justice Review Task Force, Nov. 2006, www.bcjusticereview.org pp.1-42.
Click on civil justice reform working group
Supreme Court Civil Rules, Procedural Guide, Introduction, pg. xxxv

Date: October 13

1. Topic

Law Firms Meeting, Drafting Skills* and Problem Solving Practice Assignment #2

Law firms will meet, receive a litigation file and be assigned Problem Solving Practice Assignment #2-**due end of class**

2. Objectives

At the end of this class you should be able to

*read and review a civil litigation file to identify any substantive, procedural or ethical issues,

*recommend a course of action for a client and the lawyer

*identify knowledge/skills needed to implement course of action

3. Preparation

Read Supreme Court Civil Rules, R.3-1, 3-7

Date: October 13

1.Topic

Lecture 6: Limitation Periods

Limitation periods play an extremely important role in civil procedure. It is essential to understand the underlying policy reasons for limitation periods, the general structure of limitation legislation, and how limitation period rules are applied to litigation matters.

2. Objectives

By the end of these classes, you should be able to

- *describe the underlying policy reasons for limitation periods in civil justice matters
- *describe the general structure of limitation legislation,
- * be able to analyze a litigation file to identify if a limitation period issue exists and determine how it should be resolved.

3. Preparation

White Paper on Limitation Act Reform, Finding the Balance September 2010
pp. 1-52

Date: October 18, 20, 25

1. Topic

Problem Solving: Goals, Options, Analysis, Action for selected procedural problems

The decision to sue is an important step in civil litigation. While many civil disputes are resolved without resort to civil litigation, the decision to commence civil proceedings involves a careful consideration of important substantive, procedural and ethical issues. What considerations go into interviewing a client and counseling a client to begin a lawsuit? Who makes the decision to sue? What are the costs? Part of the decision to commence civil proceedings involves the lawyer in conjunction with the client developing a “theory of the case” that will guide her or him in moving the case forward to a successful conclusion. In this lecture we examine the knowledge and skills needed to meet (interview and counsel) clients, to make the decision to commence civil proceedings, and to develop a “theory of the case” approach to problem solving in civil litigation.

2. Objectives

By the end of this workshop you should be able to

- *describe the matters that require careful consideration when considering commencing civil proceedings including
- *describe the different ways in which a civil proceeding can be commenced
- *identify and describe the key elements of a client interviewing/counseling process in a civil case
- *develop and implement a structured problem solving approach in civil litigation including developing a theory of the case

3. Preparation

Novak v Bond, (1999) 1 SCR 808 updated for problem solving assignment #3
Selected procedural problems to be distributed

Date: October 27

1. Topic

Lecture 7: Managing the Process

There are increasing examples in the civil justice system where procedures are being put in place to manage cases as they proceed through the system. This topic will provide an opportunity to consider case management, settlement conferencing, case planning, court-connected mediation and the general ADR influences on the civil justice system

2. Objectives

By the end of this lecture, you will

- *be able to identify the range of procedural mechanisms available to manage civil cases and describe reform proposals to case management
- *be able to articulate the critiques directed at these management practices

3. Preparation

Supreme Court Civil Rules, R 5-1-5-4, 9-2, 12-2, 15-1
Jurczak v Mauro (2011) BCSC 517

Date: November 1, 3

1. Topic

Lecture 8: Procedures for Ascertaining Facts (Discovery) and Pre Trial Resolution Procedures

In the civil justice system, almost all cases settle without trial. These classes examine procedures used to encourage settlement while at the same time prepare for trial. You will examine the extensive manner in which there is required disclosure in civil cases of all relevant evidence before trial and the types of procedural mechanisms available to dispose of cases without the necessity of a full trial.

2. Objectives

By the end of these classes you will

*be able to reference and describe the details of the rules applicable to pre-trial discovery

*be able to reference and describe the details of the rules relevant to disposing of or resolving civil cases without a full trial, particularly Rule 18A and 9-7 Summary Trial

3. PREPARATION

Supreme Court Civil Rules 7-1 to 7-8

Supreme Court Civil Rules 9-1 to 9-8

Date: November 8

1. Topic

Lecture Comprehension/ Problem Solving in the Civil Justice System Assignment

The Lecture Comprehension/ Problem Solving in the Civil Justice System Assignment will be distributed today and is due start of class November 10. The assignment must be completed independently by each student without consultation with any other individual.

2. Objectives

At the end of this class you should be able to

*complete the assignment in accord with your lecture notes and the structured approach to problem solving developed in the course

3. Preparation

Review course materials to date

Date: November 10, 15, 17

1. Topic

Civil Procedure Drafting Assignment

The Civil procedure Drafting Assignment will be distributed November 10- **due no later than start of class November 22**

2. Objectives

By the end of these classes, you will be able to

*identify the knowledge and skills needed to successfully complete the Civil Procedure Drafting Assignment

.

3. Preparation

Review relevant Supreme Court Civil Rules

Date: November 22, 24, 29, December 1

1. Topic

Civil Procedure in Action Simulation and Course Conclusion

In these meetings students in law firms will have an opportunity to work in teams on litigation files applying what you have learned in the course to a realistic fact situation as you complete identified tasks.

2. Objectives

By the end of these classes you should be able

* apply your learning in the course to a final civil litigation matter to apply all knowledge and skills learned in the course to a specific fact situation in a Civil Procedure Simulation.

3. Preparation

Review course materials

(Doc: Civ Pro Course Outline and Readings 2011)

