

UNIVERSITY OF VICTORIA, FACULTY OF LAW

LAW 307B CIVIL PROCEDURE WITH DRAFTING (2.0 units)

Preliminary Spring 2011 Course Description, Outline, and Reading List

Instructor Information:

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Course Schedule:

Tuesdays and Thursdays, 4:00 pm to 6:00 pm

Note: No classes February 22 and 24 (Reading Week)

Course Description:

Law 307B offers an overview of common law civil procedure with reference to the Supreme Court Civil Rules governing Supreme Court of British Columbia practice under the *Court Rules Act*.

General topics covered include theories of civil procedure, alternative dispute resolution, roles and obligations of legal professionals, organization and jurisdiction of judicial tribunals, stages of civil litigation, management of judicial resources, access to justice and civil justice reform.

Objectives:

To become familiar with the main steps of rules of procedure for conducting a civil action in the Supreme Court of British Columbia;

To develop the knowledge and skill needed to draft basic legal documents and to apply that knowledge.

To study the role and professional responsibility of lawyers and other legal professionals involved in civil disputes.

To explore the aspirations and limitations of civil litigation and alternative dispute resolution processes in contemporary multicultural societies.

Teaching Methodology

Lectures, small group work, and discussion.

Lectures – to provide information and a framework to understand the topic.

Small Group Work – to explore and discuss possible solutions to problems

Discussion – to stimulate critical reflection and apply knowledge from readings.

Expectations

You will have read and thought about assigned readings prior to class.

You will participate in class discussion.

You will ask questions.

Classroom Climate

An inclusive, respectful and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcome and equally able to contribute to class discussions, both I as instructor and you as students must endeavour to be respectful in our language, our examples and the manner in which we engage with each other in our discussions. We have both an ethical and legal obligation to support this kind of environment. For reference you may wish to consult the University's Discrimination and Harassment Policy (<http://web.uvic.ca/uvic-policies/pol-1000/1150HPP.html>). If you have any concerns about the climate of the class, please feel free to contact me.

Communication and other Administrative Matters

Please check your Uvic e-mail account regularly for notices from me about class cancellations, reading assignments, helpful hints for assignments, and other matters.

Outside of scheduled class time, the best way to reach me is by email. However feel free to ask questions after class, via email or telephone me during the day.

If you would like to discuss classroom, assignment or exam accommodations necessitated by a permanent or temporary disability, or for other reasons, please arrange an appointment to meet with Associate Dean Heather Raven.

As a general rule, it is not permitted to tape or digitally voice record lectures, however we do occasionally make exceptions for accommodative reasons. If you would like to tape a lecture, please speak to me in advance.

You do not need to use a laptop computer in class to succeed in this course. If you choose to take notes on a laptop, please do so in a manner that is respectful of those seated around you. Should it be evident that you are not using the laptop for this course's purpose, you will be asked to leave the class.

Required Materials

Required: Supreme Court Civil Rules, statutes, cases, Canons of Legal Ethics and Professional Conduct Handbook and other material referred to in the Reading List. This information is available via the internet.

Text: It is recommended, but not required, that you obtain Bouck, Dillon and Turiff, *British Columbia Annual Practice 2010-11* and bring it to class.

Method of Evaluation

- **Drafting Assignment #1** Notice of Civil Claim, 25% of final grade
Distributed January 20; due February 3 at 4:30 pm
- **Chambers Assignment** Drafting Assignment #2, Application, 25% of final grade
Distributed February 15; Due March 10 **at 8:30 am**

Oral Advocacy, Chambers, 10% of final grade
Distributed February 15; Arguments made March 10
- **Final Examination** 40% of final grade
April 20, 2011, 12:00 pm (subject to change)

The Final Examination will be open book meaning that you can bring your notes, summary/outline and the British Columbia Annual Practice into the examination room. No other written materials permitted and no laptops or other electronic devices are allowed in the examination room.

Code names will be used on Drafting Assignment #1 and the Final Exam. Please obtain your mid-term and final code names from the Main Office in advance.

Penalties for Failure to Complete Assignments and Failure to Meet Deadlines

A student who fails to meet a deadline without prior approval from the course instructor will be penalized by reducing that student's grade for the assignment by one letter grade for every day, or part of a day, that the assignment is late. All assignments must be completed. Failure to complete any assignment or to write the exam will result in a grade of "N" (incomplete)

The four evaluations are each graded by a numerical percentage. The final grade for this course will be calculated by adding the weighted numerical grades of all evaluations components and determining the equivalent letter grade for the total of those weighted components as in the following example:

	Percentage	Weight	Marks
Assignment #1	75%	25%	18.75
Assignment #2	80%	25%	20.00
Oral Advocacy	75%	10%	7.50
Examination	88%	40%	<u>35.20</u>
			81.45 = A-

The following are the relevant equivalencies between numerical and letter grades at the University of Victoria Faculty of Law:

<u>Letter Grade</u>	<u>Numerical % Equivalent</u>	<u>Grade Point</u>	
A+	90+	9	Exceptional
A	85 – 89	8	Outstanding
A-	80 – 84	7	Excellent
B+	75 – 79	6	Very Good
B	70 – 74	5	Good
B-	65 – 69	4	Solid
C+	60 – 64	3	Satisfactory
C	55 – 59	2	Minimally Satisfactory
D	50 – 54	1	Marginal
F	49 and below	0	Unsatisfactory

Academic Integrity

Academic integrity is expected of all participants in the university community. It is a serious academic offence to engage in plagiarism or other forms of academic dishonesty, or to assist others in doing so. You should familiarize yourself with the University's Policy on Academic Integrity which is set out in the University Undergraduate Calendar.

If you have any questions about what constitutes paraphrasing, plagiarism or cheating, or if you have any concerns or questions about the University's policy, please speak with me or Associate Dean Heather Raven. For convenience, the definition of plagiarism is included here:

“Plagiarism

A student commits plagiarism when he or she:

- 1. submits the work of another person as original work;*
- 2. gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work.*
- 3. paraphrases material from a source without sufficient acknowledgement as described above.*

Students who are in doubt as to what constitutes plagiarism in a particular instances should consult their course instructor.”

Referenced Resources:

Supreme Court of BC Practice & Procedure (Act, Rules, Practice Directions)

http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure

Supreme Court Civil Rules

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_00

Bouck, Turriff & Dillon, *British Columbia Annual Practice 2010-11 (the "White Book")*). This is a popular British Columbia rule book that provides short summaries of key cases interpreting each rule as well as annotations of cases.

Background to the Supreme Court Civil Rules

<http://www.ag.gov.bc.ca/new-rules/civil/index.htm>

Statutes *Supreme Court Act, Court Rules Act, Class Proceedings Act, Interpretation Act, Limitation Act, Law and Equity Act and Negligence Act* are available online at <http://www.BCLaws.ca> - and on commercial databases such as Quicklaw.

Provincial Court Act and Rules are on the court website at:

<http://www.provincialcourt.bc.ca>

Professional Responsibility and Ethics *Canons of Legal Ethics and Professional Conduct Handbook*, published by The Law Society of British Columbia <http://www.lawsociety.bc.ca> under "Publications and Forms"

The full-text of the cases referred to in this outline are available on the Internet at <http://www.courts.gov.bc.ca> or <http://www.canlii.org> or on commercial databases such as Quicklaw. Summaries of many of these cases are in *British Columbia Annual Practice*.

Additional readings may be assigned for some classes. Everything on the reading list is examinable. From time to time, optional readings may be referenced as will cases referred to in class which are not on the list. Reference to those cases in class is made to illustrate the different approaches taken by the justices of the court to address procedural issues.

Helpful Resource Materials

Seckel and MacInnis, *BC Supreme Court Rules Annotated*. Very similar to the White Book, but provides useful short essays on each Rule.

B. McLachlin and J. Taylor, *British Columbia Practice* (2nd ed.). This is organized by Rules and offers the most complete collection of judicial application of the rules.

Fraser and Horn, *The Conduct of Civil Litigation in British Columbia* (2 vol); organized by procedures and themes rather than by rules.

B. McLachlin and J. Taylor, *British Columbia Court Forms* (2nd ed). This is the authoritative British Columbia book of precedents.

Bullen & Leake & Jacob's Precedents of Pleading. This is a classic pleadings text but is based on English law. The older editions are often more useful as they focus more on common law claims and defences and less on English statute law.

**Civil Procedure with Drafting 307B – Spring 2011
Course Outline**

1	January 4, 6	Introduction
2	January 11, 13	Initiating Proceedings
3	January 18, 20	Drafting and Challenging Pleadings
	January 20	Drafting Assignment Distributed; Due Feb 3, 4:00 pm
4	January 25, 27	Responding to Claims, Failure to Prosecute, Discontinuance, Amendments
5	February 1, 3	Pre-Trial Procedures for Ascertaining Facts
6	February 8, 10	Pre-Trial Facts continued; Chambers Applications
7	February 15, 17	Advocacy in Chambers and Experts
	February 15	Drafting Assignment Two Distributed; Due March 10, 8:30 am
8	February 22, 24	Reading Week – no Classes
9	March 1, 3	Managing the Case to Trial
10	March 8	Costs
	March 10	Chambers Assignment
11	March 15, 17	Saving Time and Money? Alternatives to the Standard Procedure; Complexities of Litigation: Injunctions, Jury Trials and Class Proceedings
12	March 22, 24	Complexities Continued; Provincial Court Practice; Revisiting Themes: Access to Justice
13	March 29, 31	Revisiting Themes: Professional Responsibility and the Toolbox of Skills
	April 5	Review and Examination Preparation
	April 20	Examination

Week One: Tuesday, January 4; Thursday, January 6 - Introduction

TOPICS:

- Overview of course and evaluations
- Introduction of Themes
 - Access to Justice
 - Toolbox of Skills (New Lawyer and Warrior Lawyer)
 - Professional Responsibilities
- Methods of dispute resolution
- Litigation and the Adversary System
- Life Cycle of a Civil Action
- Rules of Court
 - Who Makes the Rules?
 - Object of the Civil Rules
- Public perceptions of Litigation and Lawyers
- Professional Obligations
- Civil Justice Reform – a Wish List
- Introduction of Fact Patterns

READING:

Rules: 1-3
Statutes: *Supreme Court Act*, R.S.B.C. 1996, c.442
Court Rules Act, R.S.B.C. 1996, c. 80

Executive Summary of *Effective and Affordable Civil Justice*, BC Civil Justice Working Group http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp

Professional Conduct Handbook

http://www.lawsociety.bc.ca/publications_forms/handbook/handbook_toc.html

Chapter 1 Canons of Legal Ethics
Chapter 3 Competence and Quality of Service

Macfarlane, J., "Evolution of the new lawyer: how lawyers are reshaping the practice of law", *Journal of Dispute Resolution* v. 2008, no. 1

Week Two: January 11 and 13 – Initiating Proceedings

TOPICS: Jurisdiction
Limitation Periods
Notice of Claim vs. Petition vs. Requisition
Service
Calculating Time
Renewing a Claim
Default Judgment

READING:

Rules: 1-2, 2-1, 3-1, 3-2, 3-7, 3-8, Parts Four, Sixteen and Seventeen, 22-4
Statutes: *Small Claims Act*, R.S.B.C. 1996, c.430, s
Limitation Act, R.S.B.C., c. 266
Interpretation Act, R.S.B.C. 1996, c. 238, s. 25
Cases: *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.*
[1996] B.C.J. No. 234 (CA) (Adding after Limitation Period)
Novak v. Bond, [1999] 1 S.C.R. 808 (Post-ponement)
Wall v. Lemire [1992] B.C.J. No. 1036 (SC-M.) (Service)
Sutherland v. McLeod [2004] B.C.J. No. 2739 (CA) (Renewal of Writ)

Week Three: January 18 and 20 – Drafting and Challenging Pleadings

TOPICS: Substantive Rules for Drafting Pleadings
Naming Parties
Particulars of pleadings
Striking pleadings
On Jan 20, we will collectively draft a Notice of Claim in preparation for the first drafting assignment.

READING:

Rules: Rule 3-7, 9-5 4, 20-1, 20-2, 20-3, and Rule 22-5

Cases: *Delaney & Friends Cartoon Productions Ltd. v. Radical Entertainment Inc.*, 2005 BCSC 371 (Material Facts and Striking)
Young v. Borzoni et al, 2007 BCCA 16 (Material Facts and Striking)
Cansulex Ltd. V. Perry [1982] B.C.J. No. 369 (CA) (Particulars)

Drafting Assignment Distributed January 20; Due February 3, 2011 at 4:30 pm.

Week Four: January 25 and 27 – Responding, Failure to Prosecute, Discontinuance and Amendments

TOPICS: Responding to a Civil Claim
Counterclaim and Set-off
Effect of non-compliance
Dismissal for Want of Prosecution
Discontinuance and Withdrawal
Amending Pleadings
Summary Judgment

READINGS:
Rules: 3-3, 3-4, 3-7, 6-1, 9-6, 9-8, 22-4, 22-7
Cases: *Aker Kvaerner Canada Inc. v. Twardowski* 2010 BCSC 1153 (Dismissal for Want of Prosecution)
Bank of Montreal v. Erickson [1984] B.C.J. No. 1540 (CA) (set aside default)

Week Five: February 1 and 3 - Pre-Trial Procedures for Ascertaining Facts

TOPICS: Discovery of Documents
Privilege
Examinations for Discovery

READINGS:
Rules: 7-1; 7-2
Statutes: Law Society of BC Professional Conduct Handbook, Chapters 5,
Cases: *Benning v. Trustees of the IWA* 2010 BCSC 1422 (Documents)
Biehl v. Strang 2010 CSC 1391 (Documents)
Kendall v. Sun Life Assurance Co. of Canada 2010 BCSC 1556 (Scope of Questions)
Sandbar Construction Ltd. V. Howon Industries Ltd. (1998) B.C.L.R. (3d) 55 (implied undertaking)

Week Six: February 8 and 10 – Pre-Trial Facts continued; Chambers Applications

TOPIC: Interrogatories
Physical Examination and Inspection
Discovery of Documents from Third Parties
Notice to Admit
Witnesses

Applications and Responses
Affidavits
Orders

READING:

Rules: Remainder of Part 7, Part 8, 13-1, 13-2, 22-1, 22-2, 23-6
Practice Directions for Master

Cases: *Weiss v. Koenig* 2010 BCSC Nov. 1814 (Withdrawal of Admission)
U., (L.M.) v. U. (R.L.), 2004 BCSC 95 (Affidavits)
Kennedy v. Kennedy, 2006 BCSC 190 (Affidavits)

Week Seven: – February 15 and 17 - Advocacy in Chambers and Experts

TOPICS: Experts

READING:

Rules Part 11

Cases: *Jayetileke v. Blake* 2010 BCSC 1478 (expert not advocate)
927966 Ontario Ltd. V. Cogenix Development Corp. 2000 BCSC
747 (experts)
Homolka v. Harrison 2002 BCCA 262 (experts)

Drafting Assignment Two Distributed February 15; Due March 10 at 8:30 am

Week Eight - February 22 February 24 – Reading Week – no Classes

Week Nine – March 1 and 3 – Managing the Case to and Through Trial

TOPICS: Case Planning Conferences
Setting a Trial Date
Trial Management Conferences
Evidence & Procedure at Trial
Costs

READING:

Rules: Parts 5, 12,

Cases: *Roberge v. Huberman* (1999) 62 BCLR (3d) 385 (no evidence)
Robinson v. Robinson Estate 2006 BCSC 663 (insufficient evidence)
Vernon v. British Columbia (Ministry of Housing and Social Development)
2010 BCSC 1688 (trial management conferences and statements of
counsel)
Dawson v. Tolko Industries Ltd. 2010 BCSC 1384 (Adverse witnesses)

Week Ten – March 8 –Costs;

TOPICS: Costs

READINGS:

Rules: Part 14, Appendix B

Cases: *Aschenbrenner v. Yahemech* 2010 BCSC 1541 (costs)
Jayetileke v. Blake 2010 BCSC 1478 (costs)

Thursday, March 10 - Chambers Applications

Chambers Assignment due at 8:30am today; oral arguments scheduled today between 8:30am and 9pm – Check Chambers list for time of your moot.

Week Eleven – March 15 and 17 – Saving Time and Money? Alternatives to the Standard Process; Complexities of Litigation: Third Parties, Injunctions, Jury Trials and Class Proceedings

TOPIC: Fast Track Litigation
Summary Trials
Judicial Settlement Conferences
Mediation (Notice to Mediate)
Offers to Settle
Consequences of Offers to Settle on Costs

Third Party Procedure
Injunctions
Jury Trials
Class Proceedings

READINGS:

Rules 9-1, 9-2, Part 15, 3-5, 10-1, 10-4, 12-6

Statute: *Class Proceedings Act*, R.S.B.C. 1996, c.50 (focus on Part I and Part II)
Jury Act, R.S.B.C. 1996 c. 242

CASES:

Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202 (CA) (summary trial)

Chu v Chen 2002 BCSC 906 (summary trial)

Bomford v. Wayden Transportation Systems Inc. 2010 BCSC 1721 (offer to settle)

[Rumley v. British Columbia, \[2001\] 3 S.C.R. 184](#) (class actions)

: *Canadian Broadcasting Corporation v. CKPG Television Ltd.* [1992] 3 W.W.R. 279, (BCCA); (injunctions)

Attorney General of British Columbia v. Wale (1986) (BCLR) (2d) 333 (CA) (injunctions)

READINGS: R. Hayley and W. Branch, *An Insider's Guide to Class Certification*, 2004
<http://www.branchmacmaster.com/articles/>

Week Twelve – March 22 and 24 – Complexities continued; Provincial Court Practice; Revisiting Themes: Access to Justice

TOPICS: Provincial Court Procedure
Indigency Application
Legal Aid
Legal Fees, Contingency Fees
Self-represented parties
Access to Justice

READING:
Statute: Provincial Court (Small Claims) Rules
Rules: 20-5
Other: Report of the Public Commission on Legal Aid (released in February)
Professional Conduct Handbook: Chapter 9 - Fees

Week Thirteen – March 29 and 31 – Revisiting Themes – Professional Responsibility and the Toolbox of Skills

TOPIC: Overview of BC Law Society and the role of Benchers
Profession Responsibility Issues
New Lawyers and Warrior Lawyers

READINGS:
Professional Conduct Handbook
Macfarlane, J., "Evolution of the new lawyer: how lawyers are reshaping the practice of law:", *Journal of Dispute Resolution* v. 2008, no. 1

Tuesday, April 5 – Review and Examination Preparation

TOPIC: Review, Questions, Closing Remarks

Wednesday, April 20, 2011

12:00 pm **Final Examination (subject to change)**