

UNIVERSITY OF TORONTO  
FACULTY OF LAW

LEGAL PROCESS (AA)  
FALL 2007

PROFESSOR ANGELA FERNANDEZ

Office: Flavelle 427; 416-946-8208  
E-mail: angela.fernandez@utoronto.ca  
Classes: Tues & Thurs 4:10-5:25, FLB

---

**A. INTRODUCTION**

**1. COURSE DESCRIPTION**

This course provides an introduction to legal process, with a particular focus on civil litigation. It introduces students to essentials of legal thinking, rules and processes of civil procedure and dispute resolution, issues of professionalism and ethics in the context of civil dispute resolution. Special emphasis is put on addressing fundamentals of law in a broad, theoretical context.

The course consists of three parts. Part 1 provides an introduction to legal process, concepts of truth, fairness, and leading analytical frameworks of legal thought. Part 2 focuses on the litigation process and selected rules of civil procedure to see how concepts of fairness and frameworks of legal thought are reflected in the civil justice system. Specific topics considered in Part 2 include: an introduction to rules of civil procedure; parties to the civil process; jurisdiction; timing; discovery; privilege and confidentiality; traditional and alternative methods of resolving disputes prior to trial; and costs, fees and access to justice. Part 3 examines issues relating to legal actors and professionalism.

**2. READING MATERIALS AND ASSIGNMENTS**

There are three course materials: (1) *Casebook*, 1 vol., 2007 (516 pages); (2) *Rule Book* (128 pages); (3) *A Civil Action* by Jonathan Harr. All are available for purchase at the University of Toronto, Faculty of Law Bookstore. Items in the *Casebook* and *Rule Book* are also available in electronic form at the course software Blackboard. The *Casebook* is posted in unnumbered individual files, whereas the printed version of the materials corresponds to page numbers on the course outline. The *Rule Book* is posted as one file with consecutive page numbering in both Word and as a PDF file.

The course outline indicates when a reading is “required,” “recommended,” or a “background reference” (the latter two are for your information, further insight and exploration into topics examined in class). *A Civil Action* should be read in full and can be done at any time. However, the outline will indicate when particular sections will be drawn on in class.

**3. EVALUATION**

The evaluation for this course consists of an open-book 100% final examination.

## **B. COURSE OUTLINE: PART I**

### **1. INTRODUCTION TO THE COMMON LAW SYSTEM OF CIVIL JUSTICE & LEGAL PROCESS**

#### **1.1 Introduction**

##### **Required Reading**

- Categories of Law (Handout & p. 1)\*
- Court Structure (Handout & p. 2)

##### **Recommended Reading**

- Waddams, "The Structure of the Courts" (pp. 4-7)
- Baker, "The Forms of Action" (pp. 8-16)
- Waddams, "Equity" (pp. 17-18)

#### **1.2 What is Process?**

##### **Required Reading**

- Gary D. Watson, "The Structure and Purpose of Civil Procedure" (pp. 19-21)
- Walker, "Courts and Tribunals" (pp. 22-29)
- Fitzgerald & Wright, *Looking at Law: Canada's Legal System* (pp. 30-32)
- Kenneth E. Scott, "Two Models of the Civil Process" (pp. 33-34)
- Lawrence B. Solum, "Procedural Justice" (pp. 35-38)
- *A Civil Action* (pp. 1-146)
- "A Documentary Companion to A Civil Action: Outline" (pp. 39-46)

##### **Recommended Reading**

- Angela Fernandez, "Legal Education & *A Civil Action* in Canada: (In)visibility of the Courtroom in Film" (pp. 47-70)

##### **Background Reference**

- Pleadings in *A Civil Action*, <http://www.law.fsu.edu/library/coursresources/beatrice/index.html>
- "Lessons from the Woburn Project," <http://cyber.law.harvard.edu/acivilaction/>
- Olivo, Statement of Claim, Statement of Defense & Reply to Statement of Defense (pp. 71-74)

#### **1.3 Truth, Fairness & Philosophies of Law**

##### **Required Reading**

---

\* Page numbers with no designation refer to pages in the *Casebook*.

- Lon L. Fuller, *The Morality of Law* (pp. 75-81)
- Mirjan Damaska, "Truth in Adjudication" (pp. 82-91)
- *A Civil Action*, pp. 325-340
- "The Power of Procedure: Reflections on 'A Civil Action'" (pp. 92-95)

### **Recommended Reading**

- John Burrows, *Recovering Canada: The Resurgence of Indigenous Law* (pp. 96-100)
- Patricia Williams, *The Alchemy of Race and Rights* ( pp. 101-102)

---

## **2. LITIGATION PROCESS AND RULES OF CIVIL PROCEDURE**

### **2.1 Who are the Parties to the Litigation?**

#### **A. Intervention; Standing**

##### **Required Reading**

- Rule 13 (Rule Book, pp. 8-9)
- *MacNeil v. Nova Scotia (Board of Censors)*, [1976] 2 S.C.R. 265 (pp. 103-105)
- *Borowski* (1983), 144 DLR (3d) 657 (pp. 106-107)
- *Canadian Council of Churches*, [1992] 1 S.C.R. 236 (pp. 108-110)

##### **Recommended Reading**

- Ian Brodie, *Friends of the Court* (pp. 111-112)
- Charles Epp, "Canada's Support Structure for Legal Mobilization" (113-115)

#### **B. Joinder; Class Actions**

##### **Required Reading**

- Rule 5 (Rule Book, pp. 5-7)
- *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (Rule Book, Appendix A, pp. 76-99)
- *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158 (pp. 116-121)
- *Rumley v. British Columbia*, [2001] 3 S.C.R. 184 (pp. 122-126)
- *Cloud et al. v., Canada (A.G.)* (2005) 73 O.R. (3d) 401 (C.A.) (pp. 127-133)
- Highlights on the Residential Schools Agreement (pp. 134-136)
- Steven Penney, "Mass Torts, Mass Culture: Canadian Mass Tort Law and Hollywood Narrative Film" (pp. 137-191)

##### **Recommended Reading**

- Kirk Makin, "Class-Action Suits Explode Into 'National Phenomenon'" (pp. 192-194)
- Gary D. Watson, "Class Actions: The Canadian Experience" (pp. 195-204)

### **Background Reference**

- Settlement Agreement in Residential Schools Case, [http://www.irsr-rqpi.gc.ca/english/news\\_10\\_05\\_06\\_AIP.html](http://www.irsr-rqpi.gc.ca/english/news_10_05_06_AIP.html)
- Legal Notice, “Notice of Certificate of Approval of Class Action Settlement” (p. 205)

## **2.2 Where to Litigate? Jurisdiction and *Forum Non Conveniens***

### **Required Reading**

- Rules 16 & 17 (Rule Book pp. 10-19)
- *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 (pp. 206-207)
- *Muscutt v. Courcelles* (2002) 213 DLR (4<sup>th</sup>) 577 (pp. 208-215)
- *Roy v. North American Leisure Group*, [2004] O.J. No. 4767 (pp. 216-218)

## **2.3 When to Litigate? Limitation Periods**

### **Required Reading**

- *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6 (pp. 219-224)
- *Limitations Act, 2002*, S.O. 2002, c. 24 (Rule Book, Appendix B, pp. 100-116)
- *Novak v. Bond*, [1999] 1 S.C.R. 808 (pp. 225-232)
- *Hewson v. Whistler* (2006) B.C.P.C. 359 (pp. 233-234)

### **Recommended Reading**

- Kent Roach, “Reforming Statutes of Limitations” (pp. 235-250)

## **2.4 How Many Times? *Res Judicata***

### **Required Reading**

- *Toronto (City) v. CUPE, Local 79*, [2003] SCC 63 (pp. 251-256)
- *Minott v. O’Connor* 1999 ONCA 44 (pp. 257-260)
- Lange, *The Doctrine of Res Judicata in Canada* (pp. 261-264)
- *Dale Streiman & Kurz LLP v. De Teresi*, [2007] 84 O.R. (3d) 383 (pp. 265-268)

## **2.5 Summary Judgment, Striking Claims etc**

### **Required Reading**

- Rules 20 & 21 (Rule Book, pp. 20-24)
- *Jane Doe* (1989) 58 D.L.R. (4th) 396 (pp. 269-294)
- *Jane Doe*, Book Cover & “The Right to Take the Police to Court” (pp. 295-296)

### **Recommended Reading**

- Review *A Civil Action* (pp. 99-119)
- Rule 11 (pp. 297-303)

## **2.6 In Whose Interests?**

### **Required Reading**

- Jane Doe, "LEAF" (pp. 304-308)
- S. Ellman, "Client-Centredness Multiplied" (pp. 309-313)
  
- *A Civil Action*, "The Negotiation" (pp. 405-458)
  
- *Justice Statute Law Amendment Act, 2002*, S.O. 2002, c. 24 (Rule Book, Appendix C, pp. 117-21)
- Ministry of the Attorney General, "Ontario Government Improves Access to Justice" (p. 314)
- *Solicitors Act*, R.S.O. 1990, c. S-15 (Rule Book, Appendix D, pp. 122-24)
- Contingency Fee Regulations (Rule Book, Appendix D, pp. 125-28)

## **2.7 Discovery; Privilege and Confidentiality**

### **Required Reading**

- Rules 30, 31 & 34 (Rule Book, pp. 32-53)
- Jane Doe, "Discovering Jane Doe" (pp. 315-323)
- *Grossman v. Toronto General Hospital* (1983), 146 D.L.R. (3d) 280 (Ont. Gen. Div.) (pp. 324-326)
- *Ontario (Ministry of Environment) v. McCarthy Tétrault* (1992), 9 C.E.L.R. (N.S.) 12 (Ont. Prov. Div.) (pp. 327-329)
- Archibald and Morton, "History, Purpose and Scope of Discovery" (pp. 330-333)
- Stewart, "Privilege and Related Issues" (pp. 334-336)
- *General Accident Assurance Company v. Chrusz* (1999), 180 DLR (4<sup>th</sup>) 241 (pp. 337-346)
  
- *A Civil Action*, "Discovery" & "The Woodshed" (pp. 147-232)
- *A Civil Action*, "Blindman's Bluff" (pp. 449-492)
- Pre-Trial process materials from *A Documentary Companion to a Civil Action* (pp. 347-360)
- Discovery abuse and sanctions materials from *A Documentary Companion to a Civil Action* (pp. 361-366)

### **Recommended Reading**

- Gavin MacKenzie, "Is Keeping Secrets in Client's Best Interest?" (pp. 367-368)
- Kirsten McMahon, "In-House Opinion Protected By Privilege" (pp. 369-370)

## **2.8 Case Management; Mandatory Mediation & ADR; Settlement**

### **Required Reading**

- Rule 24.1 & 77 (Rule Book, pp. 25-31, 64-75)
- Olivo, "Case Management" (pp. 371-372)
- Olivo, "Mandatory Mediation" (p. 373)
- Martin Teplitsky "Excessive Cost and Delay: Is There a Solution" (pp. 374-387)
- Paul Emond, "ADR: A Conceptual Overview" (pp. 388-390)
- Superior Court of Justice, "Civil Case Management: Toronto Update" (p. 391)
- Kim Honey, "Police Failed Rape Victim" (pp. 392-393)
- Jane Doe, "Goddamn, if she didn't poster" & "Winning" (pp. 394-406)
- Jonathan Woodward, "Anger of the Balcony Rapist" (pp. 407-408)
- Jonathan Woodward, "Civil Lawsuit Cited in Outing of Rapist in B.C." (p. 409-410)

### **Recommended Reading**

- Owen M. Fiss, "Against Settlement" (pp. 411-413)
- Chris A. Carr & Michael R. Jencks, "The Privatization of Business and Commercial Dispute Resolution: A Misguided Policy Decision" (pp. 414-421)

## **2.9 Financing Litigation: Costs, Fees, Access to Justice**

### **Required Reading**

- Rules 57 & 58 (Rule Book, pp. 54-63)
- Olivo, "Retainer," "Docket Slip," "Bill of Costs" (pp. 422-424)
- Orkin, "Party-and-Party Costs," "Costs Under Legal Aid Ontario," "Costs in the Supreme Court of Canada" (pp. 425-430)
- Cassandra Szklarski, "More People Fend for Themselves in Court as Legal Fees Rise, Access Drops" (pp. 431-433)
- Tracey Tyler, "Taking Your Own Counsel" (pp. 434-436)
- Silver, *Mediation and Negotiation: Representing Your Clients* (p. 437)

### **Recommended Reading**

- Review *A Civil Action* (pp. 451-458)

---

## **3. LEGAL ACTORS: PROFESSIONALISM, ETHICS & THE PUBLIC INTEREST**

### **3.1 Lawyers, Clients and the Public: Professional Responsibility and Legal Ethics**

#### **Required Reading**

- Perell & Varro "Elements of Professionalism" (pp. 438-447)
- Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives" (pp. 448-473)
- *Mugesera*, [2005] S.C.C. 39 (pp. 474-476)

#### **Recommended Reading**

- Angela Fernandez, "Polling and Popular Culture (News, Television, and Film): Limitations of the Use of Opinion Polls in Assessing the Public Image of Lawyers" (pp. 477-495)

#### **Background Reference**

- *Law Society Act*, R.S.O. 1990, c. L-8, online:  
[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90l08\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90l08_e.htm)

### **3.2 Judges: Duty of Impartiality**

#### **Required Reading**

- *Reg. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2)*, [1999] 1 All E.R. 577 (pp. 496-502)
  - *Benedict v. Ontario* (2000), 51 O.R. 3<sup>rd</sup> 147 (pp. 503-506)
  - “Judging the Courts: Wikinews Interviews Prof. Lawrence Douglas” (pp. 507-516)
-