Please write below the question numbers that you have answered:

Part 1, Part 2, 1-7

THIS EXAMINATION CONSISTS OF 7 PAGES AND 1 APPENDIX (18 pages total)

Please ensure that you have a complete paper

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION THURSDAY, APRIL 20, 2017

LAW 469.003
Civil Procedure

Adjunct Professors Gavin Cameron and David Crerar

TOTAL MARKS: 90

TIME ALLOWED: 3 HOURS

General Instructions

This Final Examination consists of two parts:

- Part 1 requires you to answer two of three short answer questions: 20 marks (22%) each, for a total of 40 marks. Recommended time: 40 minutes each.

- Part 2 consists of a Fact Pattern: seven Questions, no choice: 50 marks (55%). Recommended time: 100 minutes.

We strongly urge you to think out your answers before committing pencil to paper. Focus on the specific issues raised in each question. In marking, we will reward reflection and economy of prose, rather than broad regurgitation. Less is usually more: excessive discussion of unimportant or irrelevant issues will lower the mark, rather than be ignored. You should make brief and specific reference to any applicable legislation, Supreme Court Civil Rules, case law, ethical obligations and rules of conduct, but should not recite them word for word.

The examination is open-book.

Good Luck.
THIS EXAMINATION CONSISTS OF 10 QUESTIONS IN TOTAL, 
ONLY 9 OF WHICH MUST BE ANSWERED: 
2 OF 3 SHORT ESSAYS, AND 7 QUESTIONS ARISING FROM 1 FACT PATTERN

PART 1

SHORT ESSAYS (20 marks each) 
(ANSWER ONLY TWO OF THE FOLLOWING THREE QUESTIONS)

1. Should British Columbia reform its costs rules to encourage better compliance with the objectives of the Rules? Discuss, with examples from the course.

2. Discuss the challenges of and strategies for dealing with a client who has difficulty telling the truth. In your answer, refer to rules, ethical considerations, and other aspects of civil procedure considered in our class.

3. The proportionality principle: too little, too much, or just right? Discuss, with examples from the course.

PART 2

FACT PATTERN (50 marks)

(YOU MUST ANSWER THE FOLLOWING 7 QUESTIONS)

After completing law school and articles you have now obtained a position as an associate in the litigation group of a large downtown law firm.

Your firm has recently been approached by Keevan O'Lary ("O'Lary"), a successful celebrity businessman. Inspired by the victory of an American politician, Daniel Drumpf ("Drumpf"), O'Lary has initiated a campaign for political office in Canada.

Before turning his attention to politics, O'Lary was a panellist on a popular television series, Serpent's Lair, where he would make offers to fund start-up businesses presented by aspiring entrepreneurs in exchange for a stake in their business ventures.

O'Lary was very interested in one of the pitches made on the program, for a process which would turn lead into gold. His interest led him to enter into an agreement with the owner of the process, Mr. Sneak Oil Sealsman ("Sealsman"), a resident of Vancouver.

The agreement between O'Lary and Sealsman provided that in exchange for $500,000.00, O'Lary would receive 49% of the profits from the sale of the gold Sealsman conjured from lead, and would have the exclusive right to acquire an interest in any other products Sealsman intended to market within North America. O'Lary was represented by a Toronto law firm (the "Solicitors"), who prepared the contract which he entered into with Sealsman. The Solicitors acted only for O'Lary, and did not represent Sealsman or any other third party.
Sealsman knew that lead could not be turned into gold, and instead used O’Lary’s money to work on several other products he had read about, including the Elixir of Life and the Philosopher’s Stone.

Drumpf has recently completed construction of Drumpf Tower in Vancouver, and when he is not at his primary residence in Washington, D.C., he secretly spends some of his time there, watching late night cable television. Drumpf has become offended by O’Lary’s meteoric rise to political fame, and is concerned that there is not enough room in the fake newspapers to accommodate more than one political novice in high office.

Drumpf, who has maintained active business interests in addition to his busy political life, tuned into a late night re-run of this episode of Serpent’s Lair, and immediately determined he would use the “Art of the Deal” to convince Sealsman to do business with him, instead of O’Lary, and to reveal the “lead into gold” process as a scam, to harm O’Lary’s reputation.

Drumpf held a secret meeting with Sealsman at Drumpf Tower. Sealsman told him about the terms of the contract with O’Lary, and that he had lied about his powers to turn lead into gold. Drumpf promised him he would build a wall so tall that O’Lary would never get over it, and told him that he could sell anything to anyone, whether it worked or not. Taken by Drumpf’s confidence, Sealsman immediately agreed to enter into an exclusive relationship with Drumpf’s British Columbia company, Drumpf Holding Co. (“HoldCo”) to collaborate on the sale of the Elixir of Life and the Philosopher’s Stone, and to end his relationship with O’Lary.

That night, Sealsman sent O’Lary an e-mail, advising their deal was off, and that he had found a bigger and better American partner. O’Lary knew that this could only be Drumpf, with whom he had recently engaged in a war of Tweets, Drumpf having told O’Lary he was “weak and stupid, and that only a winner like me can turn lead into gold and make it great again”. Unbeknownst to Sealsman, O’Lary also knew that Drumpf Tower was under continuous wiretapping and surveillance, and he obtained a recording of Sealsman’s conversation with Drumpf.

Armed with this information, O’Lary has contacted a senior partner at your firm, Lofty Importacus, Q.C. (“Importacus”), because O’Lary wants to bring claims against Sealsman, HoldCo, and Drumpf.

O’Lary met with you to discuss his potential claims. He wants to claim against Sealsman for fraud and breach of contract. O’Lary also wants to claim against Drumpf, HoldCo, and Sealsman for conspiring against him.

O’Lary tells you that he is aggressive, and will not allow you to “take any prisoners”. He demands immediate action to put Sealsman and Drumpf in their place.

After the meeting, Importacus asks you to review a Notice of Civil Claim she has drafted with O’Lary named as the plaintiff and Sealsman, HoldCo, and Drumpf named as the defendants. She wants you to review this pleading, and to develop a strategy for advancing O’Lary’s objectives and claims.

Answer ALL of the questions below.
1. O’Lary is satisfied with the Notice of Civil Claim after your review, and asks you to have it filed and served on each of the named defendants.

He tells you that he knows Drumpf will be in Washington, D.C. for the next week. O’Lary suggests you immediately courier the Notice of Civil Claim to him there, marking it as “Fan Mail”, as he knows Drumpf personally opens and reads every piece of flattering correspondence sent to him. O’Lary tells you he will swear an affidavit guaranteeing a package sent in this fashion will be personally read by Drumpf the day it is received.

O’Lary says another idea is to serve Drumpf at a 10am prayer service in front of other congregants, as Drumpf will be attending church this Sunday in Washington, D.C.

O’Lary finally tells you that Drumpf will be in Vancouver 13 days from now, and that he takes walks alone when he is here, leaving the front door of Drumpf Tower at 10:00 p.m. sharp for his evening walk.

O’Lary knows that Sealsman lives in Vancouver, but he does not know his address, and has only communicated with him by e-mail at “Sneakfoilsealsman@nogoodnik.com”.

O’Lary and Importacus want you to move the claim ahead as quickly as possible.

Importacus asks you:

(a) What must be done to effectively serve Drumpf?

(b) What is the best manner and place to serve Drumpf and why?

(c) Would you be able to obtain an order to serve Sealsman by e-mail since you do not know where Sealsman lives? If that is possible, what steps would need to be taken to obtain that order?

How do you respond to Importacus’s questions?

2. 60 days after the Notice of Civil Claim was served on them, both Sealsman and Drumpf’s counsel file and deliver Responses to Civil Claim. At the same time, Sealsman’s counsel also delivers to your office a Third Party Notice claiming against the Solicitors.

The Third Party Notice alleges that the Solicitors failed to perform legal services for O’Lary in a prudent fashion, and failed to advise him to take actions which could have reduced the damages O’Lary is claiming against Sealsman in the action.

Importacus asks you:

(a) Whether Sealsman’s Third Party Notice is proper, and if not if there is anything O’Lary can do about it?

(b) Assuming that the Third Party Notice is proper, what steps Sealsman will have to take in
respect of the Solicitors to make it effective?

(c) Importacus also asks whether O’Lary could seek an order for security for costs from Sealsman or Drumpf, and what the likelihood is that such an application would be successful?

How do you respond to Importacus?

3. Sealsman and Drumpf’s Responses to Civil Claim both deny that O’Lary was party to any contract with Sealsman, or that Drumpf or HoldCo was party to any contract with Sealsman. Drumpf pleads in the alternative that if there was a contract, it was between Sealsman and BartBreit Ltd. (“BartBreit”), a company incorporated pursuant to the laws of Delaware, which does not conduct business in British Columbia. Drumpf further pleads that Beve Stannon (“Stannon”) is the sole director and shareholder of BartBreit, and that if anyone is at fault, it is Stannon, who “pulls all the strings”. Stannon lives in New York City, and has never set foot in the province of British Columbia.

When O’Lary reviews these documents, he tells you that he forgot to instruct you to include his company, O’Lary Ventures Ltd. (“OVL”), as a Plaintiff, and that it was OVL that entered into the contract with Sealsman, not O’Lary personally. He knows of Stannon, and says he is a shady character who could well be involved.

O’Lary asks you what, procedurally, you should attempt to do in response to the issues arising from these facts, and the likelihood of being successful if you pursue the steps you identify and suggest to him.

What do you tell O’Lary?

4. You have been exchanging e-mails with O’Lary about the need to prepare a list of documents. O’Lary tells you that he is concerned that a number of the e-mails he exchanged with Sealsman about their commercial dealings contain sensitive and highly personal information, which will damage his political aspirations. He tells you that he is going to “double-delete” all of these e-mails. O’Lary also instructs you not to list the wiretapped recording of the conversation between Drumpf and Sealsman at Drumpf Tower, as he wants you to spring it on Drumpf at trial as a surprise.

Before you can respond to O’Lary, you receive lists of documents from both Sealsman and Drumpf. O’Lary has reviewed the lists, and believes they do not contain all of the documents that should have been disclosed.

O’Lary notes that there are no e-mails at all on the lists of documents, and is very confident that Sealsman would have sent e-mails to Drumpf, as that is the manner in which he prefers to communicate. He also complains to you that Drumpf’s list of documents contains more items on the privilege portion of the list than on Part 1 of the list, and that those documents are described only as “privileged #1, #2, etc.”.

What do you do?

5. Two months before the scheduled trial date, Drumpf’s counsel delivers a notice to admit to the
facsimile number you have listed in the Notice of Civil Claim. Importacus is golfing in Palm Springs, and subsequently heads to the French Riviera to inspect her vineyards. Her assistant has sent several e-mails asking her what should be done with the notice to admit, but Importacus has not checked her e-mail while away. No one has sent you the notice to admit, but Importacus’s assistant sent a copy to O’Lary by e-mail the day it arrived. O’Lary skimmed the document and tossed it aside, asking no questions and never following up with your office about it.

24 days after the notice to admit was delivered, Importacus calls you and tells you to “deal with this”. The notice to admit contains facts which would defeat O’Lary’s case if they were true. Several of those facts are contrary to statements made in affidavits both O’Lary and Sealsman have sworn in support of prior interlocutory applications in the action.

In the circumstances:

(a) What should you tell O’Lary about what has happened?

(b) What procedural step(s) do you take to address the issue, and what arguments do you make in support of such procedural step(s)?

(c) Do you have a duty to tell anyone else about what has happened?

6. You are approaching trial. O’Lary has lost the tapes of the wiretapped conversation, and you are worried that without them, you might have a difficult time proving Drumpf and Sealsman conspired with one another. Further, as much as O’Lary wants to get back at Sealsman, he realizes that Sealsman has no money, and that he would be unable to pay damages if they were awarded against him at trial.

O’Lary wants you to extend an offer to settle to Sealsman which provides him with a full release of all claims against him in exchange for Sealsman agreeing to cooperate as a witness at trial, and giving testimony which will confirm that he conspired with Drumpf to harm O’Lary’s interests. Drumpf will then be on the hook for the damages.

What advice do you give O’Lary about this plan, and are there any alternatives you can suggest to him which may better accomplish his objectives?

Before you can give O’Lary that advice, you receive an e-mail from Drumpf’s lawyer, containing a formal offer to settle, which complies with Rule 9-1: Drumpf has offered to waive any claim of costs he has against O’Lary if O’Lary will agree to immediately discontinue his claim against Drumpf and Sealsman. The offer says that O’Lary’s claim has no merit, and is bound to fail.

O’Lary asks you what would be the possible downside to rejecting the offer and continuing the claims, but failing at trial. What should you tell O’Lary with respect to the costs consequences of losing or winning the trial?

7. The case does not settle. You are 30 days away from trial, and Importacus comes to your office at the end of the day. She tells you that she is concerned that the tape recordings of the conversations at Drumpf Tower (which O’Lary has thankfully found) will require expert
evidence to establish their reliability and accuracy. She says O'Lary has recommended an individual named Hussein Ocama as an expert. Ocama was involved in establishing the wiretapping program at Drumpf Tower, and is a known vocal critic of Drumpf. Importacus tells you to take whatever steps are necessary to obtain admissible expert evidence from Ocama.

You call Ocama, and he tells you that he is willing to set aside his grievances with Drumpf to help the court. He has free time on his hands these days, and would be happy to write a report overnight, and e-mail a draft to you in the morning. He hangs up the phone to commence work before you can say another word.

Do you call back Ocama? If so, what do you say to him, and what steps do you take to have the best chance of obtaining useful and admissible evidence from him? What is your advice to Importacus about the likelihood of expert evidence from Ocama being admitted at trial?

END OF EXAMINATION

*It has been our great pleasure teaching you this term.*

*We appreciated your enthusiasm and interest.*

*Our best wishes to you all for a happy summer and a successful and enriching career, in law, or otherwise.*
Objectives

1. Introduce the fundamentals of civil procedure and familiarize students with the structure of a civil action.
2. Provide a theoretical framework for the rules of procedure and identify the values and policies on which the rules are based.
3. Place these rules in a practical context to encourage future practitioners to wield the rules in a responsible, strategic, and cost-effective manner.

Materials

2. Crerar / Cameron, *Civil Procedure Casebook 2017* (the “Casebook”): available in printed hard-copy and online at the class website.
3. Supreme Court Civil Rules. You may use any of these sources:
   - Bouck, Dillon, and Turriff, *British Columbia Annual Practice 2017* (Canada Law Book Inc.) (the “White Book”)
   - Seckel & MacInnis, *Supreme Court Rules Annotated 2017* (Carswell) (the “Black Book”)

We may at times hand out, post on the class website, or otherwise refer to recent judgments or other supplementary readings, for which students are also responsible.

Evaluation

(a) 10%: based on two very simple and brief pass-fail assignments: a pleadings drafting exercise (3-4 pages) and a report on an independent visit (1 page) to the British Columbia Supreme Court Civil Chambers (at any British Columbia Courthouse); and
(b) 90%: a final open-book examination set during the Faculty examination period.
(c) A discretionary amount of 1-5% may be added to the grades of students for insightful contributions to class discussions.

Penalties: As per the Faculty’s policy, “Mark Deduction For Late Assignments”, a late penalty of 1 mark per day will be assessed.
Schedule: Please note it is our goal to keep classes in this order, limiting these topics to the assigned classes, but dates and contents are subject to change.

<table>
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<th>Week 1: Introduction: 5 January**</th>
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<tr>
<td><strong>1. Topics:</strong></td>
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<tr>
<td>(a) Overview of course</td>
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<td>(b) The life cycle of a civil action</td>
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<th><strong>2. Readings:</strong></th>
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<tr>
<td>(a) Walker: pp. 40-67 (overview of a civil proceeding)</td>
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<td>(b) Handout: “Life cycle of an action in British Columbia Supreme Court”</td>
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<th><strong>3. Optional Readings:</strong></th>
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<tr>
<td>(a) Andrew Nathanson &amp; Gavin Cameron, Complex Litigation under BC's new Supreme Court Civil Rules, p. 1</td>
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<th>Week 2: Theoretical Perspectives: 12 January</th>
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<tr>
<td><strong>1. Topics:</strong></td>
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<tr>
<td>(a) The adversary system</td>
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<td>(b) The rule of law and judicial independence</td>
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<td>(c) Ethical issues</td>
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<th><strong>2. Readings:</strong></th>
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<tr>
<td>(a) Walker: pp. 12-24 (the adversary system), and 752-759 (mediation and settlement)</td>
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<td>(b) Casebook:</td>
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<td>(i) Murphy v. Dodd, 1989 (ethics in the adversary system), p. 21</td>
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<td>(ii) Meek v. Fleming, 1961 (ethics in the adversary system), p. 25</td>
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<tr>
<td>(iii) British Columbia v. Imperial Tobacco Canada, 2005 (the adversary system, the rule of law and judicial independence), p. 30</td>
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<tr>
<td>(iv) Cojocaru v. British Columbia Women's Hospital and Health Centre, 2013 (reasons), p. 41</td>
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| (c) D. Kennedy, “The Responsibility of Lawyers for the Justice of Their Causes” (1987), 18 Texas Technical L. Rev. 1157:  
http://www.duncankennedy.net/documents/The%20Responsibility%20of%20Lawyers%20for%20the%20Justice%20of%20Their%20Causes.pdf |
| (d) Code of Professional Conduct for British Columbia (“BC Code”): see https://www.lawsociety.bc.ca/page.cfm?cid=2578 |
| (e) “Indian Judge Bans Reporting on Trial of 5 Men in Gang Rape Case”, New York Times online edition, January 7, 2013: see class website, “E-mail, January 7, 2013” |
Weeks 3 & 4: Commencement of Proceedings: 19 January** & 26 January**

1. **Topics:**
   
   (a) **Pass-fail assignment discussion:** Independent BCSC Chambers visit
   
   (b) **Different forms of procedure and consequences:** notice of claim versus petition
   
   (c) **Ethical issues:** Commencing a Claim
   
   (d) **Service**
   
   (e) **Default judgment**
   
   (f) **Jurisdiction**
   
   (g) **Limitation Periods**

2. **Readings:**
   
   (a) **Walker:** pp. 223-226 (incl. *KLB v. British Columbia*)
   
   (b) **Casebook:**
      
      (i) *Orazio v. Ciulla*, 1966 (service), p. 56
      
      
      (iii) *Austin v. Rescon Construction*, 1986 (default judgment), p. 63
      
      (iv) *Leung v. 568263 BC Ltd.*, 2000 (petition), p. 65
      
      (v) *East Kootenay Realty Ltd. v. Gestas Inc.*, 1986 (petition), p. 69
      
      (vi) *Bea v. The Owners, Strata Plan LMS 2138*, 2015 (inherent jurisdiction), p. 70
      
      (vii) *Canadian Olympic Committee v. VF Outdoor Canada Co.*, 2016 BCSC 238, p. 73
      
      (viii) *Limitation Act*, SBC 2012, c.13, p. 82
      
      (ix) *Court Jurisdiction and Proceedings Transfer Act*, SCBC 2003, c.82, p. 90
      
      (x) former **Professional Conduct Handbook**, ch.11(12), p. 94
      
      (xi) new **Code of Professional Conduct**, art. 6.02(2), p. 95
      
      (xii) Practice Direction 50: Masters' Jurisdiction, p. 96
      
      (xiii) Tabs A – E
   
   (c) **Rules 4-2 (old 4	extsuperscript{1}), 2-1, and 3-1 (old 8), 3-2 (old 9), 16-1 (old 10), 4-2 and 4-3 (old 11), 4-4 (old 12), 4-5 (old 13), 3-3 (old 14), 3-8 (old 17 and 25), and 15-1 (old 66)**

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1 The former rule numbers are included for reference and convenience only. It is **NOT** necessary to read the former version of each rule.
3. **(Optional Readings):**

(a) Walker: pp. 168-222 (jurisdiction); 227-243 (limitation periods); 675-676 (default judgment)

(b) Casebook:
   (iii) *472900 B.C. Ltd. v. Thrifty Canada, Ltd.*, 1998 (jurisdiction), p. 100

(c) David Crerar, Practice Tips for the New BC *Limitation Act* (on class website)

(d) Ministry of Justice resources on new *Limitation Act*:

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**Week 5: Pleadings and Parties: 2 February**

1. **Topics:**

   (a) Pass-fail assignment discussion: Notice of Civil Claim Drafting Assignment
   (b) Ethical issues: commencing a claim
   (c) The function and purpose of pleadings
   (d) Particulars
   (e) Amendments
   (f) Striking pleadings

2. **Readings:**

   (a) Walker: pp. 397-407 (pleadings); 642-644
   (b) Casebook:
      (i) W. Stanley Martin, “Pleadings”, p. 108
      (ii) *Jones v. Donaghey*, 2011 (pleadings), p. 112
      (iii) *CFAR v. Canadian Jewish Congress*, 1999 (striking pleadings), p. 117
      (v) *Sahyoun v. Ho* (pleadings), p. 132
      (viii) *Code of Professional Conduct*, art. 4.01(1)-(2), p. 146
   (c) Rules 20-3, 20-4 & 22-5 (old 5), 20-2 (old 6), 20-1 (old 7), 3-7 (old 19), 3-1 (old 20), 3-4 (old 21), 3-6 (old 23), and 6-1 (old 24)

3. **(Optional Readings):**

   (a) Walker: pp. 408-423 (pleadings)
(b) Nathanson & Cameron, *Complex Litigation under the New Rules*, pp. 6-7 (Week 1)
(c) *Joly v. Pelletier*, 1999 (striking pleadings), p. 148
(d) *Murrell v. Simon Fraser University*, 1997 (pleadings), p. 150
(e) *National Leasing Group v. Top West Ventures Ltd.*, 2011 (striking pleadings), p. 156

4. **Pleadings Resources** (NOT necessary to read but useful for assignment):

   (a) Casson & Dennis, *Odgers's Principles of Pleadings and Practice*, chap. 6 & 7
   (b) Bullen & Leake & Jacob, *Precedents of Pleadings*
   (c) McLachlin & Taylor, *British Columbia Court Forms*

### Week 6: Document Discovery: 9 February*

1. **Topics:**

   (a) Discovery of documents
   (b) Proportionality in discovery
   (c) Discovery of documents from third parties
   (d) The implied undertaking of confidentiality
   (e) Postponing discovery of documents
   (f) Privilege
   (g) Ethical issues: discovery

2. **Readings:**

   (a) Walker: pp. 435-445 (forms of discovery); 452-493 (document discovery and e-discovery: incl. *Peter Kiewit Sons; Fric*); 539-546 (privilege); 555-557 (incl. *Imperial Tobacco Limited*); 559-560 (litigation privilege); 571-580 (incl. *Blank*); 587-592 (waiver); 596-597 (implied undertaking); 774-780 (incl. *Sable Offshore Energy*)

   (b) Casebook:

      (v) Tab F

   (c) Rules 7-1 (old 26) and Part 5 (old 68)

3. **(Optional Readings):**

   (a) Walker: pp. 597-612 (incl. *Jumon*); 764-765 (settlement privilege)
(b) Casebook:
(i) *Kaladjian v. Jose*, 2012 (document proportionality), p. 189
(iii) *Pro-Sys Consultants Ltd. v. Infineon*, 2011 (document proportionality; electronic
discovery), p. 196

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**Week 7: Examinations for Discovery / Other Discovery / Applications: 16 February***

1. **Topics:**
   (a) Examinations for discovery
   (b) Examinations of non-party witnesses
   (c) Interrogatories
   (d) Physical/medical examinations and inspections
   (e) BCSC Chambers and applications

2. **Readings:**
   (a) Walker: pp. 500-502 (purpose of examinations for discovery); 519-531 (*Nwachukwu v. Ferreira*)
   (b) Casebook:
      (i) *B.C. Lightweight Aggregate v. Canada Cement Lafarge*, 1978 (discovery of
corporate representative), p. 199
      (ii) *Fraser River Pile and Dredge v. Can-Dive Services Ltd.*, 1992 (discovery ethics),
p. 202
      (iii) *Sinclair v. March*, 2001 (non-party examination), p. 204
      (v) *Forliti v. Wooley*, 2002 (examinations for discovery: scope and
objections), p. 209
      (vi) *Jones v. Donaghey*, 2011 (physical examination) (see above, Week 5), p. 112
      (vii) Tabs G, H
   (c) Rules 7-2 (old 27), 7-5 (old 28), 7-3 (old 29) 7-6 (old 30), 22-2 (old 51), 8-1 (old 51 A),
22-1 (old 52)

3. **(Optional Readings):**
   (a) Casebook:
Week 8: Interim Relief and Summary Trials: 2 March*

1. Topics:
   (a) Summary trial (Part 9-7 (old Rule 18A))
   (b) Summary judgment (Part 9-6 (old Rule 18))
   (c) Interlocutory injunctions
   (d) Mareva injunctions
   (e) Anton Pillar orders

2. Readings:
   (a) Walker: pp. 617-627 (incl. RJR-MacDonald Inc.); 644-652 (incl. Inspiration Management Ltd.)
   (b) Casebook:
       (ii) Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd., 2007 (Mareva injunction), p. 220
       (iii) Insurance Corp. of British Columbia v. Patko, 2008 (Mareva injunction), p. 233
       (v) Western Delta Lands Partnership v. 3557537 Canada Inc. #1, 2000 (summary trial), p. 247
       (vi) Western Delta Lands Partnership v. 3557537 Canada Inc. #2, 2000 (summary trial), p. 254
   (c) Rules 9-6 (old 18), 9-7 (old 18A), and 10-4 (old 45)

3. (Optional Readings):
   (b) Casebook:
       (iv) David Crerar, "How to Lose Your Own Rule 18A Summary Trial" (on class website)

4. PASS-FAIL ASSIGNMENTS DUE: IN CLASS (PAPER HARD-COPY GREATLY PREFERRED) OR BY EMAIL.
Week 9: Complex Litigation Part I: 9 March

1. Topics:
   (a) *Res Judicata*
   (b) Issue estoppel

2. Readings:
   (a) Walker: pp. 249-292 (incl. Shaffner; Britannia Airways; Danyluk; Toronto (City) v. CUPE)
   (b) Casebook:
      (i) *Penner v. Niagara Regional Police Services Board*, 2013 issue estoppel, p. 279

Week 10: Complex Litigation Part II: 16 March

1. Topics:
   (a) Joinder of claims and parties
   (b) Third-party proceedings
   (c) Class proceedings

2. Readings:
   (a) Walker: pp. 314-358 (joinder of claims, counterclaims, and third party claims), 869-983 (class proceedings)
   (b) Casebook:
      (i) *R. v. Imperial Tobacco Canada Ltd.*, 2011 (third party proceedings), p. 282
      (ii) A. Nathanson & G. Cameron, *Complex Litigation under BC's new Supreme Court Civil Rules* (see above, Week 1), p. 1
   (c) Rules 20-3, 20-4 and 21-2 (old 5), 6-2 (old 15), 21-9 (old 22), and 6-1 (old 24)

3. (Optional Readings):
   (a) Casebook:

   (b) *Class Proceedings Act*: review generally, but focus on ss. 1, 25, 28

Week 11: Costs and Access to Justice: 23 March

1. Topics:
   (a) Ordinary costs and special costs
(b) Offers to settle
(c) Security for costs
(d) Contingency fees
(e) Costs in class proceedings

2. Readings:

(a) Casebook:
   (i) *C.P. v. RBC Life Insurance*, 2015 (offer to settle) p. 291
   (iii) *CFAR v. Canadian Jewish Congress*, 1999 (see above, Week 5) (security for costs), p. 117
   (iv) *Nazmdeh v. Spraggs*, 2010 (costs against lawyer personally), p. 299
   (v) *Robson v. Chrysler*, 2001 (class action costs), p. 305
   (vi) *Ward v. Klaus*, 2012 (offers to settle), p. 308
   (ix) *Carhoun & Sons Enterprises Ltd. V. Canada (Attorney General)*, 2016 (security for costs), p. 350
   (xi) Tab I

(b) Rules 9-1 (old 37B), 14-1 (old 57), and Appendix B
(c) *Class Proceedings Act*: ss. 37 & 38 (costs provisions)

3. (Optional Readings):

   (a) “Da Vinci Code Appeal is Dismissed” (UK v. Canada costs), p. 360
   (b) *Lower v. Stasiuk*, 2013 (special costs), p. 362

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**Week 12: Expert Evidence, Admissions, and Standing: 30 March**

1. Topics:

   (a) Notices to Admit
   (b) Expert evidence
   (c) Standing
   (d) Intervention
   (e) Evidence and procedure at trial
2. Readings:

(a) Walker: pp. 293-314 (standing; incl. Canada v. Downtown Eastside Sex Workers); 367-379 (intervention); 379-396 (expert evidence, incl. White Burgess)

(b) Casebook:
   (i) Arsenovski v. Bodin, 2012 (notice to admit), p. 365
   (iii) Lozinski v. Maple Ridge (District), 2015 (experts), p. 369


(d) Rules 7-7 (old 31), 9-2 (old 35), 12-1 to 12-6 (old 39), 12-5 (old 40), and 11-6 & 11-7 (old 40A)

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Week 13: Exam Preparation and Course Review: 6 April

To be held at Fasken Martineau DuMoulin LLP (2900 - 550 Burrard Street, Vancouver: Bentall 5 Building) or Borden Ladner Gervais LLP (12th Floor, 200 Burrard Street): to be announced.

(a) Contents and structure of exam
(b) General review of the course
(c) Pizza
(d) Beer
(e) Further and in the alternative, other beverages

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Civil Litigation: Bibliography

Rule Books

- Bouck, Turriff & Dillon, British Columbia Annual Practice (the “White Book”): the standard British Columbia Rule book, it provides short summaries of the key cases interpreting each rule. KN361.B74 C658

- Seckel & MacInnis, BC Supreme Court Rules Annotated (the “Black Book”): like the White Book, but with very useful mini-essays on each Rule. KN361 .B742

Civil Procedure Guides and Commentaries


- Fraser & Horn, The Conduct of Civil Litigation in British Columbia (2 volumes): organized by procedures and themes, rather than by rules. It is useful but at times sparse. It tends to cite venerable and ancient black-letter cases. KN350 .F738

- McLachlin & Taylor, British Columbia Practice (3 volumes): organized by Rule numbers, it offers the most complete (if sometimes excessive and bewildering collection of judicial application unwieldy and interpretation of each rule. KN361 .M325
• May et al., Civil Procedure (the English "White Book"): organized like our White Book, on which it is based. Often older editions of the book (circa 1960) are more useful as at that time the English and British Columbia rules were very similar. Often a more appropriate interpretative tool than, say, Ontario rules. KN350.C595 1972

• Stevenson & Côté, Civil Procedure Encyclopedia (5 volumes): a valuable survey of different procedural topics, focusing on Alberta, BC, and Ontario. It will often provide just the case you are looking for where other sources come up dry. KN361.S849 2002


Pleadings
• Atkin's Court Forms: English Encyclopedia of court forms. KN351.A855

• Bullen & Leake & Jacob's Precedents of Pleadings: the classic pleadings text; sometimes older editions (e.g. 1975) will be more useful as they focus more on common law claims and defences and less on English statute law. KN380.3.B843 2004

• Casson & Dennis, Odgers on Pleadings and Practice: another classic text, with an enormously useful introductory chapter on pleadings and practice. KN380.3.O349 1991

• McLachlin & Taylor, British Columbia Court Forms (4 volumes): the authoritative British Columbia book of precedents. KN360.M252 2005

Discovery
• L. Harris, QC, Discovery Practice in British Columbia (CLE) KN 390.61.C65 H37 (not at UBC)

Summary Trials
• CLE, Rule 18A Applications (February 2002) KN360.R84 2005


Ethics
• Code of Professional Conduct for British Columbia (the "BC Code")
  http://www.lawsociety.bc.ca/docs/practice/resources/bc-code/bc-code.pdf

Other Useful Litigation Texts
• Hon. Mr. Justice David C. Harris, ed., British Columbia Civil Trial Handbook 4th ed.: an invaluable series or pithy and up-to-date essay on all aspects of civil litigation, including pleadings, gathering evidence, interlocutory applications, witnesses, trials, ethical and professional responsibility issues, and costs. KN350.B73

• Hon. Chief Justice A. McEachern, “Professionalism for Litigators”: an edited version can be found at http://www.lawsociety.bc.ca/docs/becoming/material/Civil.pdf (pp. 103-112).


Websites http://www.courts.gov.bc.ca/