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Chapter 1 : Brazilâ€™s New Civil Procedure Code â€“ Columbia Journal of Transnational Law

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Most nations today follow one of two major legal traditions: The common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as Spain and Portugal. Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly possessing distinctive legal traditions, such as Russia and Japan, that sought to reform their legal systems in order to gain economic and political power comparable to that of Western European nation-states. To an American familiar with the terminology and process of our legal system, which is based on English common law, civil law systems can be unfamiliar and confusing. Even though England had many profound cultural ties to the rest of Europe in the Middle Ages, its legal tradition developed differently from that of the continent for a number of historical reasons, and one of the most fundamental ways in which they diverged was in the establishment of judicial decisions as the basis of common law and legislative decisions as the basis of civil law. Common law is generally uncodified. This means that there is no comprehensive compilation of legal rules and statutes. While common law does rely on some scattered statutes, which are legislative decisions, it is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. The precedents to be applied in the decision of each new case are determined by the presiding judge. As a result, judges have an enormous role in shaping American and British law. Common law functions as an adversarial system, a contest between two opposing parties before a judge who moderates. A jury of ordinary people without legal training decides on the facts of the case. Civil Law, in contrast, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The following sections explore the historical roots of these differences. Basilica of San Vitale, Ravenna, Italy. The term civil law derives from the Latin ius civile, the law applicable to all Roman cives or citizens. Its origins and model are to be found in the monumental compilation of Roman law commissioned by the Emperor Justinian in the sixth century CE. While this compilation was lost to the West within decades of its creation, it was rediscovered and made the basis for legal instruction in eleventh-century Italy and in the sixteenth century came to be known as Corpus iuris civilis. Succeeding generations of legal scholars throughout Europe adapted the principles of ancient Roman law in the Corpus iuris civilis to contemporary needs. Medieval scholars of Catholic church law, or canon law, were also influenced by Roman law scholarship as they compiled existing religious legal sources into their own comprehensive system of law and governance for the Church, an institution central to medieval culture, politics, and higher learning. By the late Middle Ages, these two laws, civil and canon, were taught at most universities and formed the basis of a shared body of legal thought common to most of Europe. The birth and evolution of the medieval civil law tradition based on Roman law was thus integral to European legal development. It offered a store of legal principles and rules invested with the authority of ancient Rome and centuries of distinguished jurists, and it held out the possibility of a comprehensive legal code providing substantive and procedural law for all situations. As civil law came into practice throughout Europe, the role of local custom as a source of law became increasingly importantâ€”particularly as growing European states sought to unify and organize their individual legal systems. Throughout the early modern period, this desire generated scholarly attempts to systematize scattered, disparate legal provisions and local customary laws and bring them into harmony with

rational principles of civil law and natural law. Historical development of English Common Law Originally issued in the year , the Magna Carta was first confirmed into law in This exemplar, some clauses of which are still statutes in England today, was issued by Edward I. National Archives, Washington, DC. English common law emerged from the changing and centralizing powers of the king during the Middle Ages. After the Norman Conquest in , medieval kings began to consolidate power and establish new institutions of royal authority and justice. New forms of legal action established by the crown functioned through a system of writs, or royal orders, each of which provided a specific remedy for a specific wrong. The system of writs became so highly formalized that the laws the courts could apply based on this system often were too rigid to adequately achieve justice. In these cases, a further appeal to justice would have to be made directly to the king. Courts of equity were authorized to apply principles of equity based on many sources such as Roman law and natural law rather than to apply only the common law, to achieve a just outcome. Courts of law and courts of equity thus functioned separately until the writs system was abolished in the mid-nineteenth century. Even today, however, some U. Likewise, certain kinds of writs, such as warrants and subpoenas, still exist in the modern practice of common law. An example is the writ of habeas corpus, which protects the individual from unlawful detention. Originally an order from the king obtained by a prisoner or on his behalf, a writ of habeas corpus summoned the prisoner to court to determine whether he was being detained under lawful authority. Habeas corpus developed during the same period that produced the Magna Carta, or Great Charter, which declared certain individual liberties, one of the most famous being that a freeman could not be imprisoned or punished without the judgment of his peers under the law of the landâ€”thus establishing the right to a jury trial. In the Middle Ages, common law in England coexisted, as civil law did in other countries, with other systems of law. Church courts applied canon law, urban and rural courts applied local customary law, Chancery and maritime courts applied Roman law. Only in the seventeenth century did common law triumph over the other laws, when Parliament established a permanent check on the power of the English king and claimed the right to define the common law and declare other laws subsidiary to it. This evolution of a national legal culture in England was contemporaneous with the development of national legal systems in civil law countries during the early modern period. But where legal humanists and Enlightenment scholars on the continent looked to shared civil law tradition as well as national legislation and custom, English jurists of this era took great pride in the uniqueness of English legal customs and institutions. That pride, perhaps mixed with envy inspired by the contemporary European movement toward codification, resulted in the first systematic, analytic treatise on English common law: The American legal system remains firmly within the common law tradition brought to the North American colonies from England. Yet traces of the civil law tradition and its importance in the hemisphere maybe found within state legal traditions across the United States. Many of the southwestern states reflect traces of civil law influence in their state constitutions and codes from their early legal heritage as territories of colonial Spain and Mexico. And while Blackstone prevails as the principal source for pre-American precedent in the law, it is interesting to note that there is still room for the influence of Roman civil law in American legal tradition. The founding fathers and their contemporaries educated in the law knew not only the work of English jurists such as Blackstone, but also the work of the great civil law jurists and theorists. Indeed, a famous example of its use is the case of Pierson v. Post, in which a New York judge, deciding on a case that involved a property dispute between two hunters over a fox, cited a Roman law principle on the nature and possession of wild animals from the Institutes as the precedent for his decision. Post is often one of the first property law cases taught to American law students. Cases such as these illuminate the rich history that unites and divides the civil and common law traditions and are a fascinating reminder of the ancient origins of modern law. Download a printable PDF with more information, including images, glossary and bibliography.

Chapter 2 : Civil Procedure Forms - Legal Forms | US Legal Forms

NSW Civil Procedure is the definitive guide to civil practice in New South Wales. The legislation - Civil Procedure Act NSW and Uniform Civil Procedure Rules NSW - governs most civil proceedings in the NSW Supreme Court, District Court and Local Court.

The procedural changes promoted by the NCPC open up new perspectives for managing litigations in the Brazilian Judiciary, which faces serious problems regarding the excessive number of ongoing lawsuits â€" among other shortcomings. In this essay we will briefly present some of the most important changes in the NCPC that can provide better results in resolving disputes. Extension of Pre-Trial Proceedings. Traditionally, the Brazilian civil procedure did not include discovery proceedings and did not hold judgments before jury trials. Thus, it was mandatory that expert and witness evidence be produced throughout the trial, during proper time frames, when the parties would have the right to be heard. The correct use of this mechanism will certainly increase the number of settlements, especially those involving factual issues that can be settled by way of the evidence that has been produced. The facilitation of out-of-court settlements between parties has also been welcomed as a means of strengthening mediation and conciliation. Brazilians have the cultural tendency to believe that the judiciary is the only responsible body for providing solutions to all kinds of conflicts. For that purpose, the NCPC determines â€" with few exceptions â€" that in civil lawsuits the defendant will be summoned to appear before a conciliation or mediation hearing, which will not be chaired by the judge, with the aim of facilitating a negotiation between the parties. This will depend on the progress of negotiations between the relevant parties. During this period, the defendant does not have to come up with his defense. This becomes all the more evident in family lawsuits, in which the NCPC determines that the defendant need not even receive copies of the initial pleadings [8] â€" although the defendant may have access to them at any time â€" precisely to serve the purpose of preventing the intensification of conflicts and facilitating the establishment of agreements. As previously mentioned, one of the most significant problems in the Brazilian Judiciary is the excessive number of lawsuits. The numbers involved are intolerable: Such lawsuits involve various categories: In this regard, the NCPC has laid down two crucial measures: In fact, the inclusion of a system of precedents will enable the Brazilian judicial procedure to accomplish greater predictability and equality by making use of the same decision in dealing with all parties who may be in similar legal situations with the one that gave rise to the precedent. This may well be the most important change in the NCPC, and will require much effort and adaptation of legal professionals until it becomes truly effective from a practical point of view. Increasing Procedural Costs for Losing Parties. In various judicial systems, at the end of a lawsuit, the losing party is required to refund the lawyer fees that were paid by the winning party. Strengthening the Power of Judges in the Enforcement Proceedings. It grants the judge the possibility of using all the means of coercion and subrogation needed to ensure enforcement of court decisions. It is hoped, therefore, that the debtor will assist in this implementation in order to achieve rapid and effective results. The Brazilian Constitution warrants comprehensive access to the Judiciary, including to people with insufficient financial resources. This system was regulated by Act No. In order to avoid this issue, on the one hand the NCPC grants judges greater control in awarding this benefit; on the other hand, it allows for partial concessions of this benefit â€" or even its restriction to specific acts throughout the proceedings. These are a few of the procedural changes that the NCPC has brought forth. Further achievements of this new statute which may bring future benefits to Brazilian judicial proceedings include the greater value that has been ascribed to constitutional principles as well as the procedural streamlining that is expected to arise through the reduction of formalism. The judge is also allowed to grant the payment of rates and legal costs in installments.

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Chapter 3 : Civil procedure - Wikipedia

Guide to legal forms and precedents available either through Queen's University or freely available online.

Civil Procedure Encyclopedia by W. It is arranged by subject. A quote from the preface: Many apparent shortcuts lead to a cliff or a swamp. For example, Most new Canadian practice decisions cite very few authorities. Ten per cent are wrong, and do not cite contrary binding authority. In certain topics, such as privilege, that is endemic. Few lawyers today have the experience needed to go from a bald rule of law to all the practical details needed to draft an affidavit or argue a motion. Often only a few older cases spell out the practical detail. Often you have a case on point, but have trouble describing or researching the precise topic. In a moment you can find the case in the Table of Cases. It will send you instantly to the full relevant discussion, and the other cases on the same topic. Though every generation thinks that it finds new procedural problems and new solutions, they are rarely new. Old fallacies masquerade under new names. The basic theory and principles of civil procedure are unknown, still less consistently named. So it is easy to go in circles, or criss-cross territory, always missing one area. Research which omits cases more than a few years old invites that kind of jungle blindness or forgetfulness. In civil procedure as in negligence law , a given rule is easy to parrot, but impossible to understand or apply unless you see a number of examples. Your opponent will likely cite one or two contrary authorities. There is authority for and against many propositions in civil procedure. Not good authority, but some authority. So you need an antidote, often on short notice. This book warns you which cases disagree, and which seem questionable. It is your ethical duty to find and cite relevant authority: Costs penalties or worse enforce that duty. Western , 4th ed. Volume 16, Title 39 Injunctions. Volume 33, Title 84 Judgments and Orders. Volume 36, Title 89 Trials. Volume 54, Title The CED provides discussion of these areas of law with annotations to legislation and case law. Also available electronically through: Civil Procedure HCV Additional information may be found under other topical headings, and subsequent developments may be located by referring to the Cumulative Supplement.

Chapter 4 : Colorado Rules of Civil Procedure - JD Porter LLC

Forms and Precedents. The basic theory and principles of civil procedure are unknown, still less consistently named. So it is easy to go in circles, or criss.

These forms of case captions apply to criminal cases, as well as civil cases. Signing of Pleadings a Obligations of Parties and Attorneys. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. The initial pleading shall state the current number of his registration issued to him by the Supreme Court. A party who is not represented by an attorney shall sign his pleadings and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with his signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. An attorney may undertake to provide limited representation in accordance with Colo. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11 b. Limited representation of a pro se party under this Rule 11 b shall not constitute an entry of appearance by the attorney for purposes of C. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C. The filing of a motion permitted under this Rule alters these periods of time, as follows: Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under this Rule or C. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 5 to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in C. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule The defenses specifically enumerated in subsections 1 - 6 of section b of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section c of this Rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. Within the time limits for filings under subsections a 1 and a 2 of this Rule, the party may file a motion for a statement in separate counts or defenses or for a more definite statement of any matter that is not averred with sufficient definiteness or particularity to enable the party properly to prepare a responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court

may strike the pleading to which the motion was directed or make such order as it deems just. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section f. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to that party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section h 2 of this Rule on any of the grounds there stated. A If omitted from a motion in the circumstances described in section g ; or B if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15 a to be made as a matter of course. Counterclaim and Cross Claim a Compulsory Counterclaims. But the pleader need not state the claim if: A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment. A pleading may state as a cross claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant. Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of Rules 19 and If the court orders separate trials as provided in Rule 42 b , judgment on a counterclaim or cross claim may be rendered in accordance with the terms of Rule 54 b when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of. Except as otherwise provided by law as to negotiable instruments, any claim, counterclaim, or cross claim which could have been asserted against an assignor at the time of or before notice of an assignment, may be asserted against his assignee, to the extent that such claim, counterclaim, or cross claim does not exceed recovery upon the claim of the assignee. The death of a person shall not prejudice the rights of a third person to assert a claim, cross claim, or counterclaim surviving death against the personal representative of the deceased in the time and manner provided by law. Repealed May 30, , effective July 1, The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 14 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so. Amended and Supplemental Pleadings a Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 21 days after it is filed. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when

the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4 m for serving the summons and complaint, the party to be brought in by amendment: Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. The purpose of this Rule 16 is to establish a uniform, court-supervised procedure involving case management which encourages professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C. The disclosures and information required to be included in both the Case Management and Trial Management Orders interrelate to discovery authorized by these rules. The right of discovery shall not constitute grounds for failing to timely disclose information required by this Rule, nor shall this Rule constitute a ground for failing to timely disclose any information sought pursuant to discovery. Not later than 42 days after the case is at issue and at least 7 days before the case management conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in subsections 1 - 17 of this section and take the necessary actions to comply with those subsections. This proposed order, when approved by the court, shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section f of this Rule or unless modified upon a showing of good cause. A case shall be deemed at issue when all parties have been served and all pleadings permitted by C. The proposed order shall state the at issue date. The responsible attorney shall schedule conferences among the parties, and prepare and submit the Proposed Case Management Order and prepare and Trial Management Order. No later than 14 days after the case is at issue, lead counsel for each party and any party who is not represented by counsel shall confer with each other in person, by telephone, or video conference about: A the nature and basis of the claims and defenses; B the matters to be disclosed pursuant to C. The proposed order shall state the date of and identify the attendees at any meet and confer conferences 4 Description of the Case. The proposed order shall provide a brief description of the case and identification of the issues to be tried. The description of the case and identification of the issues to be tried shall consist of not more than one page, double-spaced, per side. The proposed order shall list all pending motions that have been filed and are unresolved. The court may decide any unresolved motion at the case management conference. The proposed order shall confirm that the possibility of settlement was discussed, describe the prospects for settlement and list proposed dates for any agreed upon or courtordered mediation or other alternative dispute resolution. The proposed order shall provide proposed deadlines for amending or supplementing pleadings and for joinder of additional parties, which unless otherwise provided by law, shall be not later than days 15 weeks after the case is at issue, and shall provide a deadline for identification of non-parties at fault, if any, pursuant to C. The proposed order shall state the dates when disclosures under C. If any party asserts an inability to disclose fully the information on damages required by C. Unless otherwise ordered by the court, discovery shall be limited to that allowed by C. Discovery may commence as provided in C. The deadline for completion of all discovery, including discovery responses, shall be not later than 49 days before the trial date. The proposed order shall state any modifications to the amounts of discovery permitted in C. The proposed order shall identify the subject areas about which the parties anticipate offering expert testimony; whether that testimony would be from an expert defined in C.

If any party desires proposed deadlines for expert disclosures other than those in C. The proposed order shall state whether the court does or does not require discovery motions to be presented orally, without written motions or briefs, and may include such other provisions as the court deems appropriate. If the parties anticipate needing to discover a significant amount of electronically stored information, the parties shall discuss and include in the proposed order a brief statement concerning their agreements relating to search terms to be used, if any, and the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs. If the parties are unable to agree, the proposed order shall include a brief statement of their positions. The court shall include the trial date in the Case Management Order, unless the court uses a different trial setting procedure. The proposed order shall be signed by lead counsel for each party and by each party who is not represented by counsel. Unless otherwise ordered by the court, pretrial motions, including motions in limine, shall be filed no later than 35 days before the trial date, except for motions pursuant to C. At that conference, the parties and counsel shall be prepared to discuss the proposed order, issues requiring resolution, and any special circumstances of the case. In the event that there appear to be no unusual issues, that counsel appear to be working together collegially, and that the information on the proposed order appears to be consistent with the best interests of all parties and is proportionate to the needs of the case, the court may dispense with the case management conference. A party wishing to extend a deadline or otherwise amend the Case Management Order shall file a motion stating each proposed amendment and a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C. No later than 28 days before the trial date, the responsible attorney shall file a proposed Trial Management order with the court. Prior to trial, a Trial Management Order shall be entered by the Court.

Chapter 5 : Civil Procedure - Forms and Precedents - Research Guides at Queen's University

The rules amend the Civil Procedure Rules for the purpose of implementing Chapter 2 of Part 1 of the Counter-Terrorism and Security Act by amending rule (so that it is subject to rule (modification to the overriding objective)); and inserting a new Part 88 containing rules about proceedings in relation to temporary exclusion.

A criminal case is introduced by the government, who claims that a person or group has committed a crime. If the defendant is found guilty of breaking the law, he can be punished by being put in jail or made to pay a fine, or both. Criminal law defines two classes of crimes. Crimes for which the punishment is less than a year in jail are called misdemeanors. Crimes with punishments of one year or more in jail are more serious and are called felonies. A civil case is introduced by a private party plaintiff seeking monetary damages. The defendant may be forced to testify. Most civil cases are resolved out of court, and people found guilty in civil cases never have to go to jail. This article has multiple issues. Please help improve it or discuss these issues on the talk page. September The examples and perspective in this article may not represent a worldwide view of the subject. You may improve this article , discuss the issue on the talk page , or create a new article , as appropriate. February Learn how and when to remove this template message Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits as opposed to procedures in criminal law matters. These rules govern how a lawsuit or case may be commenced; what kind of service of process if any is required; the types of pleadings or statements of case , motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials ; the process for judgment ; various available remedies ; and how the courts and clerks must function. Differences between civil and criminal procedure[edit] Some systems, including the English and French , allow governmental persons to bring a criminal prosecution against another person. Prosecutions are nearly always started by the state in order to punish the accused. Civil actions , on the other hand, are started by private individuals , companies or organizations, for their own benefit. In addition, governments or their subdivisions or agencies may also be parties to civil actions. The cases are usually in different courts. However this is distinguished from civil penal actions. In jurisdictions based on English common-law systems, the party bringing a criminal charge in most cases, the state is called the "prosecution", but the party bringing most forms of civil action is the "plaintiff" or "claimant". In both kinds of action the other party is known as the "defendant". A criminal case against a person called Ms. Sanchez" or "[The name of the State] v. Regina, that is, the Queen v. But a civil action between Ms. Sanchez and a Mr. For example, a criminal court may force a convicted defendant to pay a fine as punishment for his crime, and the legal costs of both the prosecution and defence. But the victim of the crime generally pursues his claim for compensation in a civil, not a criminal, action. Evidence from a criminal trial is generally admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action, unless the doctrine of collateral estoppel applies, as it does in most American jurisdictions. However, if a driver is found by a civil jury not to have been negligent, a prosecutor may be estopped from charging him criminally. If the plaintiff has shown that the defendant is liable, the main remedy in a civil court is the amount of money , or "damages", which the defendant should pay to the plaintiff. The standards of proof are higher in a criminal case than in a civil one, since the state does not wish to risk punishing an innocent person. But in a civil case, the court will weigh all the evidence and decide what is most probable. Civil procedural types[edit] Civil procedure is traditionally divided into inquisitorial and adversarial.

Chapter 6 : The Common Law and Civil Law Traditions

Civil Procedure Forms FAQ. What is civil procedure? Civil procedure is the body of law governing the methods and practices used in civil litigation. It can be enacted.

PF forms Part 47 and Practice Direction 47 - Procedure for Assessment of Costs and Default Provisions The rules are amended to provide that details of costs budgets are provided when detailed assessment of costs is required Model Precedent Q. PD51L - New Bill of Costs The pilot scheme for a new bill of costs is extended whilst the impact of its mandatory introduction is assessed. The pilot will run for two years from 1 April Practice Direction 52C - Appeals to the Court of Appeal Amendments facilitate the provision of skeleton arguments anonymised in family proceedings to accredited law reporters and the media in cases being heard in the Court of Appeal at the time of the appeal. Practice Direction 52D - Statutory Appeals and Appeals subject to special provision Amendments implement the Recall of MPs Act Recall Petition Regulations and provide that any accounts submitted by a petition officer may be the subject of detailed assessment in the County Court. Similar separate provisions are made in respect of accounts of the petition officers of Welsh MPs. Consequential amendments are made to PD8A. Part 73 - Charging Orders Rules are amended to provide for the centralised handling of the majority of applications for charging in orders in the County Court. Applications will be processed at the County Court Money Claims Centre and will be paper based for the most part. A court officer at CCMCC may make the interim order providing certain conditions are met in respect of a charge over land. Parties may also apply for a review of an interim charging order made by a court officer. Once an interim order is made at the CCMCC and served, the parties will have a period of 28 days between service on them of the interim order and referral to a judge to object to the making of the final charging order. If an objection is received the matter will be sent to a local County Court hearing centre. The service provisions are also amended. Amendments are now made to the practice direction to support those rule changes. Consequential amendments are made to PD A new part sets out the procedure for applications to attach earnings. Responses to the application will be dealt with at the CCMCC, but where the judgment debtor does not respond the process will be sent to a local County Court hearing centre. The following forms are amended: Form replaces No.

Chapter 7 : Kenya Legal Resources: CIVIL PROCEDURE

Court Forms, Precedents and Pleadings New South Wales is an invaluable resource for NSW lawyers bringing or defending civil matters, and is an excellent companion title for Ritchie's Civil Procedure New South Wales.

One has to find out whether they are entitled to final or interlocutory judgment both of which have different procedures. Assuming Defendant chooses to defend the action â€" a defence is filed. If the defence is filed and served one has to decide whether to make an application. Decision depends on cause of action if it is in the sphere of Order 36 one can apply for summary judgment which applies in only some cases. This is a short cut â€" the court has right to make orders. If not under Order 36 if one thinks what is filed does not constitute a defence one may want to terminate the proceedings under Order 2 Rule 15 in favour of their client i. These are two ways of bringing to an end the proceedings without a trial. When one wants to demand for information to help them make their mind, or wants matters clarified to determine the next step to take. Order 39 or Fixing your suit for trial has another series of steps i. What happens if a suit is fixed for trial and only the plaintiff turns up. After these and the suit eventually comes to trial, one must know who has the right to begin. Under Civil Procedure Rules there are times when the Defendant must begin, usually it is the Plaintiff who is entitled. It depends on the kind of pleadings, if the defence admits the facts as stated by the Plaintiff. Evidence is conducted in a particular order. The sequence of calling evidence it is important to make a statement to establish ones case. Where a witness turns hostile, the rules allow one to examine the hostile witness to show that they are unreliable. Sometimes witnesses can choose to forget. Ensure you have an understanding with your witnesses to streamline their memory and to anticipate. Once this is done the court delivers judgment. What is a judgment? Once judgment is written, there is a procedure of extracting the decree. Trials of civil proceedings do not end in judgment there is a subsequent step which is important. This distinguishes whether your client has won theoretically. One applies for execution of the judgment, enforcement of a right that has been acquired. One must apply for the decree to be executed. What mode of execution does one adopt, if one has an injunction, it will depend on what one wants to enforce, it could be attachment of property or winding up. Execution proceedings are very important. Another party may appear at the execution stage i. Proceedings take place, Acting for the Defendant â€" one may want to appeal the decision you go to court to ask for a stay of execution, one of the mistakes which we make is to assume that if judgment has been passed and one wants a stay of execution, one must go to the court dealing with appeals. Not always, where one is applying to set aside, one must know the right procedures. One has to identify the right order, this is not appealing or setting aside so one cannot apply for a stay. If judgment is entered in default of appearance and defence one goes for a certificate of costs to enable execution. These are costs that have been certified by the registrar and a certificate issued in respect of uncontested cases. Judicial Review Order 53 Ganishee Proceedings â€" where one has a decree but property of the judgment debtor is not in the hands of the judgment debtor.

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Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law.

Legal process[edit] The process of introducing a consent decree begins with negotiation. If the decree was obtained by means of fraud or given by mistake, it may be set aside by a court. Thus, the use of a consent decree is not a sentence or admission of guilt. The Corpus Juris Secundum declares that although consent decrees are "not the judgment of the court," they do have the "force and effect of a judgment. United States , the Supreme Court ruled that a consent decree could be modified or terminated only when new developments over time bring out a "grievous wrong" in how the ruling of the consent decree affects the parties of the suit. United Shoe Machinery Corp. City of Cleveland [6] [45] and Firefighters v. Stotts [46] they must have subject-matter jurisdiction , and they cannot modify a consent decree when one of the parties object. City of Cleveland, the Supreme Court ruled that consent decrees "have attributes both of contracts and of judicial decrees", so consent decrees should be treated differently for different purposes. Inmates of Suffolk County Jail, [48] the Supreme Court decided that courts could take into account the changing times and circumstances for more flexibility in the administration of consent decrees. ASCAP , which began in , the Department of Justice used consent decrees which are amended according to the times and technology to regulate how they issued blanket licenses to ensure that trade is not restrained and that the prices of licenses would not be competitive. United States [41] in which the Court used its power under the Commerce Clause to regulate the Chicago meat trust as an unlawful economic monopoly. United States , the government used consent decrees to dissolve the horizontal monopoly that John D. This landmark Supreme Court case established that racial segregation of children in public schools was in violation of the Equal Protection Clause of the Fourteenth Amendment , which requires that states must not "deny to any person within its jurisdiction the equal protection of the laws. Charlotte-Mecklenburg Board of Education in , the Supreme Court specifically defined the objective as eliminating "all vestiges of state imposed segregation" [66] within school systems, including the limited use of busing , [67] [68] racial quotas , [69] the creation of magnet schools and judicial placement of new schools, [70] and the redrawing of school attendance zones. County School Board [72] rulingâ€”which include, student assignment, faculty, staff, transportation, extracurricular activities, and facilities. S companies to avoid litigation and government oversight by creating decrees in cooperation with Title VII. Save financial costs of litigation: Consent decrees forgo a court trial that allows for both parties and the courts to save legal expenses. The parties and the courts save the time it would take for a court trial to occur [] and the courts more quickly clear their dockets. The parties are able to obtain similar results of a court trial, specifically where a change is required to appease the dispute. Consent decrees forgo a trial and its unknown outcome, the necessity of proof , and any guilt is taken for granted because no one is accused by the consent decree. Consent decrees allow both parties to have greater latitude in deciding how to remedy their issues. Both parties more voluntarily implement their agreements if obtained by consent than by force. Courts can supervise that consent decrees are upheld for an indefinite period of time. Some argue that "consent decrees often last for too long a period. Consent decrees can be an avenue for those seeking to enact a future-oriented change that is more general and not case-specific. Consent decrees can be complex in questions of modification, either before [] or after [] [] it is enacted: Only where the consent has been obtained by fraud or given by mistake will a bill be entertained to set it aside. There is ambiguity in the source of power of the consent decree, [] the role of judges, [] and the guidelines for a consent decree. United States , [40] the Supreme Court acknowledges that "the effects of the decree on third parties and the public interest should be taken into account when determining whether or not a change in fact warrants

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(1) This Act may be cited as the Civil Procedure Act. (2) This Act applies to proceedings in the High Court and, subject

to the Magistrate's Courts Act (Cap. 10), to proceedings in subordinate courts.