

# **Complex Litigation**

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# Complex Litigation

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## Cases and Materials on Litigating for Social Change

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN: 978-1-59460-108-8  
LCCN: 2008924395

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

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# Preface

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Mass tort cases tend to be the bread-and-butter of many complex litigation casebooks and dominate much of the academic study of complex litigation. Although not ignored in this casebook, such class actions are not its centerpiece. This casebook instead focuses on complex cases brought by lawyers seeking to promote social change. With that focus, a significant portion of the book is devoted to so-called “impact” class actions seeking injunctive or declaratory relief, not those seeking recovery of damages.

In line with the overarching theme, the casebook highlights social change cases to illustrate the various legal doctrines relevant to complex litigation. By so doing, we hope to offer students a better appreciation of the sophisticated lawyering that is required in the challenging cases handled by public interest lawyers. *See generally* GERALD L. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992). At the same time, we hope to help raise student awareness of some of the most pressing social justice issues of our times. Our approach finds inspiration in ROY L. BROOKS, *CRITICAL PROCEDURE* (1998); DOROTHY A. BROWN, *CRITICAL RACE THEORY: CASES, MATERIALS AND PROBLEMS* (2d ed. 2007); and Kevin R. Johnson, *Integrating Racial Justice Into the Civil Procedure Survey Course*, 54 J. LEG. ED. 242 (2004).

Cases seeking to promote social change often have taken complex procedural forms. *Brown v. Board of Education*, 347 U.S. 483 (1954), for example, relied on the class action device in an attempt to desegregate the public schools and, more generally, to dismantle Jim Crow in the United States. Advocates for decades have brought civil rights, employment discrimination, prison reform, securities fraud, public benefits, housing, environmental, immigration, and other class actions in efforts to reform public institutions and change laws, policies, and practices. Similarly, class action litigation has sought to transform the tobacco industry, as well as to help slow the epidemic of tobacco-related disease in the United States. Today, the nation experiences a new wave of impact litigation as international human rights advocates bring increasing numbers of class actions in the United States under the Alien Tort Claims Act in an attempt to address human rights violations around the world.

This book emphasizes the special responsibility of the lawyer seeking to bring about social change. For a series of case studies illustrating the social responsibilities of lawyers, see PHILIP B. HEYMANN & LANCE LIEBMAN, *THE SOCIAL RESPONSIBILITIES OF LAWYERS* (1988). Such responsibilities loom especially large in social change cases. Many impact class actions are for all intents and purposes run by attorneys. Their attorney-driven nature pushes the envelope of the professional duties owed by attorneys to clients. Indeed, the “clients” in a class action are not of the same kind or quality as a person or corporation individually represented by the attorney. Judicial monitoring of attorneys in class actions is in many respects modest and limited to a few critical junctures in the case. Although less so than in other pieces of litigation, self-regulation is the general rule in class actions.

However, the rights of many more people are affected by resolution of the ordinary class action than by the routine piece of civil litigation.

Consistent with the social change approach to complex litigation, the instructor may want to supplement the casebook with materials from the Civil Rights Litigation Clearinghouse, <http://clearinghouse.wustl.edu>, which includes a plethora of documents and data about many different kinds of civil rights cases. See Margo Schlanger & Denise Lieberman, *Using Court Records for Research, Teaching, and Policymaking: The Civil Rights Litigation Clearinghouse*, 75 UMKC L. REV. 135 (2006).

With this thematic emphasis, the casebook outlines the law concerning

- The Nature of Procedure and Complex Litigation
- Social Change Litigation
- Jurisdiction and Forum Choice
- Anti-Suit Injunctions
- Joinder of Parties
- Class Actions
- International Litigation
- Discovery in Complex Cases
- Trials in Complex Cases
- Remedies in Complex Cases
- Finality Doctrines in Complex Litigation: Claim and Issue Preclusion
- Arbitration

The book is written for use with one of the many civil procedure and complex litigation statutory supplements. When relevant, the text generally includes quotations of the relevant rule or statute that is the subject of analysis. The text often directs students to relevant internet websites. The advent of the information age, as well as law students' increasing computer acumen, make such references necessary and appropriate.

A teaching manual will soon be available for use with **Complex Litigation: Cases and Materials on Litigating for Social Change**.

Thanks to George A. Martínez and Ana Maria Merico for their help in conceptualizing this casebook.

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# Acknowledgments

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I thank my family, Virginia, Teresa, Tomás, and Elena for their continued support. Hard-working U.C. Davis law students, Jeff Finucane, David Yun, and Karen Marquez Dong, all of the class of 2006, Steliana Schmidel, class of 2008, Aaron Gopen, class of 2009, and Crystal Yu, class of 2010, provided excellent research assistance. Sarah Martínez, class of 2009, helped with proofreading. Over the years, my civil procedure and complex litigation students have taught me important lessons that helped inspire and improve this book. Brigid Jimenez, as always, provided indispensable editorial assistance and unsurpassed patience. Glenda McGlashan also provided important editorial assistance. Thanks to Dean Rex Perschbacher for the financial and other support that made this book possible. The Mabie-Apallas chair and the UC Davis School of Law provided much-appreciated financial assistance for the research necessary to complete this book.

I thank my co-authors Catherine Rogers and John White, for their hard work, patience, and good cheer.

Last but not least, I thank my mother, Angela, who passed away in October 2007, for all that she sacrificed for me.

Kevin R. Johnson  
May 2008

I would like to thank both of my co-authors for their work and support. In particular, I thank Kevin, without whose vision and perseverance this project never would have been completed. I also thank my brother, Chris, for all his inspiration and encouragement.

Catherine A. Rogers  
May 2008

To my father who after years of complex litigation for social change could attest that the greatest complexity of such cases derives from the fact of seeking change to the status quo. And to my mother whose vision of the good life and faith in the capacity of the world to change inspired my father, my siblings, and me.

J.V.W.