Syllabus **ADVANCED CIVIL PROCEDURE** **Prof Andrews** **Spring 2014**

CLASS POLICIES, PROCEDURES AND OBJECTIVES:

Course Objectives: The core objective is to give students additional exposure to the basic elements of the procedure governing civil cases in the United States, including topics not addressed in the first course. Our principal focus will be the law governing **preclusion, party choice, joinder and appeals**. We will study federal procedural law and the Restatement of Judgments as our primary source of law, but we also will study Alabama procedural law, where it varies significantly from these national models.

Texts:

- **Andrews Handout Book** ("**HB**").
- **FRCP** Rulebook [You may use any current federal rulebook (and/or access the rules/statutes on-line)]

Course Meeting Times: Monday and Wednesday, from 10:35- noon, Room 175.

Make-up Classes: I must travel for return visits to MD Anderson and for moot court competition. Both might require me to miss class. We may meet in a separate makeup session, but more likely, I will make up the missed time by going long, into the noon hour, on a few days.

Attendance Policy: You must attend and sign the roster every day, including the make-up classes. If you miss more than **six** classes you will be withdrawn from the course. Whether that withdrawal is a "pass" or a "fail" depends on your reasons for missing more than nine classes. You do not need to explain individual absences to me unless/until you are at the limit.

Class Participation and Assignments: You must divide into five groups (2-3 students each, depending on the ultimate class size). I will assign each group to the units listed below (items listed in bold as "group"). A group signup list is posted on my office door (#313). The reading assignments are by topic unit, not class day. Some units will take only a few minutes of class time, and some will take a few class periods. All assignments are for "study" (in-depth reading and thinking) unless the syllabus lists the assignment as "review" (which you should read generally to give context and background for the "study" material).

Final Examination and Grading: Your grade will be based on your performance on the final exam, which will be an in-class 3-hour exam at the place and time scheduled by the Records Office. The exam typically includes both essay and multiple-choice questions. Essays from a previous exam are in the Hand-out book.

Office Hours, Email and Conferences: I will be in my office most days from 9:00 am until 3:30. I welcome your visits at any time that I am in the office. You can email questions, and I also will create a distribution list for regular email communications to the class from me.

Seating and Special Accommodations: I will use the white board and projector almost every class period. Sit where you can see both. If you need accommodations, please let me or Dean Arrington know.

Classroom Behavior -- Dress, Computer Use, Cell Phones and Recordings In Class: I ask that you show courtesy to me and your classmates and turn off your cell phones and do not use your computers or other electronic devices in a disruptive manner. Please talk to me first, if you want to record the class for any reason. Behave in a professional manner, and observe law school rules on drinks and food. Do not wear hats, unless you talk to me about a medical or other reason to wear a hat.

<u>CLASS READING ASSIGNMENTS</u>:

PRECLUSION

Unit # 1– **Introduction to Preclusion** (Andrews)
Review:
Claim Preclusion – Restatement Sections 17(1) & (2), 18 & 19 (HB, 6)
Issue Preclusion – Restatement Sections 17(3) and 27
Full Faith & Credit Clause, US Constitution, Art IV.
Full Faith & Credit Statute, 28 USC §1738.
FRCP 8(c)

Unit # 2 – **Preclusion** -- **Related Doctrines** (Andrews)
Review: FRCP 60

Unit # 3 – **Preclusion: Valid and Final Judgment** (Andrews)
Review:
Restatement Sections 1, 13, 14, 15, 16 & 17
FRCP 54(c), 58, 60(b)(5), 62(a) &(b), 79(a)
FRCP Forms 70 and 71

Unit #4 – **Preclusion -- Simultaneous Actions** (Andrews)
Review:
Alabama Code § 6-5-440 (HB, 4)
Clark (HB, 59); *Brooks Insurance* (HB, 50)

Unit # 5 – **Claim Preclusion: Same Claim** (Group #1)
Restatement Sections 24 & 25
Landrigan (HB, 139)
Equity Resources (HB, 82)

Unit # 6 – **Claim Preclusion: Judgment on the "Merits"** (Group #2)
Restatement Section 20
FRCP 41(b) [review FRCP 41(a)]
Rinehart (HB, 204); *Capstone* (HB, 53)
Review: *Semtek* (HB, 206)

Unit # 7 – **Claim Preclusion: Defenses, Counterclaims and Cross-claims** (Andrews)
Restatement Sections 18(2), 21, 22, 23, and 38
Review: FRCP 7(a), 8(c), 12(b), 13, and 18; FRCP Form 30

Unit # 8 – **Claim Preclusion: Exceptions** (Andrews)
Review:
Restatement Section 26
Landrigan, footnote 2 (HB, 151)

Unit # 9 – **Inter-jurisdictional Preclusion** (Andrews)
Review: Full Faith & Credit Clause, US. Constitution, Article IV
28 USC §1738
Semtek, (HB, 206); *Equity Resources* (HB, 92)

Unit # 10 – **Issue Preclusion: Basic Elements** (Group #3)
Restatement Section 27 and commentary
"Chicken" Problem Set
Review: FRCP 49
Restatement Sections 13, 14, 15, 16, 17

Unit # 11 – **Issue Preclusion: Exceptions** (Andrews)
Review: Restatement Section 28

Unit # 12 – **Preclusion: "Same" Parties – named parties not bound by preclusion** (Andrews)
Restatement Sections 34 – 38
Pate (HB, 189)

Unit # 13 – **Preclusion: "Same" Parties – non-parties bound by preclusion** (Group #4)
Restatement Sections 34, 39-41
Taylor (HB, 216)
Review: *Hansberry* (HB, 112); Restatement Section 42

Unit # 14 – **Preclusion: "Same" Parties – non-parties taking advantage of issue preclusion** (Group #5)
Restatement Section 29
Parklane (HB, 184)

Unit # 15 – **Preclusion Review** – Practice Essay

PARTY CHOICE AND JOINDER

Background and "Refresher" on Basic Concepts [All "Refresher" units are "*Review*" assignments]

Unit # 16 – **"Refresher" on Personal Jurisdiction** (Andrews)

Unit # 17 – **"Refresher" on Service** (Andrews)
FRCP 4(e), 4(h) and 5(b) and 5(c)

Unit # 18 – **"Refresher" on Subject-matter Jurisdiction** (Andrews)
28 U.S.C. §§ 1331,1332(a)(1) and 1332(c)(1) and § 1367
Allapattah (HB, 97); *Hertz* (HB, 116)

Unit # 19 – **"Refresher" on Removal** (Andrews)
28 U.S.C. § 1441(a) (b)(2), § 1446 (a)(b) & (d), and § 1447
Legg (HB, 153)

Unit # 20 – **"Refresher" on Venue** (Andrews)
28 U.S.C. §§ 1391(b), 1404(a), 1407

Party Choice

Unit # 21 – **Party Choice: Real Party in Interest, Representative Parties and Capacity** (Group #1)
FRCP 9(a), FRCP 17(a)(1), (a)(3), 17(c), and ARCP 17(a) and (b) (HB, 2)
Blue Star (HB, 48); *Dennis* (HB, 83); *Pate* (HB, 189)
Virginia Electric [Intro/Part I](HB, 229); *Drummond*, (HB, 88)
Review: FRCP 17(b), 17(d), ARCP 17(c), FRCP 25
1966 Advisory Committee notes to FRCP 17
Restatement Sections 35 through 37
28 U.S.C. § 1332(c)(1) and (2)

Unit # 22 – **Party Choice: Pseudonymous Parties** (Group # 2)
FRCP 10
1966 Advisory Committee notes to FRCP 17
James [Parts I, II and IV](HB, 128)

Unit # 23– **Party Choice: Correcting Errors in Pleadings & Party Designation (Federal)** (Group #1)
FRCP 15(a) & 15(c), 16(b) [Review: FRCP 15(b) & 15(d)]
Wilson (HB, 245); *Krupski* (HB, 145)
Review: 1966 Advisory Committee notes re FRCP 15(c)
Restatement Section 34 (comment d)

Unit # 24–**Party Choice: Correcting Errors in Pleadings & Party Designation (Alabama)** (Group #2)
ARCP 15(a) and 15(c) (HB, 1)
Blue Star (HB, 48); *Drummond* (HB, 88)

Unit # 25 – **Party Choice: Unknown Defendants (Alabama)** (Group # 3)
ARCP 4(f) [reprinted in *Pate*], 9(h) and 15(c)(4) (HB, 1)
Pearson (HB, 191); *Pate* (HB, 189); *International Refining* (HB, 122); *General Motors* (HB, 107)

Unit # 26 – **Party Choice: Unknown Defendants (Federal)** (Andrews)
FRCP 15(c)
Review: *Krupski* (HB, 133); *Wilson* (HB, 245)
28 USC 1441(b)(1)

Unit # 27 – **Party Choice: "Ethical" Limitations** (Andrews)
FRCP 11(b)
1993 Advisory Committee Notes re Rule 11(b)(3)
Pearson (HB, 191)

Joinder

Unit # 28 – **Introduction to Joinder** (Andrews)
FRCP 18

Unit # 29 – **Joinder: Permissive Party Joinder** (Group #4)
FRCP 8(d)(2), 20, 21 and 42
FRCP Form 12
28 USC 1367
Novartis I (HB, 170); *Novartis II* (HB, 175); *Battison* (HB, 46); *Allapattah* (HB, 97)

Unit # 30 – **Joinder: Mandatory Party Joinder** (Group # 5)
FRCP 12(b)(7) and FRCP 19
28 USC § 1367
Virginia Electric [Part II] (HB, 229); *Temple* (HB, 227)
Review: FRCP 4(k)(1)(B)
1966 Advisory Committee Notes to Rule 19
FRCP Forms 8 and 30

Unit # 31 – **Joinder: Counterclaims and Cross-claims** (Group #1)
FRCP 7(a), and 13
28 USC 1367
Clark (HB, 62); *Brooks Insurance* (HB, 50); *Cordero* (HB, 78)

Unit # 32 – **Joinder: Third Party Impleader and Joinder of Additional Parties** (Group # 2)
FRCP 13 and 14
28 USC 1367
Century 21 (HB, 56); *Donaldson* (HB, 86); *JS & LS* (HB, 142)
Review: FRCP 4(k)(1)(B), FRCP 7(a), FRCP Forms 16 and 41

Unit # 33 – **Joinder: Interpleader** (Group #3)
FRCP 22
FRCP Forms 20 and 31
28 USC §§ 1335, 1397 and 2361
State Farm (HB, 211)

Unit # 34 – **Joinder: Intervention** (Group #4)
FRCP 24
FRCP Form 42
28 USC § 2403
Review: FRCP 5.1

Unit # 35 – **Joinder: Introduction to Class Actions** (Andrews)
Review: FRCP 23
Andrews Article excerpt (HB, 223)
Hansberry (HB, 112); *Coopers & Lybrand* (HB, 72); *Jenkins* (HB, 137)

Unit # 36 – **Joinder: Basic Elements of and Standards for Class Actions** (Group #5)
FRCP 23(a), 23(b) and 23(c)(2)
Restatement 41 and 42
Neenan (HB, 166)
Wal-Mart (HB, 233)

[All remaining units will be Andrews lecture and random call]

Unit # 37 – **Joinder: The Class Certification Process**
Review: FRCP 23(c) through 23(h)
Alabama Code §§ 6-5-640 through 642 (HB, 4)

Unit # 38 – **Joinder: Special Issues in Class Actions**
Review: *Shutts* (HB, 196); *Allapattah* (HB, 97); *Amchem* (HB, 33);
Class Action Fairness Act: 28 USC §§ 1332(d), 1453, 1712-1715

Unit # 39 – **Joinder: Corporate Shareholder Derivative and Association Suits**
FRCP 23.1
28 USC § 1401 and §1695
Cooper (HB, 70); *Capstone* (HB, 53)
Review: FRCP 23.2
Cohen (HB, 66)

Unit # 40 – **Other Special Procedures**
Review: 28 USC § 1407; 28 USC § 1369
Legg (HB, 153)

APPEALS

Unit # 41 – **Appealability: Final judgment rule**
28 U.S.C. §1291
Coopers & Lybrand [Intro and Part II](HB, 72)

Unit # 42 – **Appealability: Collateral order doctrine**
Cohen (HB, 66); *Coopers & Lybrand* [Intro/Part I](HB, 72);
James[Parts I & II] (HB, 128); *Mohawk Industries*(HB,161)

Unit # 43 – **Appealability: Partial final judgment**
FRCP 54(b)
Liberty Mutual (HB, 158)

Unit # 44 – **Appealability: Section 1292(a) interlocutory appeals of specified orders**
28 U.S.C. § 1292(a)
State Farm (HB, 199)

Unit # 45 – **Appealability: Discretionary interlocutory appeals**
18 U.S.C. §1292 (b) & (e)
FRCP 23(f)
Virginia Electric (HB, 229); *International Refining* (HB, 122)

Unit # 46 – **Appealability: Extraordinary Writs**
28 U.S.C. §1651
Novartis I and II (HB, 170 and 175); *International Refining* (HB, 122)

Unit # 47– **Standard of review**

FRCP 52(a)
James [Part III] (HB, 128)