CIVIL PROCEDURE    Syllabus    Professor Andrews (Summer 2011)

Key:
HB    Handout Book, Andrews Course Materials, Summer 2011

Review     Read the material for its general content without detailed study
Study      Carefully read and re-read the material for a full understanding of its meaning and application

Andrews  Professor Andrews will lecture on the subjects in class
Group x  The students in the assigned group number will answer questions and otherwise discuss the subjects in class

I.   INTRODUCTION TO US LEGAL SYSTEM & CIVIL PROCEDURE (Andrews)
   A.   The American Legal System:  Dispute Resolution Systems and Sources of Law
      Review:  Charts (HB, 4 and 5)
                Meador book (entire book)
   B.   Overview of a civil action
      Review:  Stages of a Civil Lawsuit charts (HB, 6-13)
                Sample pleadings and litigation papers (HB, 14+)
                CP Chap. 30

II.   CHOICE OF THE FORUM -- Introduction to jurisdiction, venue and choice of law
   A.   Introduction to Forum Choice  (Andrews)
      Review:  “Which Court?” chart (HB, 29)
                CP, Chap. 6, pages 109-14 (text only, not the problems)
   B.   Personal Jurisdiction
      1.   Introduction  (Andrews)
          Review:  Andrews’ summary case note - Pennoyer (HB, 30)
                    Andrews’ excerpt, discussion of Pennoyer era pj (HB, 33–35)
                    CP Chap. 1, Intro (pp 3-4)
      2.   The “Minimum Contacts” Test  (Group #1)
          Study:  International Shoe (HB, 43)
          Review:  U.S. Const, Amend 5 & 14 (Sec 1) (due process clauses)
                    (RB, 210)
                    CP Chap. 1 (pp 4-5) (text only, not problems)
                    Andrews’ essay re Shoe and policy of relatedness
                    (HB, 35–37 &40+)
3. Personal Jurisdiction – Specific PJ
   Study: Worldwide VW (HB, 48)  (Group #2)
   Asahi (HB, 57)  (Group #3)
   CP chap. 1 (pp 8-11, text and problems 1 thru 14)
   Review: Andrews’ essay excerpt re VWVW (HB, 37-38)
   Andrews notes - McGee, Hanson, Kulko, Keeton, BK (HB, 30+)

4. Personal Jurisdiction - General PJ  (Group #4)
   Study: Helicopteros (HB, 64)
   Potts (HB, 72)
   Andrews’ case notes – Perkins and Keeton (HB, 30+)
   CP Chap 1, pp. 5-7 [be careful of oil company example on p 7!]

5. Personal Jurisdiction based on Service, Property and Consent  (Group #5)
   Study: Burnham (HB, 76)
   Review: Andrews’ case notes - Shaffer and Insurance Corp.
   Andrews’ essay re Shaffer and Burnham (HB, 39-40)

6. Challenging Personal Jurisdiction (Andrews)
   Review: FRCP 12(b)(2)
   CP Chap. 3 (pp. 47-53) (text only)

7. PJ Issues Currently Before the US Supreme Court
   Study: NC and NJ cases (in-class handout)

8. Summary and Review
   PJ Practice Essay (in-class handout)
   CP Chap 1, p. 14 (problem #15)

C. Subject-Matter Jurisdiction

1. Introduction  (Andrews)
   Review: U.S. Constitution, Article I (Sec. 8)(RB, 205)
   Article III (Sec. 1 and 2 (clause1) (RB, 208)
   28 USC §§ 1331 & 1332(a) (RB, 173)
   CP Chap. 4 (pp 63-65)

2. Federal Question Jurisdiction  (Group # 6)
   Study: 28 USC §§ 1257 (HB, 87, note) and 1331 (RB, 173)
   CP Chap. 4 (pp. 63-71 and problems 1 thru 10 & 15)
   Mottley (HB, 85)
   Review: Civil Rights Statute, 28 USC §1983 (HB, 106)
   “RICO” statute excerpts, 18 USC §1961 (HB, 88)
   Patent, etc., jurisdiction statute, 28 USC §1338 (RB, 178)
3. Introduction to Removal (Andrews)
   Review: 28 USC §§ 1441(a)&(b) and 1446(a), (b) & (d)
   CP Chap. 7 (pp. 123-27) & CP Chap 32 (p 53, sample removal papers)
   McDonald (HB, 91); Rayfield (HB, 93)

4. Diversity Jurisdiction
   Study: 28 USC §1332 (a)(1) [skip the statutory material after §1332(a)(1)]
   Diversity - Natural persons: (Group #7)
   McDonald (HB, 91); Rayfield (HB, 93)
   CP Chap 5, 89-92 & problems 1-7 [skip problems 1(e), 1(f)]

4. Diversity Jurisdiction (continued)
   Study: Diversity - Corporations: (Group #8)
   28 USC 1332(c)(1); Hertz (HB, 97)
   CP Chap 5, 92-93 and problems 8 - 11
   Diversity - Amount: CP Ch 5, 95-99 [skip Case 4 & problems 12d, e]

D. Introduction to Venue (Andrews)
   Review: 28 USC § 1391(a), (b) and (c)
   CP Chap. 8 (pp.141-47)

E. Introduction to Choice of Law (Andrews)
   Review: CP Chap. 10 (pp. 177-78) and Chap. 12 (pp. 229-35)

F. Summary and Review (All students)
   CP Chap. 6 (text and problems)
   Practice Multiple-choice exam re Choice of Court

III. STARTING A CIVIL LAWSUIT – Preparing, filing and serving the complaint

A. Introduction to the Federal Rules of Civil Procedure (Andrews)
   Review: FRCP 1, 2 and 83

B. Introduction to “Pleadings* and "Motions" (Andrews)
   Study: FRCP 7
   Review: Andrews sample pleadings and motions (HB, 14+)
   FRCP Forms 30 and 40 (RB, 117-19)
C. Introduction to "Cause of Action" and Complaints  
   (Andrews)  
   Study: FRCP 3, 5(d) & 7  
   Review: Andrews sample complaint (HB, 14)  
            CP sample complaint CP Chap. 31 (p. 634)  
            Negligence and Fraud chart (HB, 105)  
            42 USC §1983 and Pattern Jury Instruction for a §1983 claim (HB, 106)  

D. Form of the Complaint  
   (Group # 1)  
   Study: FRCP 8(a), (d)(1) & (e), 10, and 84  
   Review: FRCP Forms 1, 7 and 11  
            Andrews sample complaint (HB, 14)  
            Comparison of pleadings chart (HB, 109)  

E. Particularity of Pleading  

1. Particularized pleading  
   (Group #2)  
   Study: FRCP 9(b)  
           FRCP Form 21  
           General Cigar (HB, 127); Scott (HB, 131)  

2. Notice pleading vs. particularized pleading  
   (Group #3)  
   Study: FRCP 8(a), 9(b)  
           FRCP Form 11  
           Leatherman (HB, 110); Swierkiewicz (HB, 113); Iqbal (HB, 117)  

F. "Ethics" in Pleading  

1. History and elements of Rule 11  
   (Group #4)  
   Study: FRCP 11 – prepare comparison chart (in-class handout)  
   Review: FRCP advisory committee notes: 1983 & 1993 amendments (HB, 135)  

2. Application of Rule 11  
   (Group #5)  
   Study: FRCP 8(d)(2) & (3), FRCP11  
           FRCP Forms 2 and 12  
           Garr (HB, 150); Mars (HB, 143); Walker (HB, 146)  

G. Introduction to Joinder and Severance of Claims  
   Study: FRCP 18(a), 42 and 82  
           FRCP Form 13  
           CP Chap.13 (pp. 253-55, 257-58)
H. Simple Joinder of Parties (Group #6)
Study: FRCP 20 & 21
CP Chap. 13 (pp 253-55, text & problems 1, 3 (exclude 3f) thru 6, &16)
Novartis (HB, 157); SAP America (HB, 162)

I. Jury Demand (Andrews)
Study: FRCP 38(a), (b) and (d)
Review: FRCP 39, 47 & 48
US Constitution, Amendment 7

J. Service of the Complaint and Notice to the Defendant

1. Due process standards (Group #7)
Study: Mullane (HB, 165)
CP Chap 18 (pp. 345-46, 349-50, text)
US Constitution, Amendments 5 and 14

2. Rule requirements for service (Group #8)
Study: FRCP 4(a) through 4(e), 4(h), 4(l) and 4(m)
FRCP Forms 3, 5 and 6
CP Chap 18 (pp. 345-50, text & problems 1-8)(skip Mass rule, page 308)

K. Amendment of the Complaint (Group #1)
Study: FRCP 7(a),15(a)
Sabatini (HB, 171)
CP Chap. 20 (383-89) (text and problems 1 thru 8)
Review: FRCP 15(b),(c) & (d)
CP Chap. 20 (p. 389-95)

L. Summary and Review (All students)
Review: CP Chap 31 and Group complaint (in-class hand-out)

IV. DEFENDANT'S RESPONSE – Responding to and challenging the complaint

A. The "Answer" – Response to Complaint Allegations (Group #2)
Study: FRCP 8(b), 10 and 11(b)(4)
FRCP Forms 30 & 40
Beckman (HB, 177)
Review: Andrews sample answer (HB, 17)
CP sample answer, CP Chap. 33 [examine paragraph 7, page 663]
A Committee notes re 1993 amendment to Rule 11 re denials [handout]
B. The “Answer” – Affirmative Defenses  
   Study: FRCP 7, 8(c) and 8(d)  
   *LaFont (HB, 179); Harriss (HB, 181)*

C. The "Answer" – Cross-claims and Counterclaims  
   Study: FRCP 7; FRCP 13(a), (b) and 13(f) thru (i); FRCP 18  
   CP Chap. 13 (pp. 255-57 and problems 7-15)  
   *Keisser Insurance (HB, 185)*

D. Timing and Service of Response  
   Study: FRCP 4(d)(3), 5, 6, 12(a) and 15(a) – hypo’s [in-class handout]

E. Amendment of the Answer  
   Study: FRCP 15(a)  
   *Harriss (HB, 181); Beeck (HB, 188)*

F. Rule 12(b) Motions to Dismiss (Andrews):  
   Study: FRCP 7(b), 12(a) & 12(b) and FRCP Form 40  
   CP Chap. 19 (pp. 367-69), CP Chap. 23 (pp 473-77 & problems 1 thru 6)  
   *Smith-Haynie [Part I] (HB, 187); Anderson (HB, 191)*  
   Review: Consider motions in previous cases (e.g., *Potts, Leatherman,*  
   *Swierkiewicz, Scott, General Cigar, Iqbal, Walker*)

G. Other Rule 12 Motions  
   Study: FRCP 12(c) through 12(f) and 12(i)  
   *Austin (HB, 201); Erikson (HB, 204)*

H. Consolidation of Motions and Waiver of Defenses  
   Study: FRCP 8(c), 12(g) & 12(h)  
   CP Chap 19 (problems 1 thru 12 & 14)  
   *Harriss (HB, 181)*

I. Summary and Review (All students)  
   CP Chap. 33 and groups prepare/draft Answer to Group Complaints (In-class hand-outs)
V. DISCOVERY – Gathering facts and preparing the case

A. Introduction
Study: FRCP 26 (except Rule 26(a) & 26(b)(4))
CP Chap 21, pp. 409-10; CP Chap 22 (pp. 435-36, text)

B. Scope of Discovery – Relevance
Study: FRCP 26(b)(1)
Kozlowski (HB, 211) [Parts I and II]; United Oil (HB, 215)
Fed. Rule of Evidence 401 and notes (HB, 208)
CP Chap. 21 (pp. 409-12 and problems 3 thru 5)
Advisory Committee Notes, 2000 amendment to Rule 26(b)(1)
Review: FRE 407 (RB, 151); FRE 802 (RB, 161)

C. Limitations on Discovery

1. Introduction to “Privilege”
Review: FRCP 26(b)(1), FRCP 26(b)(5),
CP Chap. 21 (pp. 410-12)

2. Confidentiality, Burden and Other Limits on Discovery
Study: FRCP 26(b)(2), 26(c)
Kozlowski (HB, 211) [Parts I, III & IV]
CP Chap. 21 (problems 6 thru 8)
Review: FRCP 5.2

3. Work Product Protection
Study: FRCP 26(b)(3) & 26(b)(5)
CP Chap. 21 (pp. 413-15 and problems 1, 13-16)
Hickman (HB, 221)

D. General Duties in Discovery

1. Timing and Sequence of Discovery
Study: FRCP 26(d), 26(f), 29
Review: FRCP 16; FRCP Form 52

2. Duty of Supplementation
Study: FRCP 26(e)(1)

3. Duty of Good Faith and Reasonable Inquiry
Study: FRCP 26(g)
E. Discovery Devices – Introduction

1. Interrogatories
   Study: FRCP 33
   United Oil (HB, 215)
   CP Chap. 22: text (p. 436), problems 1 thru 7 (pp. 447-48) and sample interrogatory and problems (p. 463-71)

2. Document Requests
   Study: FRCP 34
   Kozlowski (HB, 211) [Part IV]; United Oil (HB, 215)
   CP Chap 22: text (pp. 437-39) and problems 8-10 (pp 448-49)
   Review: FRCP Form 50
   Andrews sample discovery (HB, 22+)

3. Depositions
   Review: FRCP 30
   CP Chap. 22: text (pp. 441-42) and sample papers (pp. 457-58)

4. Physical/Mental Exams
   Review: FRCP 35(a)

5. Requests to Admit
   Review: FRP36
   FRCP Form 51

6. Automatic Disclosures
   Review: FRCP 26(a)(1), FRCP 26(a)(3) & FRCP 26(d)
   CP Chap. 22 (pp. 445-46)

F. Discovery Motions, Protective Orders and Sanctions
   Study: FRCP 26(c), 26(g) 37
   Kozlowski (HB, 211); United Oil (HB, 215)
   CP Chap 22 (p. 396)

G. Mock Final Exam: Fall 1995 Exam (HB, 273), Essay Question #1 (HB, 281)
VI. JUDGMENTS AND CHALLENGES TO JUDGMENTS

A. Summary Judgment -- Mechanics and Standards  (Andrews)
   Study:  FRCP 12(b) and FRCP 56
   CP Chap. 23 (pp. 473-80)
   Andrews' overview of summary judgment (HB, 230)
   Review:  Ala. Code §12-21-12 (HB, 228)
   Pattern jury instruction re burden of proof (HB, 229)
   Proposed amendment to FRCP 56 and AC notes (in-class handout)
   Study:  FRCP 56
   CP Chap. 23 (problems 10-15) and CP Chap 36
   Celotex (HB, 231); Albert (HB, 239); Martin (HB, 242)

C. Introduction to Trial  (Andrews)

D. Trial Motions for Judgment as a Matter of Law or New Trial
   Study:  FRCP 50(a) & (b); FRCP 59(1)(a), 59(b) and 59(d)
   Alabama Code 12-13-11 (HB, 251)
   Newtown (HB, 245) Warren (HB, 248);
   Review:  CP Chap 24 & Chap 25
   FRCP 52, 54(a) & 54(b), 58, and 79(a)

E. Motions in the Trial Court to Vacate the Judgment (Andrews)
   Review:  FRCP 51, 54, 59, 60 and 61
   Brandon (HB, 252)

F. Default
   Study:  FRCP 5(a)(2), 54(c), 55(a) thru 55(c), 60(b) and 77(d)(1)
   C&G Boats (HB, 255), Rice (HB, 258)
   Study:  FRCP 41
   Prairie State Bank (HB, 262); McDaniel (HB, 265)

H. Introduction to the Preclusive Effect of Dismissals/Judgments
   Study:  FRCP 4(m); FRCP 41
   White v. New York (HB, 267); Rinehart (HB, 269)
   Review:  Consider dismissals/judgments in previous cases (e.g., Mottley, Austin, Scott)

I. Appeals (Andrews)

VII. FINAL OVERVIEW  – Review Fall 1995 and 1996 final examinations (HB, 273 & 281)