

COMPLEX LITIGATION
Syllabus – Fall 2013
Professor D. Theodore Rave

Class Hours: Mondays and Wednesdays from 10:30am to 12:00pm in 215 TU2

Office Hours: Mondays immediately following class, from noon to 1:30pm. I am always happy to talk with students, so if that time is not convenient for you please feel free to email me to set up an appointment. My office is 126 BLB. My email address is dtrave@central.uh.edu.

Required Casebook: NAGAREDA, BONE, BURCH, SILVER & WOOLLEY, THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (2d ed. 2013) and the JULY 2013 SUPPLEMENT, thereto. I will also post required reading materials on the Blackboard website from time to time.

Supplemental Resources: You may find the following texts helpful throughout the course (and your careers) in understanding some of the issues in complex litigation. But except for excerpts that I assign and post on Blackboard, you are not responsible for these readings for the purposes of the exam.

- AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (2010), available on Westlaw in the ALI-AGGLIT database
- CHARLES ALLAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE, available on Westlaw in the FPP database
- WILLIAM RUBENSTEIN, ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS, available on Westlaw in the CLASSACT database
- ROBERT H. KLONOFF, CLASS ACTIONS AND OTHER MULTI-PARTY LITIGATION IN A NUTSHELL (4th ed. 2012)

Course Requirements

Exam: Your grade will be based primarily on a three-hour in-class final exam scheduled for December 11, 2013 from 9am-noon. The test is open book in that you may use the assigned readings, your class notes, handouts from class, and outlines prepared by you (including as part of an outline group). You may not bring commercial outlines or any other material that you did not help create. If you have a question about what is permitted, ask me well in advance of the exam.

Class Participation: Participation in class discussion is necessary both for your own understanding of the material and for the benefit of your classmates. I expect you to be prepared for every class. If, for any reason, you are not prepared for a class I ask that you let me know in advance (either by email or by leaving a note on the lectern in class) and I will not call on you that day. I may increase your grade one step (e.g., B+ to A-) for outstanding participation and lower it one step for failing to participate adequately or for consistently being unprepared for class.

Attendance: You are expected to attend all class session. If you fail to attend at least 80% of class meetings you will be in violation of ABA and Law Center policy and may be dropped from the course. Late arrivals may be treated as absences.

Computer Policy: Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness.

Accommodation: If you have a disability and require an accommodation, please contact the Center for Students with Disabilities.

Reading Assignments: For the first class, please read pages 1-12 of the casebook, as well as Section 1.02 of the ALI PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (including the Comments and Illustrations, but not the Reporters' Notes), which will be posted on Blackboard and is available on Westlaw. For subsequent assignments, at the end of each class I will tell you how far ahead on the syllabus to read for the next class. The course outline below covers reading assignments for the first several weeks of class. I will give you the rest of the outline and assignments in installments as the course goes on.

Course Outline and Reading Assignments (Part I)

- I. Introduction
 - A. Framing the Problem
 - Casebook pp. 1-3
 - ALI § 1.02 and Comments and Illustrations
 - B. Preclusion
 - Casebook pp. 3-6
 - Parklane Hosiery Corp. v. Shore*, pp. 6-10
 - Notes pp. 10-12
 - ALI § 1.01 and Comments and Illustrations
 - Taylor v. Sturgell*, pp. 12-22
 - Notes pp. 22-25
 - C. An Overview of Aggregation Techniques
 - Casebook pp. 25-44 (skim pp. 31-34)
 - ALI § 1.04 and Comments
 - ALI § 1.05, Comments a & b, Reporters' Note on Comment b
- II. Class Actions: Creating a Class
 - A. The Stakes
 - Casebook p. 42
 - Hansberry v. Lee*, pp. 42-49
 - Notes 4-6, pp. 51-56
 - In re Rhone-Poulenc Rorer, Inc.*, pp. 56-61
 - Notes pp. 61-69

- B. The Mechanics: Class Certification
 - 1. Overview
 - Federal Rule of Civil Procedure 23, Casebook pp. 30-34
 - 2. Numerosity
 - Casebook pp. 69-70
 - 3. Commonality & Typicality
 - General Telephone Co. v. Falcon*, pp. 70-74
 - Notes 1 & 3, pp. 75-76
 - Wal-Mart Stores, Inc. v. Dukes*, pp. 76-86
 - Notes pp. 87-89
 - ALI § 2.01 and Comments and Illustrations
 - ALI § 2.02 and Comments a, b, e, f, and h
 - 4. Adequate Representation
 - Casebook pp. 89-91
- III. The Types of Classes
 - Casebook pp. 91-92
 - A. The Opt-Out Class
 - 1. Due Process
 - Phillips Petroleum Co. v. Shutts*, pp. 93-102
 - Notes pp. 102-09
 - 2. Predominance & Superiority
 - Casebook pp. 109-10
 - Amchem Products, Inc. v. Windsor*, pp. 110-28
 - Notes pp. 128-35
 - 3. Future Claimants
 - Stephenson v. Dow Chemical Co.*, pp. 135-41
 - Notes pp. 142-44
 - Uhl v. Thoroughbred Technology & Telecom., Inc.*, pp. 145-47
 - 4. Choice of Law
 - Casebook pp. 147-51
 - Cole v. General Motors Corp.*, pp. 152-57
 - Notes pp. 157-60
 - In re St. Jude Medical, Inc.*, pp. 161-64
 - Notes pp. 164-68
 - 5. Challenging Class Certification
 - Klay v. Humana, Inc.*, pp. 168-82
 - Notes pp. 182-90
 - Supplement Note 4, p. 4