

**John Marshall Law School
Spring 2015
Remedies
Evening Division**

Thursdays 6:15p.m.-9:30p.m., Room TBA

Associate Professor Helen de Haven

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Office Hours: M: By appointment, T: 2:00-4:00, W: By appointment, Th: 2:30-4:30 and after class at 9:30, F: 2:00-6:00 and after class at 9:30. Walk-ins welcome. Appointments preferred.

I give my time generously to committed students. I am here a lot Tuesday-Friday, but not necessarily in my own office. Appointments are always preferred. You are also welcome to drop by during official office hours. The faculty assistant will usually know where to find me if I am not in my office when you arrive.

Remedies Course Description and Syllabus

I. Course Description

Welcome to Remedies.

This course is often said to entangle students in “the seamless web of the law.” It involves both substantive and procedural subject matters and makes a good capstone course for the final year of law school. We will be covering the law of monetary damages, injunctions and specific performance of contracts, declaratory relief, restitution, contempt, and remedial defenses. All but monetary damages are subjects that may be tested on the Georgia bar exam.

We will use the **concise** version of Douglas Laycock’s *Modern American Remedies: Cases and Materials* (4th Ed.). If you take a little time with each assigned case to consider the substantive and procedural law background out of which it arises, you will be able to integrate many of your prior substantive law courses (Contracts, Torts, Property, and Constitutional Law II in particular) and anticipate courses that you may take before you graduate.

II. Student Learning Objectives

In order to achieve a grade of 2.00 (C) or better, you must, by the end of this course, as judged by your performance on a written examination, demonstrate that you can:

1. Comply with examination rules and instructions;
2. Read cases, statutes, and other law-related materials thoughtfully, analytically, and comprehensively;
3. Retain and state with accuracy governing principles of applicable law, such as, for example, the operation of a constructive trust, the elements of an injunction, the varieties of contempt, the requirements for securing a temporary restraining order, the measures of damage for injury to property.
3. Write clearly and plainly in grammatical, standard American English, using correct spelling, punctuation, and capitalization;
4. Organize your answer to a problem logically, clearly, and persuasively;
5. Use legal terms correctly and precisely;
6. Identify and synthesize the remedial issues arising from complex fact patterns presented to you;
7. Create strong rule statements drawn from the most applicable sources of law, taking into account the facts with which you are presented;
8. Express the legal arguments reasonably applicable to the facts you are given with respect to the issues you have identified, using the rules you have articulated;
9. Reach a well-supported conclusion, based on fact and law, that comports with reason, fairness, justice, and precedent.

III. Teaching and Evaluation Methods

Classes may have a variety of formats. I will present lectures for some materials, drawing on your textbook and providing additional background on Georgia law where appropriate. You may be asked to draft a sample document, summarize cases from your reading, or explore the legal issues and arguments presented by a problem. You will also be working in groups to develop a cogent analysis of problems based on the reading materials.

There will be a three-hour closed-book examination in the course. I may raise or lower your grade by one grade step for exceptionally good or exceptionally poor class preparation and performance. Overall class participation and preparation may affect the class mean.

IV. Other Course Requirements

The ground rules of this class are that you must show up, pay attention, and keep an open mind. You are expected to behave professionally at all times. Disrespect and incivility will not be tolerated. We will be engaged in a group learning experience, and I intend to keep the field open and level. You must, however, take responsibility for your own access to the group. I am a straight white woman, and I am aware that my group identities may have an exclusionary impact. That is not my intention. If you experience difficulty participating fully in the class as a result of your own group identities, you are expected to bring the issue to my attention.

Remedies is broad, deep, and vague, and it takes a lot of reading to master the subject to the level of minimum competence. These reading assignments are varied, interesting, timely, and of reasonable length. I expect you to show up for all classes and be prepared. You are responsible for all reading assignments whether or not we cover them in class. You will acquire much of your understanding simply through reading many cases and annotations, and there is no effective shortcut in this process.

I require that you attend class. Under no circumstances may you miss more than 20% of scheduled class hours. Unexcused absences may lower your grade by one grade step. Absences are excused only for good cause shown and communicated to me preferably in advance but certainly no later than the day following the absence.

Attendance will be taken during each class session. Please arrive on time. Students who are chronically late to class may be considered absent.

Attendance requires preparation and attention during the entire class period. Except in emergencies, students should not leave the classroom once class has begun.

Cell phones are to be turned off during class. If for some reason you need telephone access during class, please let me know before class starts.

Participation in the class requires a commitment to peaceable disputation using only the tools of reason and fair persuasion. Under no circumstances may you bring a firearm or other lethal weapon into this space.

V. Supplemental Material

The best hornbook on Remedies is Professor Dan Dobbs' *Law of Remedies* in either the one-volume student edition or the three-volume practitioners' edition. Also useful is James Fisher's *Understanding Remedies* (2d Ed. 2006)(LexisNexis). I do not recommend any other study aides.

VI. Syllabus

Week 1 January 15 Casebook pp. 1-52

Chapter 1: Introduction

Chapter 2: Paying for Harm: Compensatory Damages

- A. The Basic Principle: Restoring Plaintiff to Her Rightful Position
- B. Value as the Measure of the Rightful Position
- C. Reliance and Expectancy as Measures of the Rightful Position
- D. Consequential Damages

Week 2 January 22 Casebook pp. 53-107

Chapter 2: Paying for Harm: Compensatory Damages

- E. Limits on the Basic Principle
 - 1. The Parties' Power to Specify the Remedy
 - 2. Avoidable Consequences, Offsetting Benefits, and Collateral Sources
 - 3. The Scope of Liability
 - 4. The Certainty Requirement
 - 5. Substantive Policy Goals

Week 3 January 29 Casebook pp. 108-121, 137-169

Chapter 2: Paying for Harm: Compensatory Damages

- F. Damages Where Value Cannot Be Measured in Dollars
 - 1. Personal Injuries and Death
 - 2. Dignitary and Constitutional Harms
- G. Taxes, Time, and the Value of Money

Week 4 February 5 Casebook pp. 207-257

Chapter 4: Preventing Harm: The Measure of Injunctive Relief

- A. The Scope of Injunctions
 - 1. Preventing Wrongful Acts
 - 2. Preventing Lawful Acts That Might Have Wrongful Consequences
 - 3. Repairing Consequences of Past wrongful Conduct
 - 4. Ending Complex Violations
 - A. The Desegregation Cases

Week 5 February 12 pp. 257-295

Chapter 4: Preventing Harm: The Measure of Injunctive Relief

- A. The Scope of Injunctions
 - 4. Ending Complex Violations
 - B. The Prison Cases
- B. Modifying Injunctions
- C. The Rights of Third Parties

Week 6 February 19 *pp. 297-350*

Chapter 5: Choosing Remedies

- A. Substitutionary or Specific Relief
 - 1. Irreplaceable Losses
 - a. Injunctions
 - b. Specific Performance of Contracts
 - 2. Burdens on Defendant or the Court
 - 3. Other Persons

Week 7 February 26 *pp. 350-372*

Chapter 5: Choosing Remedies

- B. Preliminary or Permanent Relief

Week 8 March 5 *pp. 453-488*

Chapter 7: Preventing Harm Without Coercion: Declaratory Remedies

- A. Declaratory Judgments
- B. Quiet Title and the Like
- C. Reformation
- D. Declaratory Relief at Law

Week 9 March 12 *pp. 489-538*

Chapter 8: Benefit to Defendant as the Measure of Relief: Restitution

- A. Restitution From Innocent Defendants
- B. Recovering More Than Plaintiff Lost
 - 1. Disgorging the Profits of Conscious Wrongdoers
 - 2. Measuring the Profits

Week 10 March 26 pp. 539-587

Chapter 8: Benefit to Defendant as the Measure of Relief: Restitution

- B. Recovering More Than Plaintiff Lost
 - 3. Breach of Contract
- C. Restitutionary Rights in Specific Property
 - 1. Constructive Trusts
 - 2. Tracing
 - 3. Equitable Liens and Subrogation

Week 11 April 2 pp. 587-600

Chapter 8: Benefit to Defendant as the Measure of Relief: Restitution

- D. Defenses and Rights of Third Parties

Week 12 April 9 pp. 601-654

Chapter 9: Ancillary Remedies: Enforcing the Judgment

- A. Enforcing Coercive Orders: The Contempt Power
 - 1. The Three Kinds of Contempt
 - 2. How Much Risk of Abuse to Overcome How Much Defense?
 - 3. The Collateral Bar Rule
 - 4. The Rights of Third Parties
 - 5. Drafting Decrees

Week 13 April 16 pp. 689-702, 713-726

Chapter 10: More Ancillary Remedies: Attorneys' Fees

- A. Fee-Shifting Statutes
- C. Ethical Issues in Fee Awards

Week 14 April 23 pp. 727-766

Chapter 11: Remedial Defenses

- A. Unconscionability and the Equitable Contract Defenses
- B. Unclean Hands and *In Pari Delicto*
- C. Estoppel and Waiver
- D. Laches
- E. Statutes of Limitations