

WESTERN STATE COLLEGE OF LAW

REMEDIES SECTIONS 303A and 303B – SPRING 2015

Syllabus and Policies

Professor Philip L. Merkel

Office: Third Floor Faculty Suite
Telephone: (714) 459-1146
Email: pmerkel@wsulaw.edu
Office hours: Tuesday and Thursday, 12:30-3:00 p.m., Thursday, 4:00-6:10 p.m., or by appointment. To schedule an appointment, sign up in the appointment book at the receptionist desk on the third floor. You may only sign up for one appointment at a time. If you miss an appointment without advance notice, you will not be able to make other appointments.

Required Book

Shoben, Tabb, and Janutis, *Remedies: Cases and Problems* (5th ed.)

Recommended Books

Tabb and Shoben, *Remedies in a Nutshell*. This book gives a basic overview of remedies. It is written by the casebook authors.

Fischer, *Understanding Remedies* (3rd ed.) This is a very comprehensive hornbook. The third edition is available as an ebook. A copy of the first or second edition will suffice.

Course Coverage

Remedies is a three-credit required course. It introduces students to remedies in civil cases. The course will provide an overview of three major types of remedies: equitable remedies (the injunction and specific performance), damages, and restitution. In most cases, we will discuss remedies in the context of a tort or a breach of contract lawsuit. You will learn the range of remedies available in specific cases and how to select the remedy or remedies that best serve a client's interests.

Course Methodology and Objectives

The course methodology will include the use of cases and problems. The authors of the casebook begin the discussion of each major concept with a "model case." The model cases are simple examples illustrating how a concept works. They should aid you in understanding the more complex issues that arise in the cases and problems that follow.

The Remedies course has a number of major objectives. The first goal is to provide the student with a firm grounding in the law of remedies. You will learn the fundamentals of equitable remedies, damages, and restitution. These are important concepts that attorneys working on the civil side encounter in everyday practice. A second goal is to enhance the student's ability to apply the remedies in specific fact situations. The third goal is to enable the student to make a written assessment of remedial choices in a coherent, organized way.

Examinations and Grading

Remedies is a graded course. Your grade will be based on your performance on a number of tests, including a contract – torts basic concepts test, a midterm examination, quizzes and/or short essay tests, and a final examination. I will inform you in advance of the dates of the tests. **You should be prepared to have a quiz in every class.**

Attendance and Participation

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY.

Students must attend class regularly, prepare written case briefs and/or written answers to problems, and participate in discussions. **A student who is not prepared will be considered absent for that class.** There is no “free pass” policy for this course.

A student in the day section can be absent no more than **two** class sessions. A student in the night section can be absent no more than **one** class session. **A student who exceeds the limit will be dropped from the course and receive a failing grade.** You are responsible for keeping an accurate count of your absences.

Promptness

Classes will begin promptly at the scheduled time. Please be in your seat for the start of the class. Students who arrive late disrupt the learning process for others. If you are unavoidably late, please enter quietly through the rear entrance and take a seat in the back of the room. Once class begins, please do not leave the room except for emergencies or medical reasons.

Cell Phones and Pagers

Disable cell phones and pagers and store them before class begins.

Food and Drinks

Do not eat during class. You may have drinks in covered containers.

Commercial Outlines

You may not recite from commercial outlines, briefs, or other commercial study aids. If you bring these materials into the classroom, they must be closed at all times.

Computer Use

You may use a personal computer during class **for note taking only**. You may not be on the Internet, check email, text, play games, etc. In the event that students violate this rule, I reserve the right to prohibit computer use in class. If you use your computer for case briefing, please have the document open before we begin discussing the case so as not to waste time bringing it up.

Seating Chart

I will send around a seating chart early in the semester. Please print your name legibly in the seat of your choosing. This will be your permanent seat. I strongly encourage you to choose a seat near the front of the room. Educational studies show that students who sit near the front benefit most from the classroom experience. Because I randomly select student to recite, your seat choice will not enhance or reduce the likelihood of your being chosen to recite.

Assignments

The following assignments are from the casebook. **You must brief the cases and answer the assigned problems in writing.** I will assign additional problems that are not in the casebook. Read the corresponding sections in the recommended books to gain a fuller knowledge of the topics.

<u>Week</u>	<u>Topic and Assignment</u>
1	Introduction to the course; introduction to remedies; v-vii; 1-6; 13-27; 31-39; preventive injunctions: inadequacy of law remedies, 43-50.
2	Irreparable harm, 50-57; balancing interests, 57-62, 67-72 public interest, 72-85. Contract-Torts test.
3	Specific performance: entitlement, 90-111; (skip problem on 105); fashioning relief, 111-124; 127-129; sale of goods contracts, 129-134.
4	Equitable defenses: laches and estoppel, 142-160; notes on 165-168; unclean hands, 168-180; election of remedies, 190-197, notes on 200-202.
5	Interlocutory injunctions: substantive requirements, 203-219 (skip problem on 217); procedural requirements, 232-236; injunction bonds, 243-255.
6	Contempt: criminal contempt, 256-257, notes on 261-270; civil contempt, 282-290, 300-304; enjoining nuisances, (handout).

<u>Week</u>	<u>Topic and Assignment</u>
7	Contract damages: 392-407, (skip problem on 398); land sales contracts, 471-486. Midterm examination.
8	Tort damages: personal property, 487-518 (skip problems on 496 and 512); real property, 518-538.
9	Personal injury, 545-575 (skip problem on 575); adjustments to damages: present value and inflation, 607-610.
10	Limitations on damages: foreseeability, 647-664; certainty, 664-670; avoidable consequences, 676-685 (skip problem on 685); collateral source rule, 692-693.
11	Unjust enrichment: the concept, 814-830; benefits acquired by agreement or mistake, 830-845; 851-854.
12	Waiver of tort and suit in assumpsit, 854-861; constructive trusts, 869-870; notes on 874-876, 883-887.
13	Equitable liens, 887-892 (skip problem on 892); tracing, 898-904, notes on 907-909.
14	Defenses: bona fide purchaser and change of position, 909-915; changed position, notes on 922-924; volunteers, 924-926.
15	Reading week
16	Final Examination