

## WESTERN STATE COLLEGE OF LAW

### REMEDIES SECTIONS 303A & 303B – SPRING 2018

#### Syllabus and Policies

**Professor Philip L. Merkel**

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Office hours: To be announced in class.

#### **Required Book**

Shoben, Tabb, Janutis, and Main, *Remedies: Cases and Problems* (6<sup>th</sup> ed.) You *must* have a *current edition* of the casebook and bring it to every class.

#### **Recommended Books**

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

Fischer, *Understanding Remedies* (3<sup>rd</sup> ed.) This is a comprehensive hornbook. The third edition is available as an ebook. Any 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, mainly a midterm examination and a final examination. I will inform you in advance of the dates of these tests. I may also give short in-class quizzes. **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 **four** class sessions. A student in the night section can be absent no more than **two** class sessions. **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**

Disable phones and **store** them before class begins.

### **Food and Drinks**

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

## Commercial Study Aids

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.

## Time Requirements for Class Preparation and the Study of Remedies

ABA Standard 310 (b) (1) requires that students spend at least two hours of outside study time for every course credit hour. **This means you must devote at least six hours each week to the study of torts outside the classroom.** Your class preparation should include the following:

- Carefully read every assigned case and problem in the casebook, including assigned materials before and after each case.
- Produce *detailed written briefs* of every assigned case and accumulate the briefs in a brief notebook. I may require you to provide me with a written copy of your brief notebook.
- Produce written answers to every assigned problem in the casebook.
- Produce written answers to exercises and bar exam questions I may assign.
- Complete practice examinations that I will distribute before the midterm and final examinations.
- Take the initiative to delve further into topics by doing outside study, especially on topics that interest you.
- Form study groups with classmates for the purpose of learning from one another.
- Visit the professor during office hours to discuss course materials, identify areas with which you are having difficulty, review practice examinations, etc.

## Reading Assignments

The following assignments are from the casebook. You should read the entire week's assignment before the first class in that week. **You must brief the cases and answer the assigned problems in writing.** I may 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; 1-8; 15-24, 27-32; consequences of remedy characterization, 39-43; preventive injunctions: inadequacy of law remedies, 51-58. |
| 2           | Irreparable harm, 58-66; balancing interests, 66-71 (omit problem on 71), 77-82; public interest, 82-101.                                                                                  |
| 3           | Specific performance: entitlement, 103-127 (omit problem on 121); fashioning relief, 127-141, 144-147; sale of goods contracts, 147-152.                                                   |
| 4           | Equitable defenses: laches and estoppel, 161-190 (omit problem on 172); unclean hands, 190-195, notes on 199-202; election of remedies, 213-222, notes on 224-227.                         |
| 5           | Interlocutory injunctions: substantive requirements, 229-251 (omit all problems); procedural requirements, 257-264; injunction bonds, 272-285.                                             |
| 6           | Contempt: criminal contempt, 291-292, notes on 296-306 (including <i>In re Stewart</i> ); civil contempt, 323-330.                                                                         |

| <u>Week</u> | <u>Topic and Assignment</u>                                                                                                                                               |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7           | Midterm examination; contract damages: 425-438, (omit problem on 432), 443-450; liquidated damages, 498-499; land sales contracts, 516-518.                               |
| 8           | Tort damages: personal property, 535-570 (omit all problems); real property, 570-591.                                                                                     |
| 9           | Personal injury, 599-630; adjustments to damages: present value and inflation, 665-669.                                                                                   |
| 10          | Limitations on damages: foreseeability and certainty, 701-721; avoidable consequences, 721-729 (omit problem on 729), 730-736; collateral source rule, 736-737.           |
| 11          | Unjust enrichment: the concept, 855-873; benefits acquired by agreement or mistake, 873-889 (omit problem on 889), 892-897.                                               |
| 12          | Waiver of tort and suit in assumpsit, 901-908; constructive trusts, 917-925, 933-938.                                                                                     |
| 13          | Equitable liens, 938-949; tracing, 951-959.                                                                                                                               |
| 14          | Defenses: bona fide purchaser and change of position, 965-973; changed position, notes on 973-978 (including <i>Alexander Harmilton Life Ins.</i> ); volunteers, 978-980. |
| 15          | Reading week                                                                                                                                                              |
| 16          | Final Examination                                                                                                                                                         |

## **Disabilities Services Statement**

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities Services Office** assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at [aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

## **Argosy University Institutional Learning Outcomes**

### **1. Analytical Reasoning**

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

### **2. Effective Communication**

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

### **3. Information Competency**

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

### **4. Interpersonal Effectiveness**

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

## **5. Personal and Professional Integrity and Ethical Behavior**

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

## **6. Professional Competence**

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

### **Western State College of Law – Programmatic Learning Outcomes**

**Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:**

#### **(1) Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

#### **(2) Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

#### **(3) Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are

legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

**(4) Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

**(5) Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

**(6) Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

**(7) Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

**(8) Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.