

# WESTERN STATE COLLEGE OF LAW

## REMEDIES – SPRING 2021

### Syllabus and Policies

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### **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 Janutis, *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.

Hasen, *Remedies, Examples and Explanations*, Wolters Kluwer

### **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 midterm and final examination. The midterm and final will be essay, structured to simulate a California Bar essay.

### **PLEASE READ THE FOLLOWING INFORMATION CAREFULLY.**

#### **Attendance and Participation**

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 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.** One class may be made up- after a showing of reasonable excuse for absence - by submitting written answers to the problems for the week, along with a written answer to a California Bar essay question which I will provide. Additional makeup class sessions may be offered during the semester, depending on circumstances occasioned by Covid-19 and related public health concerns. However, no makeup class sessions are guaranteed. You are responsible for keeping an accurate count of your absences.

Students will be awarded "participation points" for volunteering to discuss cases, and demonstrating superior preparation and knowledge of the case. Similarly, students will be docked "participation points" if they are called upon and are unprepared. Participation points above expectation will be converted to additional grade points, up to 0.2.

#### **Requirements for Students in Zoom Sessions:**

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.

- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.
- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, you may sign in under the preferred name, but let me know so that I can adjust the attendance sheet.
- Unless instructed otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.
- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them.

- I may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

### **Promptness**

Classes will begin promptly at the scheduled time. I will try to have the session open at least 15 minutes prior to the start of class. This will be free time to ask questions or seek clarification on the subject matter. Please be at your computer and logged in to the Zoom session for the start of the class. Students who arrive late disrupt the learning process for others.

### **Food and Drink**

Due to the starting time of evening classes, if you need to eat your dinner during class, please keep your computer on mute but be prepared to speak if called upon.

### **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.

### **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 remedies 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 final examination.
- 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.

<b><u>Week</u></b>	<b><u>Topic and Assignment</u></b>
1	Introduction to the course: v-viii <b>Contract damages</b> 425-438, (omit problem on 432), 443-450; liquidated damages: 498-499; land sales contracts: 516-518.
2	<b>Tort damages</b> personal property: 535-570 (omit all problems); real property: 570-591.
3	<b>Limitations on damages</b> foreseeability and certainty: 701-721; avoidable consequences: 721-729 (omit problem on 729), 730-736; collateral source rule, 736-737.
4	<b>Preventive injunctions</b> Inadequacy of law remedies: 51-58; Irreparable harm: 58-66; balancing interests: 66-71 (omit problem on 71), 77-82; public interest: 82-101.
5	<b>Specific performance</b> Entitlement: 103-127 (omit problem on 121); fashioning relief: 127-141, 144-147; sale of goods contracts: 147-152.

6	<p><b>Equitable defenses</b>  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.</p>
<b><u>Week</u></b>	<b><u>Topic and Assignment</u></b>
7	<p><b><u>Midterm examination</u></b></p>
8	<p><b>Interlocutory injunctions</b>  substantive requirements: 229-251 (omit all problems); procedural requirements: 257-264; injunction bonds: 272-285.</p>
9	<p><b>Contempt</b>  criminal contempt: 291-292, notes on 296-306 (including <i>In re Stewart</i>); civil contempt: 323-330.  Rescission and reformation: read <i>Stabmovsky v Ackley</i> 169 A.D.2d 254</p>
10	<p><b>Unjust enrichment</b>  the concept: 855-873; benefits acquired by agreement or mistake: 873-889 (omit problem on 889), 892-897.</p>
11	<p>Waiver of tort and suit in assumpsit: 901-908; Constructive trusts, 917-925, 933-938.</p>
12	<p>Equitable liens, 938-949; tracing, 951-959.</p>
13	<p>Defenses: bona fide purchaser and change of position, 965-973; changed position, notes on 973-978 (including <i>Alexander Hamilton Life Ins.</i>); volunteers, 978-980.</p>
14	<p>Final review</p>
15	<p>Reading week</p>
16	<p>Final Examination</p>

## **DISABILITY 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 #111. 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."

## **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.