SYLLABUS

REMEDIES
Spring 2015

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Office hours:
Monday (3 - 4 p.m.)
Tuesday (3 - 4 p.m.)
and by appointment

CLASS MEETINGS: Monday and Wednesday, 10:30 - 11:45 a.m.

TEXTS


OBJECTIVES

This course will introduce you to the basic principles of private remedies and, to a lesser extent, public law remedies. We will cover both legal and equitable remedies. We will examine the nature of injunctions, damages, restitution, and other remedies, both generally and in specific contexts (such as breach of contract and wrongful death).

The notes following the main cases present interesting questions and problems for discussion. Think about them as you prepare for class, for they will occasionally serve as the basis for discussion.

GRADING, ATTENDANCE, CLASS PARTICIPATION, AND LAPTOP USAGE IN CLASS

Your grade will be based entirely on a closed-book final exam consisting mainly of essay questions, with some multiple-choice questions.

Each student is expected to attend all classes regularly and punctually, to be prepared, participate in class discussion, and remain throughout the session. You will get more out of this class if you participate in the discussion. From my 20 years of litigation experience, I can tell you that it is important to make your best effort to understand the cases, analyze them, develop opinions about what the parties argued and what the court decided, and articulate your analysis and questions. Although I do not award extra points for exemplary participation, repeated instances of lack of preparedness (including excessive unexcused absences) will be grounds for a half-letter-grade deduction from your final grade or a final grade of FX.

Please limit your use of laptop computers to taking notes. Use of laptops for non-class-related activities – including but not limited to surfing, emailing, texting, and playing spider solitaire – may result in dismissal from the class.
STATEMENT ON PLAGIARISM

DePaul University is a learning community that fosters the pursuit of knowledge and the transmission of ideas within a context that emphasizes a sense of responsibility for oneself, for others and for society at large. Violations of academic integrity, in any of their forms, are, therefore, detrimental to the values of DePaul, to the students’ own development as responsible members of society, and to the pursuit of knowledge and the transmission of ideas. Violations include but are not limited to the following categories: cheating; plagiarism; fabrication; falsification or sabotage of research data; destruction or misuse of the university’s academic resources; alteration or falsification of academic records; and academic misconduct. Conduct that is punishable under the Academic Integrity Policy could result in additional disciplinary actions by other university officials and possible civil or criminal prosecution. Please refer to your Student Handbook or visit Academic Integrity at DePaul University (http://academicintegrity.depaul.edu) for further details.

DISABILITIES-RELATED ACCOMMODATIONS

Students seeking disability-related accommodations are required to register with DePaul’s Center for Students with Disabilities (CSD), enabling you to access accommodations and support services to assist in your success. There are two office locations:

- Loop Campus – Lewis Center #1420 – (312) 362-8002
- Lincoln Park Campus – Student Center #370 – (773) 325-1677

Students are also invited to contact me privately to discuss your challenges and how I may assist in facilitating the accommodations you will use in this course. This is best done early in the term and our conversation will remain confidential.

ASSIGNMENTS

Below is a schedule of assignments. All page references are to the Shoben, Tabb & Janutis casebook, unless otherwise indicated. Some materials will be emailed to you in advance of a particular class.

WEEK 1 (to accommodate the MLK holiday on Monday, Jan. 19, we will not cover § I-B in class)

I. INTRODUCTION TO REMEDIES

A. Basic Remedial Tools

B. Scope of Legal and Equitable Remedies
   1. Limitations on Remedies
      pp. 13-27 (Orloff, Cowin, Treister) (cont’d next page)
2. Consequences of Remedy Characterizations

pp. 31-39 (Hanna, Brunecz)

II. DAMAGES

A. Contract Damages

1. Introduction – Compensable Interests and How We Value Them

pp. 392 - 407 (Eastlake; Gruber, Johnson)

2. Damages under the U.C.C. Art. 2 for sale of goods contracts

a. Buyer’s Remedies

pp. 407-34 (Wilson, Gerwin, AM/PM, Aries)

b. Seller’s Remedies

WEEK 2

pp. 434-45 (Sprague; Collins); p. 451 (Problem: The Coins)

3. Liquidated Damages

pp. 454-60 (Boyle); p. 458, note 1 (Vanderbilt U.)

WEEK 3

B. Tort Damages

1. Harm to Personal Property

pp. 487-96, 500-18 (Hewlett; notes after Roxas; Lane; Carbasho; Long)

2. Harm to Real Property

pp. 518-32 (Miller; La. Gas Serv.); pp. 538-45 (SS Zoe);

WEEK 4

3. Damages for Personal Injuries

Handout to be mailed to you (Milo v. State Elevator Corp., Geary v. O’Hern); pp. 545-54 (Frankel); pp. 558-62, 563-67, 571-75, and 578-79 (notes following Wilburn, Healy, Debus, and Dupont); (cont’d next page)
4. **Damages for Injuries Resulting in Death**

   pp. 579-94; (Cal. Code provisions at pp. 583-84 and notes; *Jordan*)

   Illinois wrongful death (740 ILCS 180/1 et seq.) and survival (755 ILCS 5/27-6) statutes (handout)

5. **Tort Reform** (briefly)

   Overview and notes at pp. 594-95, 603-06

**WEEK 5**

C. **Adjustments to Compensatory Damages**

1. **Present Value and Inflation**

   pp. 607-20 (*Budge; Jones & Laughlin Steel Corp.*; Problem: The Frustrated Judge)

2. **Prejudgment Interest**

   pp. 624-25; pp. 641-46 (*Campbell*)

**D. Limitations on Compensatory Damages**

1. **Foreseeability**

   pp. 647-54 (*Redgrave*), p. 663

2. **Certainty**

   pp. 664-70 (*Cannon*)

3. **Avoidable Consequences**

   (Time permitting) pp. 676-85 (*Rockingham; Parker*)

4. **Collateral Source Rule**

   pp. 692-99 (*Helfend*: Problem: The Good Samaritan)

**WEEK 6**

E. **Economic Loss Damages**

   pp. 731-39 (*Clark*); pp. 753-59 (*People Express*)

F. **Punitive Damages**

1. **State Law Claims for Entitlement and Procedures**

   pp. 766-84 (*Silverman; Wangen*: Problem: The Injured Rookie)
WEEK 7 2. Constitutional Limits

pp. 792 - 806 (Campbell); Exxon Shipping Co. v. Baker (handout)

III. EQUITABLE REMEDIES AND DEFENSES

A. Preventive Injunctions

1. Inadequate Remedy at Law

pp. 44-50 (Thurston; Wheelock)

2. Irreparable Harm

pp. 50-53 (K-Mart)

3. Balancing Interests

pp. 57-62 (Triplett)

4. Public Interest

pp. 72-77 (Graham)

WEEK 8 B. Specific Performance

1. Entitlement

pp. 91 - 111 (Est. of Osborn; Houseman; Henderson; Problem: The Family Care Contracts)

2. Fashioning Relief

pp. 111-24 (Dover Shopping Ctr.; Shubert Theatrical Co.)

3. Contracts for the Sale of Goods

pp. 129-41 (Sedmak; Weathersby; Ace Equipment; Problem: The Jilted Buyer)
WEEK 9  C. Equitable Defenses

1. Laches
   pp. 142-60 (Stone, Vineberg); Problem (handout)

2. Estoppel
   pp. 160-68 (Geddes)

3. Unclean Hands
   pp. 169-74 (Senter; Problem: The College Star's Secret)

4. Unconscionability
   pp. 180-90 (Lhotka; Jones)

WEEK 10  D. Interlocutory Injunctions

1. Substantive Requirements
   pp. 203-09; pp. 212-27 (Ride the Ducks; Doherty Assoc.; Cassim; Baldrige); pp. 217-18 (Problem: The Frustrated Book Publisher)

2. Procedural Requirements
   pp. 232-36 (Sims); pp. 240-41 (note 2)

E. Contempt

1. Criminal Contempt
   pp. 256-64 (Walker); 270-79 (Daniels; Greenberg)

2. Civil Contempt
   pp. 282-90 (Trudeau I & II; Darwin; Problem: The Persistent Protester)

WEEK 11  F. Enjoining Speech or Litigation

   pp. 339-51 (Willing; Mabe; Pavilionis; Problem: The Litigious Neighbor)

G. Enjoining Nuisances

   pp. 358-64 (Harrison) (cont’d next page)
WEEK 11 (cont’d)  CLASS TWO: Remedies Practitioners’ Panel

WEEK 12

IV. RESTITUTIONARY REMEDIES

A. Unjust Enrichment

1. The Unjust Enrichment Concept

   pp. 814-30 (Est. of Zent; Cross; Monarch)

2. Benefits Acquired by Agreement or Mistake; Quantum Meruit

   pp. 830-44 (Pyatte; Campbell) Handout (Kelner, Rosenberg, Problem: The Fickle Politician)

WEEK 13

3. Constructive Trust

   pp. 869-83 (Barrett; Stauffer)

4. Equitable Liens

   pp. 887-93 (Middlebrooks); p. 892 (Problem: The Shared House)

B. Limitations on Restitutionary Remedies

1. Tracing

   pp. 898 - 903 (G&M Motor Co.); pp. 904-09 (ProData); Tracing Fictions handout (to be emailed to you)

WEEK 14

2. Bona Fide purchaser and Change in Position

   pp. 909-24 (City of Hastings; Reisner; Lewis)

3. Volunteers

   pp. 924-38 (Everhart; Jako; Felton)

V. DECLARATORY RELIEF

A. Declaratory Judgments

   pp. 1020-32 (Public Service Comm’n of Utah v. Wycoff Co.; Problem: The Cable Signal Dispute)