**Syllabus**

**Remedies**

**Course Number 6305, 3 Credit Hours**

**Spring 2018**

**MW: 3:00-4:15**

**Room 285C**

**Professor Darren Hutchinson**

**Associate Dean for Faculty Development &**

**Stephen C. O’Connell Chair**

**Description**

The course examines important theoretical and practical problems related to the structure, award, and enforcement of judicial remedies. The course analyzes several types of remedies, including injunctions, specific performance, restitution, and damages. The course affords students the opportunity to investigate questions of remedies in a host of practice settings, including public law, intellectual property, bankruptcy, civil rights, torts, and contracts. The course will also examine the role of contempt in the enforcement of injunctions. Finally, the course will consider the various defenses that litigants can raise to bar or reduce remedies.

Remedies law is essential to legal practice. Every litigant seeks a remedy, such as damages, an injunction, restitution, declaratory judgment, or specific performance. Every transaction has the potential to produce litigation. Accordingly, both transactional attorneys and litigators should have some familiarity with Remedies. If you learn the materials in this class, you will obtain knowledge and skills that many other new lawyers will lack when they graduate from law school.

**Course Learning Outcomes**

Although the subject matter of this survey course is necessarily limited, this class will, nevertheless, provide students with the analytical skills needed to examine general questions of Remedies Law. By taking this course, students will learn to identify when hypothetical or actual factual scenarios in transactional, public law, and other legal settings implicate questions of Remedies Law. Students will also learn how decisions by federal and state courts and federal and state legislation shape and inform Remedies Law.

Remedies Law questions shape the content of transactions, legislation, executive action, business practices, and, most pointedly, litigation strategies. In other words, Remedies Law is relevant to most legal-practice areas. This class will equip students with the skills needed to provide written and oral legal analysis regarding Remedies Law in a litigation setting and to identify and discuss the implication of Remedies Law in other legal-practice areas.

Remedies law involves a complex mixture of legal rules and public policy. Students should anticipate discussing policy considerations throughout the course, and the cases will often turn on these matters. Furthermore, the cases will often analyze economic, political, sociological, and other relevant policy factors. Students should endeavor to understand the interplay of legal rules and policy as they complete the readings for this course. This course will give students the knowledge-base for analyzing the policy implications of Remedies Law as attorneys.

**Requirements and Grading**

Grading in this class is based on the final examination. Students who type their exams must use the exam software provided by the law school. The final examination for this class is scheduled to take place on April 8 at 1:00 pm. Professor Hutchinson will provide more details about the final exam as the semester progresses.

Professor Hutchinson will also hold additional sessions to review course materials and provide answers to and feedback on hypothetical questions and skills assessment handouts. Students are strongly encouraged to attend these sessions. Failure to do so will reflect poorly on your class participation (see below).

The mandatory grade distribution for law school courses is posted on the College of Law website. Grading in this course will adhere to those standards. Furthermore, to calculate student grade-point averages, the College of Law utilizes the following system: A, 4.0; A-, 3.67; B+, 3.33; B, 3.0; B-, 2.67; C+, 2.33; C, 2.0; C-, 1.67; D+, 1.33; D, 1.0; D-, 0.67; E (Failure), 0.0.

As required by the American Bar Association, official policy of the College of Law, and Professor Hutchinson, all students must regularly attend and actively participate in class discussions. Effective lawyering involves a substantial amount of oral and written analysis. Accordingly, class participation is critical for your development as an attorney. Professor Hutchinson will call on students during class. Therefore, students must prepare to discuss the materials. Professor Hutchinson reserves the right to raise or lower student grades to reflect the value of class participation. Students who engage in exemplary and relevant class discussion–not talking for the purpose of talking–could receive a grade boost. Students who are repeatedly unprepared to discuss class materials or who have multiple absences—could receive a grade deduction. Multiple unexcused absences will reflect poorly upon the quality of a student’s class participation.

Periodically, Professor Hutchinson will make class announcements and distribute supplemental reading materials via email. Thus, it is imperative that students regularly check their email for class announcements. Students can ask questions of Professor Hutchinson by email. Please include the phrase “CONSTITUTIONAL LAW STUDENT” in the subject line of any email sent to Professor Hutchinson. Professor Hutchinson’s email address is: Hutchinson@law.ufl.edu.

**Laptop and Internet Usage**

Students should not use the Internet for activities unrelated to class while class is in session. Although most students believe that they can use the Internet free of detection, this is typically a self-delusion. Regardless, students who spend a substantial amount of time online during class will inevitably miss important substantive issues. Surfing, chatting, Facebooking, Tweeting, Googling, and other web-based fun should not take place during class. Failure to refrain from such activity can result in a lowering of your grade or a revocation of laptop privileges.

Students should also resist the temptation to use their laptops to take dictation of class discussion. Lawyers spend a lot more time and money preparing for their careers than court reporters and other transcription providers. Rather than taking dictation, students should listen to understand the substance and logical flow of the discussion. These are the important matters that should go into outlines. If Professor Hutchinson quotes standards from cases, please turn to the appropriate pages in the textbook for the precise language. Also, students should always quote doctrine from cases in their case outlines. Courts typically quote precedent in written opinions and during oral arguments, and lawyers quote precedent in their briefs and other legal documents. Do not simply summarize the doctrine. Quote the actual language and summarize it as well. This will reinforce your learning of the material.

**Readings**

Required reading assignments are taken primarily from Douglas Laycock, Modern American Remedies (Fourth Edition 2010) and the corresponding case supplement (sent via email). Students may receive additional supplemental readings throughout the semester. These assignments will be available electronically in advance of class. The casebook contains lengthy theoretical notes. Students must read these notes in addition to caselaw assignments. Class discussion and the exam will draw from these notes.

The syllabus lists a tentative outline of course assignments. Because it is impossible to anticipate precisely the pace of course discussions, reading assignments might be adjusted at points during the semester. Students will receive up-to-date reading assignments during class sessions. American Bar Association standards anticipate that students spend two hours reading for each one hour of class time.

**Contact**

Professor Hutchinson is available by email at: Hutchinson@law.ufl.edu. When contacting Professor Hutchinson, please include the word “Remedies” in the subject line of the email. Emails are the best method for contacting Professor Hutchinson.

**Office Hours**

Professor Hutchinson will hold formal office hours on Mondays and Wednesdays from 4:30-6:00 and Tuesdays 2:00-3:00. If you would like to meet with Professor Hutchinson outside of the time allocated for office hours, please contact him to make an appointment. Professor Hutchinson’s office is Room 333 Holland Hall.

Also, students should feel free to “drop by” Professor Hutchinson’s office. If he has time, he will try to meet with you. Professor Hutchinson welcomes and encourages students to take advantage of out-of-class meetings.

**Accommodation for Students With Disabilities**

Students requesting accommodation for disabilities must first register with the Office of Student Affairs. Accommodations are not retroactive, therefore, students should contact the Office of Student Affairs as early in the semester as possible.

**Honor Code**

Academic honesty and integrity are fundamental values of the University community. Students should read and make sure that they understand the UF Student Honor Code, which is available at: <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>.

**READING ASSIGNMENTS**

**WEEK ONE: Introduction: Rightful Position**; **Injunctions: Preventive**

January 8: 1-18; 276-95; Supp. 13-14

January 10: 276-295; Supp. 14-16

**WEEK TWO: Injunctions: Reparative; Institutional Reform Litigation/Structural Injunctions; Modification of Injunctions**

January 15: MLK HOLIDAY

January 17: 295-329; Handout on Institutional Reform Litigation/Structural Injunctions; Supp. 16

**WEEK THREE: Modifying Injunctions; Injunctions & Third Parties; Substitutionary vs. Specific Relief: Irreplaceable Losses**

January 22: Supp. 17-37; 336-40 (textbook)

January 24: 342-73; Supp. 38-39

**WEEK FOUR: Substitutionary vs. Specific Relief: Irreplaceable Losses; Undue Hardship; Burden to Court; Substantive and Procedural Concerns**

January 29: 375-401; Supp. 40

January 31: 402-29; Supp. 40-43

**WEEK FIVE: Preliminary or Permanent Relief; Declaratory Relief**

February 5: 429-56; Handout on Preliminary Injunctions; Supp. 43-44

February 7: 456-86; Supp. 44-46

**WEEK SIX: Declaratory Relief; Reformation; Restitution: Cause of Action & Measure of Relief**

February 12: 486-530; Supp. 46-54

February 14: 558-89; Supp. 56-59

**WEEK SEVEN: Restitution: Measure of Relief; Apportioning Profits; Restitution & Breach of Contract; Restitution of Specific Property/Constructive Trusts**

February 19: 589-618; Supp. 60-61

February 21: 619-49; Supp. 62

**WEEK EIGHT: Tracing and Equitable Liens; Subrogation; Defenses to Tracing for Third Parties; Replevin, Ejectment, etc.**

February 26: 649-71; Supp. 62-63

February 28: 678-703; Supp. 63-64

**[Spring Break]**

**WEEK NINE: Contempt; Collateral Bar Rule**

March 12: 703-33; Supp. 64-65

March 14: 733-54; 759-68

**WEEK TEN: Contempt & Third Parties; Damages: Value; Expectancy**

March 19: 769-804; Supp. 67-68

March 21: 804-20; 18-34; Supp. 68, 1

EXTRA SESSION (Date TBA): 820-28

**WEEK ELEVEN: Damages: Consequential; Limits on**

March 26: 35-74; Supp. 1-2

March 28: 74-102; Supp. 2-4

**WEEK TWELVE: Damages: Nonmonetary Losses/Intangible Losses; Remedial Defenses: Unconscionability**

April 2: 102-34; Supp. 4-6

April 4: 134-70; Supp. 6-8

**WEEK THIRTEEN: Remedial Defenses: Unclean Hands; *In Pari Delicto*; Estoppel; Waiver; Laches; Statute of Limitations: Continuing Violations; Discovery Rule;**

April 9: 170-87; 217-33; Supp. 8, 10

April 11: 233-62; Supp. 10-12

**WEEK FOURTEEN: Statute of Limitations: Fraudulent Concealment**

April 16: 925-56; Supp. 79-82

April 18: 957-91; Supp. 82-84

April 23 [Monday Makeup]: Intentionally Left Blank