

REMEDIES SYLLABUS

FALL 2018

PROFESSOR ROBERTS

office:
office hours:

classroom:
email:

UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW
370B & the UF Law Courtyard
M 3:00 to 4:00 p.m.
T 8:30 to 10:00 a.m.
+ by appointment
382
caprice.roberts@law.ufl.edu

Course Description

One of the most venerable, and most often recited, principles of the common law is: *Ubi Jus Ibi Remedium*, “For every wrong, the law provides a remedy.” This Remedies course will question and explore the underpinnings, execution, and limits of that principle. Remedies will harken back to your first year substantive courses, delve into upper level core classes, and demand that you see the relationships and contrasts between them. This process will provide an opportunity to sharpen your understanding. The course will focus, however, not on liability as do the substantive courses, but on the practical reality of relief, *i.e.*, what the court can do for the winning claimant. We will blend theory and practice. We will examine the remedies that courts use to address grievances that arise in contract, property, unjust enrichment, and tort law; and the extent to which the remedy shapes the contours of the underlying substantive right. The relevant remedies landscape includes money damages; restitution; quasi contract and constructive trust; injunctions; contempt; specific performance; other equitable relief; and remedial defenses.

Text

RENDLEMAN & ROBERTS, REMEDIES CASES & MATERIALS (9th ed.) and TWEN Supplements

Student Learning Objectives

- Analogize, distinguish, and synthesize cases across bodies of law
- Discern remedies elements and defenses by type of remedy and cause of action
- Apply legal doctrine and policy interests to hypothetical facts
- Distinguish between legal and equitable remedies
- Analyze the meaning and implications of statutory law, including reforms and caps
- Compare common law doctrines to divergent statutory law
- Evaluate and critique the merit of legal rules in light of policy goals
- Propose suggestions to laws to enhance fairness and justice
- Debate arguments on both sides of a dispute and assess the likely result
- Demonstrate improved oral communication and advocacy skills
- Develop critical thinking and your own unique legal voice
- Roadmap litigation strategies depending on remedies alternatives

The Order of Things

Remedies Topical Roadmap

Getting It Rolling: Chapter 1—Remedial Goals

- A. Introduction
- B. Tort Remedial Goals
- C. Remedial Goals in Contract Breaches
- D. Remedial Goals for Unjust Enrichment
- E. The Historical Background of Modern Remedies

Money, Money, Money: Chapter 2—Modern Damages

- A. The Meaning and Nature of Damages
- B. Proving the Amount of Damages
- C. Limitations on Damages Recovery
 - Economic Losses in Tort: Chapter 6—Contract & Remedies
- . . . Return to Money: Chapter 2
- D. Enhancement and Adjustment of Compensatory Damages—
Prejudgment Interest; Punitive Damages
- E. Tort Reform

Stop ‘em in Their Tracks: Chapter 3—Equitable Remedies— The Injunction

- A. Traditional Maxims Assist and Limit Injunctions
- B. Injunction Procedure
- C. The Modern Injunction: Discretion and Flexibility
- D. Contempt
- E. Structural Injunctions (Enforcing Constitutional + Public Law)
- F. Injunction Reform

Ill-Gotten Gains: Chapter 4—Unjust Enrichment—Restitution

- A. Unjust? Enrichment? (“Can’t reap what another has sowed...”);
 - B. Legal Restitution: Quasi-Contracts
 - C. Equitable Restitution
 - D. Defenses to Restitution
 - E. Restitution Reform?
- Selected Topic—Slavery Reparations and Unjust Enrichment*

Who Owns What: Chapter 9—Property Interests

- A. Choosing + Measuring the Remedy (“Which way do we go?”);
- B. Calculating Damages

Working for a Living: Chapter 8—Employment Agreements

- A. Employer’s Remedies

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## ***The Fine Print***<sup>1</sup>

**TWEN:** Enroll in my TWEN course and regularly check for postings.

**Grading:** Your grade will be based on a three-hour, closed book final exam covering material we will explore over the course of this semester. The subject matter of the course is inherently cumulative. The exam will be essay questions, which will give you the opportunity to showcase the complex doctrines you have learned as well as your analytical skills. Meaningful participation dictates that students must read, reread, and prepare all assignments, provide oral answers in class, complete simulations, and listen respectfully.

**Grading Scale:** This course will conform to the Levin College of Law mean and mandatory distributions, <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#9>.

| LETTER GRADE     | POINT EQUIVALENT |
|------------------|------------------|
| A (EXCELLENT)    | 4.0              |
| A-               | 3.67             |
| B+               | 3.33             |
| B                | 3.0              |
| B-               | 2.67             |
| C+               | 2.33             |
| C (SATISFACTORY) | 2.0              |
| C-               | 1.67             |
| D+               | 1.33             |
| D (POOR)         | 1.0              |
| D-               | 0.67             |
| E (FAILURE)      | 0.0              |

**Attendance:** Attendance—on time and complete—at every class is expected. It's your responsibility to sign the roster at the start of class. Excessive absence (>5 absences, including lack of punctuality, preparation, or respect for others) will result in withdrawal from the course and a grade of withdrawn failing.

**Academic Honesty:** The UF Honor Code, <http://www.dso.ufl.edu/students.php>, governs our class activities & embodies the foundational community values of honesty and integrity.

**Workload:** Expect to spend approximately two hours preparing for every hour of class.

**Technology:** Use it well: any educational purpose directly related to the course. Please be attentive and refrain from texting, emailing, surfing, gaming, and other nongermane uses of technology. Please silence cell phones. Disruptive use will forfeit technology privileges.

**Notes in Class:** Laptops instill an automatic inclination to transcribe every word the professor utters. My advice is to spend more time listening, thinking, and taking fewer in-class notes. Draft your impressions of cases before class and reconcile new insights from our in-class discussion immediately after class.

**Recording:** Recording a class requires advanced permission and, if granted, will be conditioned upon educational use and shared access with the class.

**Accommodations:** If you seek accommodation, first register with the Disability Resource Center, <https://drc.dso.ufl.edu/>, which will issue an Accommodation Letter to qualifying applicants for presentation to the Associate Dean for Student Affairs.

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<sup>1</sup> **Ultra-Fine Print:** By accepting receipt of this document, which represents our complete merged agreement, you affirm that you have read, understood, and assented to every clause and waive every right to complain. (gotcha!)

**REMEDIES ROADMAP**  
**FALL 2018**  
**MTW 11:00–11:50 a.m. | Room 382**

**READING ROADMAP**  
**PROFESSOR ROBERTS**

**UNIVERSITY OF FLORIDA**  
**LEVIN COLLEGE OF LAW**

| <b><i>Remedies Reading Forecast—Our Readings Will Shift as Necessary</i></b> |                                                                                                           |                                                                                  |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <b><u>Dates</u></b>                                                          | <b><u>Read &amp; Prepare</u></b>                                                                          | <b><u>Key Concepts</u><sup>2</sup></b>                                           |
| Week One<br>13 August<br>14<br>15                                            | 1–31<br>Dobbs & Roberts, Remedies Ch. 1 TWEN<br>31–46                                                     | Goals; Jury Trial;<br>\$\$ Damages; Actual Damages;<br>Lost Capacity to Earn; FV |
| Week Two<br>20 August<br>21<br>22                                            | 46–62<br>68–84<br>84–96                                                                                   | Measurement & Commodification<br>Pain & Suffering<br>Hedonic Damages             |
| Week Three<br>27 August<br>28<br>29                                          | <i>Ayers</i> , 538 U.S. 135 Part III & Kennedy<br>96–116<br><i>Hamlin</i> , 165 F.3d 426 + 62–68 + 138–39 | Remedying Fear of Cancer?<br>Criminal “Restitution”<br>Collateral Source Rule    |
| Week Four<br>3 September<br>4<br>5                                           | HOLIDAY: Labor Day<br>139–53<br>1103–08 + 689–710                                                         | Avoidable Consequences<br>Economic Loss Rule                                     |
| Week Five<br>10 September<br>11<br>12                                        | 710–19<br>153–70<br>171–86                                                                                | Economic Loss Rule<br>PJI; The 3 Ps<br>Punitive Damages: The 3 Gs                |
| Week Six<br>17 September<br>18<br>19                                         | 186–207<br>240–52<br>252–85                                                                               | More Punitives<br>Tort Reform: Caps & Scales<br>Reforming Tort Reform            |
| Week Seven<br>24 September<br>25<br>26                                       | 287–98<br>298–315<br>315–31                                                                               | Equity; Injunction<br>Equitable Limits<br>Equitable Power & Scope                |

<sup>2</sup> This list is not exclusive. It highlights some of the key concepts to help your study. Abbreviations include: FV (Full Value); ELR (Economic Loss Rule); PJI (Prejudgment Interest); TRO (Temporary Restraining Order), CSR (Collateral Source Rule); and UE (Unjust Enrichment).

**Remedies Reading Forecast—Our Readings Will Shift as Necessary**

| <u>Dates</u>                             | <u>Read &amp; Prepare</u>                                                             | <u>Key Concepts</u>                                                                         |
|------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Week Eight<br>1 October<br>2<br>3        | 332–55<br>360–69 + <i>Fl. Panthers</i> , 939 F. Supp. 855<br>369–82                   | Nuisance Injunction<br>TRO; Preliminary Injunction<br>Balancing & Sliding Scale Tests       |
| Week Nine<br>8 October<br>9<br>10        | 382–408<br>408–25<br>425–32                                                           | Jury Trial; Equitable Cleanup<br>Flexible, Modern Injunction<br>Equity Defense: Clean Hands |
| Week Ten<br>15 October<br>16<br>17       | 432–44<br>444–56<br><i>Yoho</i> , 171 W. Va. 625 + 456–67                             | Equity Defense: Laches<br>Contempt<br>Civil v. Criminal Contempt                            |
| Week Eleven<br>22 October<br>23<br>24    | 467–84<br>485–96<br>497–515                                                           | Ability to Pay<br>Who Must Obey?<br>Structural Injunction; Reform                           |
| Week Twelve<br>29 October<br>30<br>31    | 517–30<br>530–39<br>539–57                                                            | UE; Restitution<br>Unjust? Benefit?<br>Quasi-Ks: Legal Restitution                          |
| Week Thirteen<br>5 November<br>6<br>7    | 557–65<br>565–83 + TWEN Supp.<br>1037–52                                              | Measuring Quantum Meruit<br>Equitable Constructive Trusts<br>Measuring Property Interests   |
| Week Fourteen<br>12 November<br>13<br>14 | HOLIDAY: Veteran’s Day<br>1052–69 + 1088–1103<br>917–23 + 932–37                      | Comparing Remedies<br>Roundup: Equitable Remedies                                           |
| ****<br>19 November<br>20<br>21<br>26    | 938–64<br>No Class: Friday classes<br>HOLIDAY: Thanksgiving<br>Continuation + Cleanup | Roundup: Legal Remedies<br><br>R-E-M-E-D-I-E-S                                              |
| 27-29 November                           |                                                                                       | <b>Reading Days</b>                                                                         |
| 10 December<br>22589                     | 8:30 a.m.                                                                             | <b>Final Exam</b>                                                                           |