

ADVANCED REMEDIES SYLLABUS

SPRING 2019

PROFESSOR ROBERTS

office:
office hours:

classroom:
email:

UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW
370B & the UF Law Courtyard
M 10:15 to 11:45 a.m.
M 3:00 to 4:00 p.m.
+ by appointment
345
caprice.roberts@law.ufl.edu

Course Description

This course examines tougher topics in the field of Remedies. For example, we will tackle controversial, complex, and misunderstood remedies including global relief, nationwide injunctions, unjust enrichment and restitution, equitable accounting, disgorgement of profits, tracing assets for constructive trusts, data breach remedies, reparations, and attorney fees in complex litigation.

The Remedies course is not a prerequisite, but a deeper interest in civil remedies in private and public law cases and will aid your study of Advanced Remedies.

Text

KULL & FARNSWORTH, *RESTITUTION AND UNJUST ENRICHMENT—CASES AND NOTES*, AMERICAN CASEBOOK SERIES (WOLTERS KLUWER 2018). The course will also include supplemental materials available without further cost on TWEN or otherwise online. For law review citations, please use HeinOnline from your library's resource page:
<https://www.law.ufl.edu/library/library-information/find-an-article>.

Student Learning Objectives

- Analogize, distinguish, and synthesize cases across bodies of law
- Comprehend freestanding claims of unjust enrichment and restitution remedies
- 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—Advanced Remedies Topical Roadmap

Chapter 1 Introduction

Section A. What is “Restitution,” Anyway?

Section B. Some Legal History, and An Important Case

Section C. A Little More Legal History

Chapter 2 Mistake

Section A. Direct Payments

Section B. Indirect Payments

Section C. Benefits Other Than Money

Section D. Mistaken Improvements

Section E. Mistaken Gifts

Chapter 3. Defective Consent

Section A. Fraud and Misrepresentation

Section B. Duress

Section C. Undue Influence

Section D. Incapacity

Chapter 4. Transfers Under Legal Compulsion

Section A. Judgment Subsequently Reversed

Section B. Restitution of Tax Payments

Chapter 5. Unrequested Intervention: Conferrings

Section A. Emergencies

Section B. Performance of Another’s Duty

Section C. Indemnity and Contribution

Section D. Equitable Subrogation

Section E. Self-Interested Intervention

Section F. Former Cohabitants

Section G. Common Fund

Chapter 6. Failed Trades: Restitution and Contract

Section A. Undoing or Correcting the Parties’ Mistakes

Section B. Restitution to a Performing Party with No Claim on the Contract

Section C. Alternative Remedies for Breach of an Enforceable Contract

Section D. Profitable Breach of Contract— “Opportunistic Breach”

Chapter 7. Restitution for Wrongs

Section A. Trespass and Conversion

Section B. Fraud and Misrepresentation

Section C. Infringement and the Like

Section D. Fiduciary or Confidential Relation

Section E. Other Torts

Chapter 8. Remedies

Section A. Restitution in Money: The Measure of Enrichment

Section B. Asset-Based Restitution; Following Property into Its Product

Section C. Commingled Funds

Chapter 9. Defenses

Section A. Change of Position

Section B. Bona Fide Purchase

Section C. Creditor/Payees

Section D. Equitable Disqualification (Unclean Hands)

Section E. Limitation of Actions

Section F. “Payable in Point of Honor and Honesty”

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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), <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](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code), <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>, 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!)

**ADVANCED REMEDIES ROADMAP  
 SPRING 2019  
 MTW 9:00–10:15 a.m. | Room 345**

**READING ROADMAP  
 PROFESSOR ROBERTS**

**UNIVERSITY OF FLORIDA  
 LEVIN COLLEGE OF LAW**

| <b><i>Advanced Remedies Reading Forecast—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>                                                                                |
| January<br>7                                                                      | Roberts, <i>Teaching Remedies</i> ,<br>57 ST. LOUIS U. L.J. 713 + Rendleman,<br><i>Remedies: A Guide for the Perplexed</i> , 57<br>ST. LOUIS U. L.J. 567       | Purpose & Goals of Remedies                                                                                           |
| 8<br>Week One                                                                     | TWEN: DOBBS & ROBERTS, REMEDIES Ch. 1<br>Casebook: 1–10 + Laycock, <i>Restoring<br/>Restitution to the Canon</i> , 110 MICH. L.<br>REV. 929 only pages: 929–40 | The Forgotten Law of Unjust<br>Enrichment & Restitution                                                               |
| January<br>14<br>15<br>Week Two                                                   | Hot Topics TWEN: Equity & Injunctions<br>Hot Topics TWEN: <i>Spokeo</i>                                                                                        | Nationwide & Global Relief; Nonparties<br>Injury? Data Related Remedies—the<br><i>Right to be Known v. Forgotten?</i> |
| January<br>21<br>22<br>Week Three                                                 | <i>Holiday—Martin Luther King Jr. Day</i><br>11–29                                                                                                             | Mistake: Direct Payments                                                                                              |
| January<br>28<br>29<br>Week Four                                                  | 29–43<br>44–57                                                                                                                                                 | Mistake: Indirect; Non\$ Benes<br>Mistaken Improvements + Gifts                                                       |
| February<br>4<br>5<br>Week Five                                                   | 59–79<br>79–96                                                                                                                                                 | Defective Consent: Fraud,<br>Misrepresentation, Duress                                                                |
| February<br>11<br>12<br>Week Six                                                  | 96–116<br>121–42                                                                                                                                               | Undue Influence, Incapacity,<br>Legal Compulsion: Reversals<br>Unrequested Interventions                              |
| February<br>18<br>19<br>Week Seven                                                | 147–66<br>166–71 & 182–93 & 198–202                                                                                                                            | Equitable Subrogation<br>Intervention; Former Cohabitants                                                             |

<sup>2</sup> This list is not exclusive. It highlights some of the key concepts to help your study. Abbreviations include: QM (Quantum Meruit), FMV (Fair Market Value), K (Contracts), BFP (Bona Fide Purchaser), and UE (Unjust Enrichment).

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

| <u>Dates</u>                       | <u>Read &amp; Prepare</u>                                      | <u>Key Concepts</u>                                                                                   |
|------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| February<br>25<br>26<br>Week Eight | 202–16<br>217–39                                               | Attorney Fees—Common Fund<br>Failed Trades: Restitution & K                                           |
| March<br>4<br>5<br>Holiday Week    | Spring Break<br>Holiday<br>Holiday                             | <i>Reaping what we've sowed</i>                                                                       |
| March<br>11<br>12<br>Week Nine     | 239–57<br>264–80                                               | Unenforceable & Illegal Ks<br>Restitution for Breachers; Rescission                                   |
| March<br>18<br>19<br>Week Ten      | 298–306<br>307–29                                              | Opportunistic Breach of K<br>Restitution for Wrongs: Trespass,<br>Conversion, Fraud, Securities Fraud |
| March<br>25<br>26<br>Week Eleven   | 329–341<br>342–58                                              | IP Infringement; Right of Publicity<br>Fiduciary + Confidential Relations                             |
| April<br>1<br>2<br>Week Twelve     | 375–92<br>392–409                                              | Measuring \$\$ Restitution Remedy<br>Asset-Based Restitution: Constructive<br>Trusts                  |
| April<br>8<br>9<br>Week Thirteen   | 409–22 & 427–37<br>461–73                                      | Equitable Lien, Subrogation, Tracing<br>Commingling; Defenses: Change of<br>Position, BFP             |
| April<br>15<br>16<br>Week Fourteen | Cont. TBD<br>Hot Topic TWEN: Restitution for<br>Ancient Wrongs | Quantum Meruit, Constructive<br>Trusts; Defenses: Laches, Repose                                      |
| 22 April                           | Continuation + Cleanup                                         | Advancing Legal Remedies                                                                              |
| 23-25 April                        |                                                                | <b>Reading Days</b>                                                                                   |
| 2 May                              | 8:30 a.m.                                                      | <b>Final Exam</b>                                                                                     |