

## Remedies – 5870 Syllabus

Professor Wells  
Spring 2021  
TR 10:30-11:45, Room 5/async (more below)

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**TEXT:** DOUGLAS LAYCOCK & RICHARD L. HASEN, MODERN AMERICAN REMEDIES (5th ed. 2019) (hereinafter L&H)

### **COURSE GOALS, OBJECTIVES, AND EXPECTED LEARNING OUTCOMES:**

This course is a semester-long examination of the various remedies available to people involved in the litigation process. More specifically, this course is structured to accomplish the following goals, objectives, and outcomes:

- Increasing your understanding of various types of remedies available in litigation, including damages, injunctions, restitution, and contempt;
- Gaining in-depth knowledge of the elements of each of the above remedies and defenses;
- Understanding the relationship among these various remedies and how to analyze basic choices between remedies when multiple options are available;
- Acquiring and honing basic drafting skills regarding various remedies;
- Exploring and understanding policy questions as to various legal approaches to remedies;

### **CLASS MEETINGS AND OFFICE HOURS:**

This class is a “hybrid” class. In this instance, the course meets partly asynchronously and partly during the regularly scheduled class time.

- For the Tuesday class, we will NOT meet in class. Instead, I will post slides and the weekly readings for you so that you can do them before or during this time.
  - There will also be a short discussion board on Tuesdays with questions regarding the reading. You must pick one question to respond to and another to engage with a colleague on.
  - You may also pose an independent question/comment of your own about the readings.
  - The purpose of Tuesday discussions is to flesh out your thoughts about the reading so we can have a more fulfilling discussion on Thursdays. Other academics have referred to this type of exercise as “silent meetings.” See <https://www.chronicle.com/article/to-spark-discussion-in-a-zoom-class-try-a-silent-meeting>.
- For the Thursday class, we will meet to discuss and apply the readings for the week.
  - After Tuesday but prior to Thursday, I will let you know the basics of what we will discuss in class. There may be an additional handout with a few problems or hypotheticals but there should not be a lot of additional text readings.

- At the **beginning** of the semester **we will meet via Zoom rather than face-to-face on Thursdays** until the COVID 19 situation calms down.

Because this class is partly asynchronous and meets online at the beginning of the semester, I do not have formal office hours for meeting with students. I am happy to schedule any appointment to meet with you at your request. You can always reach me at the phone number or email addresses above.

**ASSIGNMENTS AND GRADING:**

Your grade will be based on the following:

- Attendance/Class Discussion Boards(20%)
- Two Projects (40%)
- Final Exam (40%)

**Attendance/Class Discussion Boards (20%):** The success of this course depends upon your preparation, attendance and participation in all classes. However, I am not going to set a rigid attendance policy. Rather participation in class discussion boards (in lieu of Tuesday class) and in class discussion on Thursdays is part of your attendance grade. As noted above, there will be weekly discussion boards where the posts are due on Tuesdays. Collectively, these boards and your discussion in class are worth 20 percent of your grade.

**Projects (40%):** Second, there are two short drafting projects that are each worth 20% (for a total of 40%) of your grade. These projects will involve (1) a liquidated damages/limited remedies scenario, and (2) drafting an order pertaining to an injunction in a specific scenario.

**Exam (40%):** The final 40% of your grade will involve a 1.5-2-hour open book final examination. I will discuss the exam in greater detail later in the semester. Old exams will be available on the Canvas site for this course. It is an extremely useful exercise to review these exams prior to the final examination for this class.

**REMEDIES SCHEDULE OF CLASSES AND ACTIVITIES**

Module/Week	Dates	Topic	Assigned Reading/Activities
1	1/19 1/21	Intro to Class and Concept of Rightful Position in Remedies	L&H pp. 1-18
			<ul style="list-style-type: none"> <li>• NO Discussion Bd. On Tuesday</li> <li>• Class Thursday</li> </ul>
2	1/26 1/28	Value as a Measure of Rightful Position – Torts and Contracts Cases	L&H pp. 18-52
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
3	2/2 2/4	Consequential Damages – Torts and Contracts	L&H pp. 53-63, 68-75 (or 76)

		<b>Limitations on Remedies – Substituted Remedies Clauses</b>	
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>4</b>	<b>2/9 2/11</b>	<b>Limitations on Remedies – Liquidated Damages</b>  <b>Judicial and Statutory Limits on Remedies - The Doctrines of Avoidable Consequences, Offsetting Benefits &amp; Collateral Sources</b>	<b>L&amp;H pp. 76-102</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> <li>• <b>Handout Project 1</b></li> </ul>
<b>5</b>	<b>2/16 2/18</b>	<b>Personal Injury Damages &amp; Wrongful Death</b>	<b>L&amp;H pp. 167-204</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>6</b>	<b>2/23 2/25</b>	<b>Dignitary and Constitutional Torts</b>	<b>L&amp;H pp. 205-222</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• <b>Project 1 Due Before class Thursday</b></li> <li>• Class Thursday, including go over project assignment.</li> </ul>
<b>7</b>	<b>3/2 3/4</b>	<b>Intro to Types of Injunctive Relief – Preventive Injunctions Ripeness &amp; Scope</b>	<b>L&amp;H pp. 273-309</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>8</b>	<b>3/9 3/11</b>	<b>Reparative Injunctions Institutional Reform Litigation (aka Structural Injunctions)</b>	<b>L&amp;H pp. 309-48</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>9</b>	<b>3/16 3/18</b>	<b>Irreparable Injury Requirement in Tort and Contract</b>	<b>L&amp;H pp. 381-416</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> <li>• <b>Handout Project 2</b></li> </ul>
<b>10</b>	<b>3/23 3/25</b>	<b>Burden on the Defendant, Burden on the Court &amp; Other Reasons to Deny an Injunction</b>	<b>L&amp;H pp. 416-440</b>

			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
	<b>3/30 4/1</b>	<b>SPRING BREAK</b>	
<b>11</b>	<b>4/6 4/8</b>	<b>Preliminary Injunctions &amp; TROs– Standards for Granting, Injunction Bonds</b>  <b>Some thoughts on the EBAY case</b>	<b>L&amp;H pp. 449-484, pp. 440-449</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> <li>• <b>Project 2 Due By End of Friday</b></li> </ul>
<b>12</b>	<b>4/13 4/15</b>	<b>Contempt of Injunctions Intro to Declaratory Judgments</b>	<b>L&amp;H pp. 787-813, 821-53, 591-607</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>13</b>	<b>4/20 4/22</b>	<b>Restitution from Innocent and Conscious Wrongdoers - Intro</b>	<b>L&amp;H pp. 641-93</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>14</b>	<b>4/27 4/29</b>	<b>Restitution w/ Breach of Contract and Constructive Trust</b>	<b>L&amp;H pp. 707-53</b>
			<ul style="list-style-type: none"> <li>• DISCUSSION Posts Due By Tuesday At 5 pm</li> <li>• Class Thursday</li> </ul>
<b>Final Exam - TBD</b>			

## POLICIES:

**Covid Syllabus Statement:** Although this course is mostly asynchronous and online, some of you are still participating in courses on campus in other ways or are accessing your computers on campus. Accordingly, you may be in campus buildings, where you should pay attention to safety. MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, the campus is following several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. You can find current university expectations regarding student safety activities at <https://renewal.missouri.edu/safety-expectations/>.

**Communication, Accommodation, and Pivot:** All course materials necessary for completion of the course will be available on CANVAS, other than the textbook, which is easily obtained via online purchase. After the first week or so, when I may use MYZOU, I will communicate with you through your email on CANVAS. All simulation materials that are not posted on CANVAS (and there will be some that are secret) will be distributed via these emails. You may always send me an email at [wellsc@missouri.edu](mailto:wellsc@missouri.edu) either directly or through CANVAS to discuss something through email or to schedule an online meeting.

I recognize that while the course is designed to give students' maximum flexibility, given the ongoing pandemic and generally unforeseeable events, students may find that they are not in a position to complete work as required. If you find that you are in such a situation, please let me know as soon as possible so that we can discuss best to handle your circumstances.

**Mental Health:** The University of Missouri is committed to supporting student well-being through an integrated network of care, with a wide range of services to help students succeed. The MU Counseling Center offers professional mental health care and can help you find the best approach to treatment based on your needs. Call to make an appointment at 573-882-6601. Any student in crisis may call or go to the MU Counseling Center between 8:00 – 5:00 M-F. After hours phone support is available at 573-882-6601.

Visit <https://wellbeing.missouri.edu> to take an online mental health screening, find out about workshops and resources that can help you thrive, or learn how to support a friend. Download Sanvello, a phone app that teaches skills and strategies to help you maintain good mental health. Log in with your Mizzou e-mail to unlock all the tools available through Sanvello at no cost to you.

**Academic Honesty:** Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law's Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. I will follow university procedures on cases of academic dishonesty; in such cases it may be necessary not only to report such dishonesty to the Associate Dean but also to assign a failing grade for the assignment or even the entire course. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, feel free to consult me.

**Statement for ADA-Students with Disabilities:** If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me and/or the Associate Dean know as soon as possible. If disability related accommodations are necessary please register with the Office of Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 882-4696 and then notify the Associate Dean of the Law School (Dean David Mitchell) of your eligibility for reasonable accommodation. For other resources for students with disabilities, click on "Students With Disabilities" under the Support and Policies Tab on this Canvas Site

**Audio/Visual Recordings in the Classroom:** Students may not record classes except in cases of special need with the instructor's express permission. To foster a safe environment for learning, the university prohibits redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course without the express permission of the instructor and any students who are recorded. In accordance with Executive Order #38, the unauthorized distribution of such materials is a violation of academic standards and may violate copyright laws and/or privacy rights. Students found to have violated this policy are subject to discipline in accordance with the provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri.

**Statement of Intellectual Pluralism:** The University and this instructor welcome intellectual diversity and respect student rights. I encourage free discussion, inquiry, and expression in this course. Student performance will be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean of the Law School or the Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.