DOUGLAS LAYCOCK & RICHARD L. HASEN, MODERN AMERICAN REMEDIES (5th ed. 2019)

Course Goals, Objectives, and Expected Learning Outcomes:
This course is a semester-long examination of 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 related 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.

Attendance and Class Participation Policy:
Beginning on January 25, an attendance sheet will be available each class; students who are present should sign their initials next to their names. The attendance sheet will be considered final; if your name is not initialed by the end of class, you will be considered absent. Students missing more than ten (10) classes will be dropped from the course. Signing in any student as present other than yourself is strictly prohibited and is a violation of the Honor Code on the part of all students involved.

I expect every student to be prepared to participate in class discussion. Failure to be prepared when called on or excessive absences when called on will affect your final grade. I reserve the right to adjust your final grade two (2) points in either direction based upon class participation.

If you are absent for health reasons the “Accommodation” policy described below explains what you should do to satisfy the requirement of your attendance and class participation.

Office Hours
I am available to talk by Zoom at any convenient time. Just send me an email or talk to me after class about scheduling an appointment.
Grading:
Your grade in this class has two components. First, seventy percent (70%) of your final grade will be determined by your performance on a two hour closed 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. There are also old exams available in the library. It is an extremely useful exercise to review these exams prior to the final examination for this class.

Next, thirty percent (30%) of your final grade involves a written project drafting an order pertaining to an injunction in a specific scenario.

Reading Assignments: (references to casebook unless otherwise noted)

In general we will follow the readings in the order set forth below. I will try to post specific reading assignments on the course website at least the day before each scheduled class and earlier if possible. Those assignments will specify the material to be read and will also contain the questions/issues that I will focus on in class regarding specific cases or problems. It is possible that we will not get through all of the material contained in this syllabus. If so, I will indicate deviations from the syllabus in the daily reading assignments, which are the last word as to the material for which you are responsible.

BACKGROUND

Chapter 1 – Introduction to Remedies
pp. 1-9

DAMAGES – THE BASIC COMPENSATORY REMEDY & SOME DISCUSSION OF PUNISHMENT

Chapter 2 – Compensatory Damages – Paying for Harm Caused to Others

A. The Basic Principle: Restoring Plaintiff to Their Rightful Position

1. The Basics
   pp. 11-18

2. Value as the Measure of Rightful Position (Torts Involving Property)
   pp. 18-35

3. Reliance & Expectancy as Measures of Rightful Position (Contracts)
   pp. 35-52

B. Consequential Damages
   pp. 53-63
C. Limits on Compensatory Damages

1. Contractual Limits on Remedies – Limitations on Remedies & Liquidated Damages  
   pp. 68-86

2. Judicial & Statutory Limits on Remedies – The Doctrines of Avoidable Consequences, 
   Offsetting Benefits & Collateral Sources  
   pp. 86-102

D. How Do We Restore Plaintiff to Her Rightful Position When the Damage Cannot Be Measured 
   in Dollars?

1. Personal Injuries, Death & Tort Reform  
   pp. 167-204

2. Dignitary & Constitutional Harms  
   pp. 205-222

Chapter 3 – Punitive Damages – Are they Deterrents or Punishment?

A. Common Law and Statutes  
   pp. 223-240

B. The Constitution  
   pp. 240-56

C. Punitive Damages in Contract  
   pp. 256-65

INJUNCTIONS – PREVENTING OR UNDOING THE HARM CAUSED TO OTHERS

Chapter 4 – Different Kinds of Injunctions: The Measure & Scope of Different Kinds of Injunctive Relief

A. Preventive Injunctions

1. Preventing Wrongful Acts  
   pp. 273-93

2. Preventing Lawful Acts that Might Have Wrongful Consequences  
   pp. 293-309

B. Reparative Injunctions - Undoing Harm From Past Wrongful Consequences  
   pp. 309-23
C. Institutional Reform Litigation
   pp. 323-48

D. Modifying Injunctions
   FRCP 60(b)(5) and possible handouts

Chapter 5 – Various Issues Related to Injunctions

A. The Substantive Requirements for Obtaining Permanent Injunctions
   1. Irreparable Injury
      a. Injunctions Involving Torts
         pp. 381-99
      b. Specific Performance of Contracts
         pp. 399-416
   2. Burden on Defendant or the Court
      pp. 416-29
   3. Other Reasons to Deny an Injunction
      pp. 430-40
   4. Are these Requirements Weighed in Some Mushy Way or Is There a Scientific Test for Granting Permanent Injunctions?
      pp. 440-49

B. The Standards for Obtaining Preliminary Injunctive Relief
   1. The Substantive Standards for Preliminary Injunctions
      pp. 449-466
   2. The Procedure for Obtaining Preliminary Relief (including TROs)
      pp. 466-84

Chapter 9 – Enforcing Injunctive Relief – Contempt

A. Three Kinds of Contempt
   pp. 787-804

B. Perpetual Coercion w/ Coercive Contempt
   pp. 804-13

C. Contempt of Anticipated Injunctions
   pp. 813-21
D. Collateral Bar Rule & Criminal Contempt  
pp. 821-36

E. Contempt & Third Parties  
pp. 836-53

DECLARATORY REMEDIES

Chapter 7 – Preventing Harm without Coercion – Declaratory Remedies

A. Declaratory Judgments  
pp. 591-607

B. Declaratory Relief at Law  
pp. 636-38

RESTITUTION AS AN ALTERNATIVE MEASURE OF RELIEF (DIFFERENT FROM DAMAGES)

Chapter 8 – Benefit to the Defendant as a Measure of Relief

A. Restitution from “Innocent” Defendants

1. Introducing Restitution - Mistake  
   pp. 641-58

2. Measuring Restitution from the Innocent  
   pp. 658-73

B. Recovering More than Plaintiff Lost

1. Disgorging the Profits of the Conscious Wrongdoer  
   pp. 673-93

2. Measuring the Profits  
   pp. 693-99

3. Breach of Contract

   i. Disgorging the Profit  
      pp. 707-12

   ii. Rescission  
      pp. 712-23
C. Restitutionary Rights in Specific Property

1. Constructive Trust  
   pp. 723-37

2. Tracing  
   pp. 737-53

**EQUITABLE DEFENSES**  
Handouts on unconscionability, unclean hands, laches, estoppel and waiver

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**Miscellaneous Policies**

**Decreasing the Risk of COVID 19 in the Classroom**
If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, the slides regarding class discussion and any related problems for that class will be posted on the website before class).

If you are absent from class due to health reasons, I will treat you as present if you certify to me that you have reviewed the materials for the class and hand in any problems that we worked for class that day.

**Intellectual Pluralism**
The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or 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.

**Academic Integrity**
Academic integrity is fundamental to the activities and principles of the Law School. 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 its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

**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 know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), SS Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

**Requirement of Consent for Redistribution of Recordings of Classes**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student’s grade.