

MODERN AMERICAN REMEDIES OVERVIEW
PROFESSOR JOSHUA JAY KANASSATEGA
UNIVERSITY OF LA VERNE COLLEGE OF LAW
SPRING 2019
LAW 514A – SECTION 2: TWO CREDITS HOURS

PROFESSOR

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CLASS TIME AND PLACE

Meeting days: Friday
Meeting time: 10:00 a.m. to 12:00 Noon
Location: Room 207

OFFICE HOURS FOR COUNSELOR CONFERENCES

Friday: 12:30 p.m. to 2:30 p.m. and by appointment. I expect to be available for Counselor conferences by appointment on Monday or Wednesday afternoon.

PROFESSOR NOTE NO. 1:

Remedies presents an aspiring highly-capable and talented Counselor-at-Law with an opportunity to master three basic remedial areas: (a) **damages**; (b) **equity**; and, (c) **restitution**.

My objective is to present the conceptual relationship of substantive theories on which lawsuits are brought and the remedies related to those different theories. Furthermore, I aim to present hypothetical illustrations that you might find helpful in recognizing strategic and tactical decisions that aspiring highly-capable and talented Counselor-at-Law, who value the Academic Practice of Law, make in prosecuting and defending any law suit and that transactional lawyers make in thinking through remedies with respect to a variety of contractual issues.

You might ask, “How do you intend to teach this class?” Well, the answer is by applying the Socratic Method! In other words, **this Class will be a “Professor” directed learning experience in which focused intellectual inquiry reigns supreme.** Accordingly, in each

class and throughout the entire semester, I will be “cold-calling” on the *aspiring highly capable and talented Counselors-at-Law* to interact with me concerning the assigned case reading (including any assigned IRAC Case Briefings) – in what *The Admiral* characterizes as “*The Well*.” Your performance in *The Well* dictates the number of points (anywhere from *one to five points*) you accumulate – as this number represents 25% of the total points available in the Class.

Because Remedies presents Counselors with difficult concepts to master, as well as to apply, I strongly encourage you to take advantage of the opportunity to meet with me during Office Hours. The days and times set out above are blocked-off on my weekly calendar to be in my office and available for meeting with students. I am also available to meet with you by appointment.

COURSE DESCRIPTION

A survey of the legal and equitable remedies available for various injuries. Topics include actions for injuries to persons, property, businesses, and reputations, and the grounds for choosing between alternate remedies.

This course includes a practicum component in which an aspiring highly capable and talented Counselor-at-Law might expect to develop and hone skills in legal analysis and reasoning, factual analysis, practical judgment, legal writing and problem solving. Careful reading and analysis of cases and other legal authorities will be among other Academic Practice skills training students will receive.” ***Carefully review and analyze the Professor Note commentary on Pages 5-6 of this Syllabus.***

BASIS OF GRADE

Grading / Points / Assessment:

SEE, MANUAL OF ACADEMIC POLICIES AND PROCEDURES (“MAPP”) DATED MAY 2018 AT SECTION III, PAGE 16, INCORPORATED HEREIN BY REFERENCE.

Grading Scale: (All Assignments)¹

- **Quizzes:**

No. 1 – Damages (10 points)

No. 2 – Equity (10 points)

No. 3 – Restitution (10 points)

- **Case Briefings (IRAC):**

No. 1 – (5 points)

No. 2 – (5 points)

- **The Well – Practicum Exercises and Research Opportunities (See infra at p. 9):**

Individual and Professor Engagements (up to 5 points)

Law Firm and Professor Engagements (up to 10 points)

- **Final Examination:** (45 points)

Periodic Quizzes:

In an effort to stimulate the Academic Practice of Law – approximately three quizzes will be administered throughout the course of the semester covering the important jurisdictional and procedural concepts (as well as those concepts to which the bar examiners find “interesting”). Each quiz may contain bar-simulated multiple choice questions, rule identification and application, and bar-simulated essay questions. Each quiz will be **closed-book**. The objective of this skill-level assessment is to provide each Counselor with periodic feed-back on the development of his or her evidentiary analytical skills throughout the semester in order to give effect to a description that the Admiral was fond of saying: ***“A rising tide lifts all boats – yachts and dinghies alike!”***

Quiz Approximate Dates:

- Quiz No. 1 – on February 8, 2019
- Quiz No. 2 – on March 22, 2019
- Quiz No. 2 – on April 12, 2019

¹ See Handout (January 11, 2019) Top Gun Counselor School Lawyering Skill Development Rubric: Thinking and Problem Solving. *This Rubric contains important information to help build your legal mind.*

Final Examination:

A FINAL EXAMINATION WILL BE ADMINISTERED IN THIS COURSE. THE FINAL EXAMINATION REPRESENTS 45 POINTS OF THE TOTAL 100 POINTS AVAILABLE IN THE CLASS.

The final examination will be comprised primarily of a combined essay and short answer questions (one of the essay questions is a practical application essay question) and multiple-choice questions. The scope of this examination covers all material presented in class. The final examination will be administered during the law school's official examination period and each Counselor will take the examination using a student grading number assigned by the Registrar. **The final exam will be designed as a litigation practice-ready closed-book examination.**

Final Exam Date, Time, and Location:

The Registrar will publish the official final examination schedule. *As a preliminary matter, the tentative date for final examination is XXXXday, April [May] XX, 2019 at X:XX x.m. in Room XXX.* **Do not rely on the incomplete date set out herein. Please refer to the Registrar's final examination schedule for the official date, time, and location of the final examination.**

Experiential Learning/Practice Capabilities:

It is an institutional value at the University of La Verne College of Law to include some experiential learning exercise or practical application skills exercise in **all** classes. I will follow this practice by exposing all *aspiring* highly-capable and talented Counselors-at-law to multiple experiential learning exercises in **The Well**, individual and law firm; each of which is graded. *See infra* at p. 9. Each **session** in **The Well** is eligible for **up to 5 Points**.

THESE GRADED EXERCISES IN THE WELL REPRESENT UP TO 25 POINTS (INCLUDING CASE BRIEFINGS) OF THE TOTAL 100 POINTS AVAILABLE IN THE CLASS. PROPER PREPARATION IS CERTAINLY REQUIRED!

Although subject to change or modification, at this time, for purposes of "Law Firm" presentations in **The Well**, I propose to divide the class into multiple Counselor groups; each group forming a law firm comprised of two to four Counselor Associates. I further propose to assign a particular Remedies-based research problem to the Law Firm(s). **The expected written work product is a three-page memorandum of law (IRAC) format to address a primary legal issue involving one or more of the Code provisions.**

THE WELL CASE BRIEF (IRAC FORMAT) TWO-PAGE MEMORANDUM WILL BE SCORED ON A 5 POINT SCALE BASED ON THE QUALITY OF THE LAW FIRM'S LEGAL RESEARCH, APPLICATION OF THE BLACK-LETTER LAW, ISSUE-SPOTTING, ANALYSIS, AND REACHING THE CORRECT RESULT WITH RESPECT TO RESOLVING THE CONTRACT-BASED PROBLEM. THE SCORE AWARDED FOR THE MEMORANDUM AND SUBSEQUENT ORAL PRESENTATION IN THE WELL IS THE SCORE THAT WILL BE ALLOCATED TO EACH MEMBER OF THE LAW FIRM TEAM PROVIDED THAT EACH MEMBER PRODUCED AT LEAST AN EQUAL EFFORT IN THE PREPARATION OF THE REQUIRED MEMORANDUM.

REQUIRED AND SUGGESTED MATERIALS

Required/Optional Texts:

BOOK 1:

Title: Modern American Remedies: Cases and Materials
Author: Douglas Laycock
Publisher: Aspen Casebook Series – Wolters Kluwer Law & Business
Edition: Fourth Edition (2010) ISBN 978-0-7355-7201-0
Required/Optional: **REQUIRED**

BOOK 2:

Title: Modern American Remedies – Cases and Materials: 2018 Supplement
Author: Douglas Laycock
Publisher: Aspen Publishers – Wolters Kluwer Law & Business
Edition: Fourth Edition (2018) ISBN 978-1-4548-9472-8
Required/Optional: **REQUIRED**

ABA STANDARD 310

This course is designed to satisfy the requirements of ABA Standard 310. Standard 310 requires that for each hour of in-class time, students spend two hours preparing for class (reading or completing class assignments or assessments).

PROFESSOR NOTE:

Welcome to the University of La Verne College of Law's professional law school classroom where you will engage in high-level thinking (analysis and reasoning), as well as receive important information like how to read carefully and to think about hypotheticals and learn how to solve legal problems like an aspiring highly-capable and talented Counselor-at-Law. We will think much about legal concepts, theories, and rules and how to apply

***such to facts so as to drive you to a legal conclusion!*² As we move forward you may discover that – for the most part -- it's all about legal “power” and the exercise of legal “power!”**

Modern American Remedies is designed to present you – the *aspiring highly-capable and talented Counselor-at-Law* – with an opportunity to engage in high level thought about the practice of law; *i.e.*, litigation and transactional legal work. The first concept you must comprehend involves Rules of Decision, namely those rules that are **substantive** as opposed to those that are **procedural**. The **substantive** rules of decision provide the legal theories upon which to assert a legal claim while the **procedural** rules of decision provide guidance as to how to assert and litigate that claim. You will be challenged to think about a legal issue in both substantive and procedural terms. Accordingly, Remedies is designed to explore both the substantive and procedural sides of the Rules of Decision. You will notice that the substantive side involve reading cases about disputes in contracts, torts, property, or constitutional law, while the procedural side will focus always on a specific rule that applies to a particular remedy and within the pleading provisions of the Federal Rules of Civil Procedure (“FRCP”) because the controlling formula here is **$L + D = R$** ! That is, **Liability plus Damages equals entitlement to a Remedy** – all of which comprise matters of substance and procedure!

Our approach to the substantive and procedural Rules of Decision will be conceptual. This means our efforts will focus on “drilling down” into each element of the procedural rule in an effort to understand the law and the rule, as a whole and as comprised of its individual elements. Here, our thinking focuses on grasping a comprehensive understanding and application of **I R A C** primarily through **Case Briefing**³ of particularly important cases and how the analysis of such cases lead to legal research and the development of legal memoranda and briefs filed with the court.

In addition, we will learn about focused intellectual activity and how to engage in that process through the law firm team concept that simulates the practice of law in a large law firm and then apply it in specific assignments. As we move forward throughout this semester, I will begin to present you with numerous hypothetical illustrations that you might find helpful to learn the law and the rules, as well as how the law and the rules work together.

Furthermore, I will introduce you to strategic and tactical decision-making – that used by the aspiring highly-capable and talented Counselors-at-Law who practice the Academic Practice of Law. Because Remedies is foundational and presents Counselors with difficult concepts to

² See Admiral’s Directive No. 4 dated January 11, 2019 – Top Gun Counselor School Lawyering Skill Development Rubric: Thinking and Problem Solving. *This Rubric applies regardless of whether a mandatory grading curve is in effect.*

³ See Admiral’s Directive No. 2, dated January 11, 2019.

master, as well as to apply, I strongly encourage you to take advantage of the opportunity to meet with me during Office Hours. The days and times set out above are blocked-off on my weekly calendar to be in my office and available for meeting with students. I am also available to meet with you by appointment.

COURSE OBJECTIVES AND SPECIFIC LEARNING OUTCOMES

To learn and apply in all things legal:

I R A C

EVERYTHING WE WILL DO IN THIS COURSE IMPLICATES I R A C!!!!!!⁴

As such, this course is designed to help you develop the analytical and reasoning skills necessary to think like a lawyer and to solve problems. Simultaneously, **you must learn (memorize) the Black-Letter Remedies Law**; otherwise known as the “**Rule Statements.**” As such, it is designed to expose you to doctrinal theory and to help you to analyze cases, laws, policies, and procedural rules applicable to litigating civil causes of action in the courts of the United States, the states, territories and possessions of the United States and the Indian tribes., *i.e.*, to expose you to the world of civil litigation at a *highly skilled and competent level*.

The basic concept for you to learn (and hopefully embrace and apply) is the “**academic practice of law.**” This concept is taught through a **focused intellectual inquiry** approach to practicing law. It is designed to teach you how to read carefully for specific information (Relevant Facts, Issues, and Rule Statements). Further, to build your capacity to think multi-dimensionally about the legal theory, policy, and rules underpinning the foundation of jurisdiction and the other areas identified above.

As we move through the semester, you will be encouraged to build a foundation for effective identification of relevant facts, issue spotting, thinking, and problem solving. You will also be encouraged to read carefully, think critically, ask probing questions, avoid making unsubstantiated assumptions and presumptions, and to synthesize data and information as applied to the rules. *Remember*, your job is to read carefully, gather and organize relevant facts, memorize the Black-letter rules, and apply those rules to the facts. **Bottom line: WORDS MATTER!**

THINKING AND PROBLEM SOLVING/SOCRATIC METHOD OF LEARNING:

Thinking and problem solving are the two primary skills encompassed in the practice of law. To perform well as an advocate for your clients’ interests, you must “take your game” to the next level and begin

⁴ See Admiral’s Directive No. 3, dated January 11, 2019.

work to build a strong analytical foundation. As you will come to appreciate, it is all about the “facts,” regardless of your opponent’s strategies or tactics. As your thinking evolves, you will come to understand that the “**facts are what the facts are.**”

Doctrinally, Congress authorized the United States Supreme Court to create a uniform set of procedures to apply in the district courts of the United States. *See Rules Enabling Act* of June 19, 1934, c. 651 §§ 1 & 2, 48 Stat. 1064, as amended 28 U.S.C. § 2071 (2006). The FRCP resulted from that authorization. *Of particular importance to Remedies, Fed. Rule Civ. Pro. Rule No. 2 recognizes that “There is one form of action – the civil action.” This means that actions at law and in equity have been merged into “the civil action.” However, that does not mean that equity has disappeared from the litigation landscape. To the contrary, equity is alive and well in United States law and in State law.* I cannot stress enough how important it is for you to understand and appreciate the policies underlying the FRCP, regardless of your assessment as to how sound those policies might be. The commentary following the rules provides a rich pool of information to help you understand each rule and how it applies.

Keep in mind, the ultimate goal is to help you become a **thinker** and a **problem-solver** of a unique set of *facts* and issues so that you can ensure – to the maximum extent possible – your ability to apply the applicable substantive law and the FRCP to help solve your eventual client’s problems. We will endeavor to accomplish this result through your hard work and a process of questions and answers and problem solving in the class setting, as well as in individual and small group settings. In many ways, this approach exemplifies the collaborative focused intellectual inquiry employed by highly talented and skilled counselors-at-law as they wrestle with uncertainty in the law, as well as with complicated and thorny fact patterns. To reach this level, you will need to approach each class with intellectual vigor, including an open mind, imagination, logic, creativity, and more.⁵

PROFESSIONALISM:

The Five Ps:

Proper Preparation Provides for Positive Performance!

I am very interested in your academic and professional development. I will endeavor to encourage you, as well as to nurture your development. In this regard, **I have purposely set “the expectation bar” high for you.** While I am interested in how high you will climb, I am equally interested in learning your assessment of how high you actually climbed during the semester and thereafter. Accordingly, in an admission against my possible future interests, I

⁵ See Admiral’s Directive No. 4, dated January 11, 2019.

readily acknowledge that you might find my expectations for your performance to be demanding. But, ultimately you are in control, Counselor. I can “lead you to water, but I cannot make you drink.” Nevertheless, and above all, please know that I am here to augment your professional development and, accordingly, I am more interested in your future capabilities than your present abilities. ***Upward and Onward, Counselors!!*** Let me know how I can be helpful.

ABOUT LEARNING AND THE DEVELOPMENT OF REASONING:

Terre Rushton is credited with the proverb: “*I hear . . . I forget; I see . . . I remember; I do . . . I understand.*” I agree. Accordingly, I will endeavor – time permitting – to design one or more small-group “learning by doing” exercises to illustrate the application of a couple of the provisions of the FRCP. I hope to “play-back” to you certain illustrations of your group work along with a “prescription” to advance your skills in considering, evaluating, and analyzing the rules and how those rules apply. In addition, I hope to demonstrate to you how the “***Academic Practice of Law***” can be useful in thinking proactively and prospectively about the *facts* within the context of the FRCP, as well as for taking law school examinations.

COUNSELOR DIRECTED PERFORMANCE: THE WELL

THE WELL –

Counselor Opportunity to Accumulate Up To 15 Points

As indicated in Professor Note No. 1, (*see supra* at p. 1-2) individual Counselors will have the opportunity to demonstrate comprehension of a particular legal concept of interest in the Code and to “*apply*” that concept in the context of Contract-based problems assigned for the day in “**The Well.**” **The Well** is a Counselor’s opportunity to engage with Professor Kanassatega in a one-on-one discussion on a wide-range of topics such as providing relevant facts, issue spotting, analysis, as well as legal reasoning on a hypothetical basis regarding a particular unassigned problem set.

Counselor Law Firm Opportunity to Accumulate Up To Five Points

Counselor Associate Law Firms also will have the opportunity to demonstrate comprehension of a particular legal concept of interest in the Code and to “*apply*” that concept in the context of Contract-based problems assigned for the day in “**The Well.**” Typically, these opportunities arise in the context of “***focus intellectual inquiries***” designed to collaborate with Counselor(s)’ activities in The Well! (Under the “***Collaborative Practice of Law***” all benefit from

supplemental analysis as: ***“A rising tide lifts all boats – yachts and dinghies alike!”*** Because points (**One to Three Points**) will be awarded to the Firm based on performance and each Counselor receives the number of points awarded to the Firm, each Counselor Associate **must actively participate** in the interaction with Professor Kanassatega to be eligible to accumulate the points awarded to a Law Firm.

Remember: *Effective lawyering is all about high quality thinking and problem solving.*⁶

BONUS POINT NOMINATIONS AND AWARD⁷ –

Up to **three bonus points** will be available during the semester to an individual Counselor for high level performance in **The Well** on a Problem Set, Research Assignment or Case Briefing.

Such **bonus points** will be available also to an individual Counselor for insightful issue spotting or cogent analysis in class discussions. Opportunities to accumulate bonus points occur in each class period and typically arise from class discussion and result from a Counselor’s engaging with Professor Kanassatega in a one-on-one discussion on a wide-range of topics such as providing relevant facts, issue spotting, analysis, as well as legal reasoning on a hypothetical basis related to a particular problem set at issue in **The Well**. Bonus Point **nominations** will be announced in Class.

Each Counselor whose in-class performance – as an aspiring highly capable and talented Counselor-at-Law – positions herself or himself to receive a bonus point(s) nomination must comply with The Admiral’s Directive. (**See TWEN Professor Note No. 1**) That is, *timely* submission (**within 24 hours** of the Bonus Point Nomination) of a **one-page Bonus Point Memorandum** in IRAC format.

CLASS PARTICIPATION PERFORMANCE REWARDS!

Every Counselor enrolled in the Class is expected to arrive at class fully prepared and ready to **actively** participate in the classroom discussion. I will **cold-call** individual Counselors to address a particular Remedies-based issue. If a single occasion arises when you are unprepared, let me know before the beginning of class. Also, you may ask for co-Counsel

⁶ See Note 1 above.

⁷ See Admiral’s Directive No. 2, dated January 11, 2019.

assistance within your law firm if you are stumped by a question.

Class activities will focus on analysis of Code (and Restatement) provisions and application of law to fact (answers) with regard to assigned Contract-based problems, Research Assignments, and Case Briefings (IRAC Format) from the Casebook and understanding how to properly apply the Code (and Restatement) provision to a fact pattern. I assume that your attendance in class signifies that – as an *aspiring counselor-at-law* – you have arrived at class fully prepared after reading and thinking about the assigned material in advance of class. This level of preparation will position you to offer cogent analysis and to otherwise fully participate in the class discussion. To help ensure full attendance and complete preparation, which I believe are essential to the learning process, I will consider each student’s level of class preparation, performance, and participation when awarding final course grades.

For Counselors who consistently demonstrate full preparation and who make an exceptional and meaningful contribution to the class discussion, I reserve the right to **award up to two additional bonus points** to your final total accumulated points. In other words, your class performance helps me measure your mastery of the material, and if your scores on the written assignments do not comport with your class performance, **bonus points** can make the difference in your final grade.

For students who are unprepared or who display an unwillingness to participate in class, I reserve the right to lower their grade one level from what their written work warrants. I believe that learning is an active endeavor, not a passive experience. Active listening enhances the learning process and helps you learn to “think on your feet!” It benefits from organization and guidance by teachers, but requires effort and energy from Counselors. Because of this, much of class discussion will focus on the Counselor’ responses to the problems and exercises in the course materials.

SUMMARY

FORMER TEACHING ASSISTANT COMMENTARY NOTE:

Former successful aspiring highly capable and talented Counselors-at-Law have provided me with the following perspective – one that the Admiral would certainly embrace – that is now shared with you as Counselors-in-Waiting:

The assigned reading material in this class is meant to stimulate and guide class discussion regardless of whether any particular case is actually discussed in class. As such, assigned reading is in no way an indication of any particular lecture scheduled

*for a particular day. However, in order to succeed in this class any aspiring highly-capable Counselor-at-Law will come to class with a working understanding of **basic** jurisdictional or procedural issues which have been gleaned from that week's topics, reading assignments, recommended evidentiary supplements, and any additional assigned materials. Aspiring highly-capable Counselors-at-Law will find lectures infinitely more useful if they arrive to class with this information in hand and ready to absorb lecture material as a time to "fill in the gaps" or to address particular "thorny jurisdictional or procedural issues." This learning environment simulates the expectations of the bar examiners and positions you for focused intellectual inquiry – a necessary ingredient for the academic practice of law.*

INTERESTING COMMENT ON THE IMPORTANCE OF SUBSTANCE – PROCEDURE DICHOTOMY:

"I'll let you write the **substance** . . . and you let me write the **procedure** and I'll screw you every time!"

Former United States Congressman John D. Dingell (D- MI)

ELECTRONIC DEVICE USE:

RULES OF THE CLASS – ADMINISTRATIVE RESTRICTIONS:

- (1) Audio or visual recording of class lectures by any electronic means is prohibited except for authorized disability accommodation purpose!
- (2) Activated cell phone status during official class time is prohibited! (***Airplane Mode Required***)
- (3) Personal computer use is prohibited, except when specifically authorized by The Admiral Directive to Ensign Professor Kanassatega.

PROFESSIONALISM IN ALL RESPECTS:

CIVILITY AND PROFESSIONALISM RULES:

- (1) The California Rules of Professional Conduct apply.
- (2) The California Attorney Guidelines of Civility and Professionalism apply.
- (3) The American Bar Association Model Rules of Professional Conduct apply.

DISABILITY ACCOMMODATIONS STATEMENT

Students with disabilities should refer to the policies described at the University of La Verne Disabled Student Services Handbook [as of September 13, 2017 located at <https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>, which can be found on the website of the University of La Verne Disabled Student Services website (<https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>) or at their office. Temporary accommodations are offered on a case by case basis. All required documentation must be submitted by the student before any formal accommodations and should be made directly to the Director of Student Affairs.

Any student eligible for and requesting academic accommodations due to a documented disability (or a suspected disability) is asked to contact the College of Law Director of Student Affairs and Americans with Disability Act Compliance Officer, Akita Mungaray by email at amungaray@laverne.edu or by phone at (909) 460-2017. Her office is located on the first floor of the College of Law, Office # 107. You can also contact Cynthia Denne at the University of La Verne Disabled Student Services office at (909) 448-4441. The office is located at the La Verne campus Health Center. In order to be considered for accommodations, disabilities must be documented and the proper medical evaluations must be submitted. The office is here to help you succeed in law school. Visit it online at <https://sites.laverne.edu/disabled-student-services/>.

COURSE-SPECIFIC POLICIES

ATTENDANCE POLICY:

THE WORLD BELONGS TO THOSE WHO SHOW-UP – ON TIME OR BEFORE – AND PARTICIPATE!!!

SEE, MANUAL OF ACADEMIC POLICIES AND PROCEDURES (“MAPP”) MAY 2018 AT SECTION I-J, PAGE 10, INCORPORATED HEREIN BY REFERENCE.

I strongly recommend that you attend class (***and be on time***) even if you find that the events of life or other reason prevent you from preparing to the level of your expectations as a highly-capable and talented Counselor-at-Law. In addition, I recommend that you identify a co-Counselor within your law firm who will share notes with you and get you a copy of handouts if you are absent.

ASSIGNMENTS/CLASS OUTLINE – WEEKLY/DAILY⁸

WEEK ONE:

JANUARY 11, 2019:

CLASS DATES

TOPIC

READING ASSIGNMENT⁹

DAMAGES: GENERAL PRINCIPLES

01/11 ¹⁰	Introduction	[T] – [READ: Preface (p. xxiii – p. xxvii)] [T] – [CH 1, p. 1 – p. 9]
	The Rightful Position Principle	[T] – [CH 2, p. 11 – p. 18]
	Value as the Measure of the Rightful Position	[T] – [CH 2, p. 18 – p. 35]
	Reliance and Expectancy as Measures of the Rightful Position	[T] – [CH 2, p. 35 – p. 52]
		[S] – [p. 1 – p. 2] [FR] – [READ: FRCP Rule 2; and Rule 7; and Rule 8(a) – Rule 8(b); and Rule 8(c) – Rule 8(d); and Rule 9; and Rule 13; and Rule 15] ¹¹

⁸ ***Murphy’s Law applies!*** *Nevertheless, the law of remedies is best learned conceptually – and with reference to the pleading and discovery provisions of the Federal Rules of Civil Procedure (“FRCP”). Keep in mind, a particular concept applies not only as a stand-alone concept, but that concept could also apply in concert with another concept in the law of remedies. Accordingly, I reserve the right to amend the weekly schedule of class discussion as the circumstances dictate or reasonably suggest would be prudent. I will make an effort to provide you with advance notice of any amendment, but class progress circumstances, more likely than not, will provide the notice. To the extent that our concept-based class discussion moves to unassigned FRCP Rules, which is likely to happen, don’t fret about it. Simply read the material set out in the assigned chapter(s) or section(s) for the next class.*

⁹ Readings assigned in the *Textbook* will be denoted as [T] while readings assigned in the 2018 Supplement (“*Supplement*”) will be denoted as [S]. Reading assigned in the Federal Rules of Civil Procedure will be denoted as [FR]. The word *Chapter* will be denoted as [CH]. I will discuss our roadmap for addressing those parts of chapter sections designated as *Notes and Questions* and *Problems* during our first class.

¹⁰ All assigned readings after January 7, 2019 are approximate and likely to shift given class progress in grasping the underlying concept. I will make an announcement at the end of class, if applicable.

¹¹ As to readings assigned in the Federal Rules of Civil Procedure, it is imperative that you carefully read the assigned pleading rules with an eye for specific purposes; among these are to learn the pleading rule as to damages (and remedies) and its underlying concept, when it applies, and how it applies and works.

CLASS DATES

TOPIC

READING ASSIGNMENT

WEEK TWO:

JANUARY 18, 2019:

01/18	Reliance and Expectancy as Measures of the Rightful Position	[T] – [CH 2, p. 35 – p. 52]
	Consequential Damages	[S] – [p. 3 – p. 4] [T] – [CH 2, p. 52 – p. 67]

DAMAGES: LIMITATIONS – CONTRACTUAL

01/18		[T] – [CH 2, p. 67 – p. 85]
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WEEK THREE:

JANUARY 25, 2019:

DAMAGES: LIMITATIONS – LEGAL

01/25	Avoidable Consequences, Offsetting Benefits, and Collateral Sources	[T] – [CH 2, p. 85 – p. 95] [T] – [CH 2, p. 98 – p. 101]
	Economic Loss Rule	[T] – [CH 2, 109 – p. 112 and [T] – [CH 2, p. 129 – p. 133] [S] – [p. 3 – p. 5 and p. 7 – p. 8]

WEEK FOUR:

FEBRUARY 01, 2019:

DAMAGES: WHERE VALUE CANNOT BE MEASURED IN DOLLARS

02/01	Dignitary and Constitutional Harms	[T] – [CH 2, p. 170 – p. 187] [S] – [p. 13]
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PUNITIVE DAMAGES

	Common Law and Statutes	[T] – [CH 3, p. 217 – p. 233] [T] – [CH 3, p. 248 – p. 262] [S] – [p. 15 – p. 17]
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CLASS DATES

TOPIC

READING ASSIGNMENT

WEEK FIVE:

FEBRUARY 08, 2019:

02/08

*****Quiz No. 1 – Money Damages*****

EQUITABLE REMEDIES: COERCIVE RELIEF

02/08

History of Equity

[T] – [CH 5, p. 378 – p. 384]

Preventing Harm: Measure of Injunctive Relief

[T] – [CH 4, p. 263 – p. 280] **and**

WEEK SIX:

FEBRUARY 15, 2019:

02/15

Preventing Lawful Acts

[T] – [CH 4, p. 280 – p. 295]

[S] – [p. 18 – p. 22]

Repairing Consequences of Past

Wrongful Conduct

[T] – [CH 4, p. 295 – p. 310]

READ: *Navajo Academy, Inc. v. Navajo United Methodist Mission Sch.*, 109 N.M. 324 (N.M. 1990),
785 P.2d. 235 (1990)

WEEK SEVEN:

FEBRUARY 22, 2019:

CHOOSING EQUITABLE REMEDIES

02/22

Substitutionary or Specific Relief

[T] – [CH 5, p. 375 – p. 377] and

[T] – [CH 5, p. 380 – p. 384] and

[T] – [CH 5, p. 387 – p. 391]

[S] – [p. 47]

Specific Performance

[T] – [CH 5, p. 391 – p. 409]

[S] – [p. 47]

CLASS DATES

TOPIC

READING ASSIGNMENT

WEEK EIGHT:

MARCH 01, 2019:

03/01	Undue Hardship; Discretionary Matters	[T] – [CH 5, p. 409 – p. 428] [T] – [CH 5, p. 438 – p. 440] [S] – [p. 47 – p. 51]
	Preliminary or Permanent Relief	[T] – [CH 5, p. 440 – p. 470] [S] – [p. 52 – p. 53] [FR] – [READ: FRCP Rule 64 and Rule 65]

WEEK NINE:

MARCH 15, 2019:

03/15	Prospective or Retrospective Relief	[T] – [CH 5, p. 470 – p. 500] [FR] – [READ: FRCP Rule 8(a)(1) and Rule 12(b)(6)]
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READ: *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

WEEK TEN:

03/22 *Quiz No. 2 – Equitable Remedies*****

MARCH 22, 2019:

REMEDIES AND SEPARATION OF POWERS

03/22	More on Governmental Immunities Right to Jury Trial	[T] – [CH 6, p. 501 – p. 525] [T] – [CH 6, p. 558 – p. 571]
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CLASS DATES

TOPIC

READING ASSIGNMENT

WEEK ELEVEN:

MARCH 29, 2019:

***PREVENTING HARM WITHOUT COERCION:
DECLARATORY REMEDIES***

03/29 Declaratory Judgments [T] – [CH 7, p. 573 – p. 617]

WEEK TWELVE:

APRIL 05, 2019:

***BENEFIT TO DEFENDANT AS THE MEASURE OF RELIEF:
RESTITUTIONARY REMEDIES: AT LAW***

04/05 Innocent Defendants [T] – [CH 8, p. 619 – p. 649]
[S] – [p. 74 – p. 75]
Wrongdoers-Disgorgement [T] – [CH 8, p. 649 – p. 665]
[S] – [p. 75 – p. 76]

WEEK THIRTEEN:

04/12 ***Quiz No. 3 – Restitution***

APRIL 12, 2019:

04/12 Measuring Profits [T] – [CH 8, p. 665 – p. 678]
Disgorgement in Breach of Contract [T] – [CH 8, p. 678 – p. 686]

RESTITUTIONARY REMEDIES: EQUITABLE

Rescission and Restitution [T] – [CH 8, p. 686 – p. 695]
[S] – [p. 76]

CLASS DATES

TOPIC

READING ASSIGNMENT

WEEK FOURTEEN:

APRIL 19, 2019:

04/19	Equitable Lien Subrogation; Indemnity; and Contribution	[T] – [CH 8, p. 733 – p. 741] [S] – [p. 77 – p. 79]
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EQUITABLE DEFENSES

11/30	Unconscionability, Unclean Hands And <i>In Pari Delicto</i>	[T] – [CH 11, p. 925 – p. 934] [T] – [CH 11, p. 938 – p. 941] [S] – [p. 93 – p. 96]
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TOP GUN SCHOOL

THIS SEMESTER HAS BEEN ABOUT THE ACADEMIC PRACTICE OF LAW AND THE HAND AND THE:

THREE-LEGGED STOOL – FOCUSED INTELLECTUAL INQUIRY!

Plato – Book VII!!!

FOUNDATIONS: THINKING LIKE A LAWYER AND PROBLEM SOLVING

DEMONSTRATIONS – ACADEMIC PRACTICE OF LAW:

THINKING AND PROBLEM SOLVING

CAREFUL READING; ANALYTICAL ROADMAPS AND OUTLINES; LEGAL WRITING

INTRODUCTION: RULES OF DECISION – SUBSTANTIVE AND PROCEDURAL

APPENDIX OF MISSION, VALUES AND LEARNING OUTCOMES

UNIVERSITY OF LA VERNE MISSION AND VALUES

It is the mission of the University of La Verne to provide opportunities for students to achieve their educational goals and become contributing citizens to the global community.

The University of La Verne shares four core values that promote a positive and rewarding life for its students through fostering a genuine appreciation and respect for:

1. **Values Orientation.** The University affirms a philosophy of life that actively supports peace with justice, the health of the planet and its people. Therefore, in light of this affirmation, it encourages students to become reflective about personal, professional, and societal values. It also encourages values-based ethical behavior.
2. **Community and Diversity.** The University promotes the goal of community within a context of diversity. Therefore, it encourages students to understand and appreciate the diversity of cultures that exists locally, nationally, and internationally. It also seeks to promote appreciation and preservation of biodiversity by helping students understand the impact/dependence of human beings on their environment.
3. **Lifelong Learning.** The University commits itself to promoting education that facilitates lifelong learning. Therefore, it teaches students how to learn, to think critically, to do constructive research, and to access and integrate information in order to prepare them for continued personal and career growth.
4. **Community Service.** The University believes that personal service is a primary goal of the educated person. Therefore, it encourages students to experience the responsibilities and rewards of serving the human and ecological community.

UNIVERSITY OF LA VERNE COLLEGE OF LAW VISION, MISSION, AND VALUES

VISION

La Verne Law is an incubator for innovation in legal education, thought, and advocacy for individuals passionate about serving their communities and promoting access and justice.

MISSION

The mission of La Verne Law is to guide our students in the discovery of law and self as they prepare for the practice of law or other professional careers. Our faculty of scholars and teachers is committed to creating an innovative, collaborative learning environment designed to develop the knowledge and skills relevant to achieving individual and professional success.

Our mission encompasses educating, as well as enhancing the professional lives of, the members of the local, regional, national, and international communities we encounter – students, faculty, staff, administrators, alumni, members of the bench and bar, and others who pursue social justice.

Our mission is grounded in the core values of the University of La Verne – life-long learning, ethical reasoning and decision-making, diversity & inclusivity, and community & civic engagement.

Difference-making is our legacy.

CORE VALUES

University Values: As a College within the University of La Verne we adopt and endorse the University core values of Lifelong Learning, Diversity and Inclusivity, Community Engagement, and Ethical Reasoning.

College of Law Core Principles and Values: As an institution dedicated to teaching and training the next generation of lawyers and leaders, we operate institutionally and individually on the principles of professionalism, innovation, ethics, student centeredness and community enhancement. In our actions and interactions, we are and seek to be affirming, respectful, humble, accountable, committed, inclusive, empathetic, responsive, passionate, and positive.

UNIVERSITY OF LA VERNE COLLEGE OF LAW PROGRAM OBJECTIVES

- A. Upon completion of the program of legal education, students will possess the skills and knowledge to enable them to pass any bar examination of their choosing.
- B. Upon completion of the program of legal education, students will possess those skills to participate as respected members of the legal profession.
- C. Upon completion of the program of legal education, students will model ethical, responsible, and professional behavior.
- D. Upon completion of the program of legal education, students will embrace cultural differences and civic and community engagement.

AMERICAN BAR ASSOCIATION STANDARD 302: LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system;
- and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

In compliance with ABA Standard 302, the University of La Verne College of Law has established the following.

UNIVERSITY OF LA VERNE COLLEGE OF LAW PROGRAM LEARNING OUTCOMES

1. Students shall demonstrate knowledge and understanding of substantive and procedural law.
2. Students shall demonstrate competence in legal analysis and reasoning.
3. Students shall demonstrate competence in conducting legal research.
4. Students shall demonstrate competence in problem-solving.
5. Students shall demonstrate competence in written and oral communication.
6. Students shall be able and motivated to exercise proper professional and ethical responsibilities to clients, the legal system, and the wider community.
7. Students shall demonstrate competent litigation skills.
8. Students shall demonstrate competent transactional skills.
9. Students shall apply cultural competency while exercising their legal skills.
10. Students shall demonstrate competence in answering bar-style multiple-choice, essay, and performance test questions.