Remedies Syllabus

SIU Law
Professor Andrew Pardieck
Spring Semester 2016, Law 555-3
Mon/Wed/Fri 11:00 pm to 11:50 a.m., Rm. 206

I. COURSE INTRODUCTION

This course is an introduction to the law of Remedies. It is a survey course that introduces contemporary problems in compensatory and punitive damages, injunctions, restitution, declaratory judgments, and enforcement of orders and judgments. These subjects are tested on many state bar exams.

At the end of this course, students will be able to evaluate fact patterns and assess what remedies come closest to “making the injured party whole.” Students will be able to identify the remedial issues raised in common fact patterns, analyze the same, and offer reasoned conclusions about the legal viability of various remedies. Students will draft a complete and legally effective complaint seeking basic remedies. Finally, students will analyze the limitations of legal remedies—when and why the civil justice system fails to make an injured party whole. Students will examine both the limitations inherent in the legal process and those adopted based on public policy.

II. COURSE MATERIALS

A. Required Texts


Douglas Laycock, Modern American Remedies: Cases and Materials (2015 Supplement), available on TWEN.

Federal Rules of Civil Procedure, United States Code, Uniform Commercial Code, and various Restatements, as cited in the text. All are available on Westlaw or Lexis. For ease of reference, excerpts from the UCC and Restatements are also available on TWEN.

B. Recommended Reading
C. TWEN

The TWEN site for this course contains required reading, including a current copy of the syllabus, writing instructions for the Writing Across the Curriculum Assignment, and supplementary materials for this course.

III. GRADES

Grades are based on a final exam (70%); other written work product (20%); and classroom attendance and participation (10%).

A. Attendance & Participation (10%)

It is incumbent upon you to read the material, come to class well prepared, and participate. Every student who does so will receive ten (10) attendance & participation points; those who do not will receive fewer or no points.

For the purposes of the participation grade, I will take illness or conflicting work commitments explained in advance into consideration in evaluating lack of preparation.

Students who attend but are not prepared for class and have not provided a valid reason in advance will be counted absent. Similarly, students who attend, but come in late will be counted absent.

With regard to absences, this course adheres to SIU Law’s attendance policy: attendance is required in all classes. If you accumulate more than nine (9) class absences, you will be subject to the sanctions set out in the law school rules. Those sanctions include mandatory withdrawal from the course.

Please note neither the law school nor the ABA’s attendance rules recognize “excused absences.” Save your absences for sick days and
work conflicts. If you have a disability requiring accommodation see Disability Support Services. For contact and other information regarding Disability Support Services see infra Part VII.

B. Writing Exercise (20%)

You will be asked to draft, with a partner, both a research memorandum and a related complaint. The memorandum and complaint are each worth 10% of your grade, for a combined total of 20%.

You will need to divide yourself up into two-person law firms to work on the assignment. You may not discuss your work with anyone other than co-counsel until after you submit your research memorandum and file your complaint.

Additional instructions will be posted to TWEN and provided in class after we have covered related material in the text.

C. The Exam (70%)

The exam will be an in-class, closed-book final exam. Depending on the nature of the exam, you may be provided with a statutory or rules excerpt for use during the exam. Use of any other materials during the exam is prohibited.

The exam itself will likely consist of some combination of multiple choice, short answer, and essay questions. The subject matter will include both material from the assigned readings and material discussed in class. If you have to miss a class for whatever reason, get notes from a friend or acquaintance.

D. Grading

This course follows SIU Law’s grading policy. It will be graded on a curve, and, of necessity, subject to mandatory medians.

IV. CONTACT INFORMATION & OFFICE HOURS

If I’m in my office and the door is open, you and your questions are welcome. After class is usually a good time to catch me. Or you can email apardieck@law.siu.edu to set up a time. I will also have regular office hours on Wednesday from 2 p.m. to 4 p.m.
For those emailing, please note my response may not come immediately and it may be brief. The ulnar nerve in my left hand periodically objects to typing. Email aside, you have options. If you have questions, by all means ask.

V. COURSE ASSIGNMENTS

Please note:

- The assignment for the first class is to read and be prepared to discuss pp. 1-15.
- The readings for the topics vary in length and complexity; we will not always cover one unit per class.
- Understanding the material will require reading through the assignment more than once.
- We will not cover every case and note in class. For the purposes of the exam, however, students are responsible for all assigned reading—not just the material discussed in class.
- The following is a tentative outline for the course. If you have questions about what to read for the next class, don’t hesitate to ask.

VI. TENTATIVE COURSE OUTLINE

Unit 1 CHAPTER 1. INTRODUCTION
The Role of Remedies et seq., pp. 1-6.

CHAPTER 2. PAYING FOR THE HARM: COMPENSATORY DAMAGES

Unit 2 Value as the Measure of the Rightful Position, pp. 16-27; Restatement sections cited in text. Notes in 2015 Supplement.

Unit 3 Expectancy and Reliance as Measures of the Rightful Position, pp. 28-41; Notes in 2015 Supplement; UCC sections cited in text.

Unit 4 Consequential Damages, pp. 41-53; Notes in 2015 Supplement; UCC sections cited in text.

Unit 5 Limits on Damages, pp. 53-68; Note in 2015 Supplement; UCC sections cited in text; Restatement section cited in text.
Unit 6  Avoidable Consequences, Offsetting Benefits, Collateral Sources & The Requirement of Certainty, pp. 68-88, 99-107; Note in 2015 Supplement; UCC sections cited in text.

Unit 7  Damages Where Value Cannot Be Measured: Personal Injury, pp. 108-121; Notes in 2015 Supplement.

Unit 8  The Controversy Over Tort Reform, pp. 121-137; Note in 2015 Supplement.

Unit 9  Dignitary and Constitutional Harms, pp. 137-150; Notes in 2015 Supplement.

CHAPTER 3.  PUNITIVE DAMAGES

Unit 10  Punitive Damages: Common Law & Statute, pp. 171-184.


CHAPTER 4.  PREVENTING HARM: INJUNCTIVE RELIEF

Unit 12  The Scope of Injunctions, pp. 207-221; Notes in 2015 Supplement.


Unit 14  Repairing the Consequences, pp. 232-244.

Unit 15  Ending Complex Violations—The Prison Cases, pp. 257-274; Notes in 2015 Supplement.

WRITING ACROSS THE CURRICULUM ASSIGNMENT

CHAPTER 5.  CHOOSING REMEDIES

Unit 16  Substitutionary or Specific Relief, pp. 297-311.
Unit 17  Specific Performance of Contracts, pp. 312-324; Notes in 2015 Supplement; UCC section cited in text; Restatement section cited in text.

Unit 18  Burden on Defendant or the Court, pp. 324-336.

Unit 19  Other Reasons, pp. 337-350; Notes in 2015 Supplement.

Unit 20  Preliminary or Permanent Relief: Substantive Standards, pp. 350-362; Note in 2015 Supplement.


Unit 22  Prospective or Retrospective Relief, pp. 373-384; U.S. Constitution, Art III. Sec. 2.

Unit 23  Suit Against Officers, pp. 384-393; Note in 2015 Supplement.

CHAPTER 6. REMEDIES AND SEPARATION OF POWERS

Unit 24  More on Governmental Immunities, pp. 395-406.

CHAPTER 7. DECLARATORY REMEDIES


Unit 26  B. Quiet Title and the like, pp. 477-488; Restatement section cited in text; Federal Rules of Civil Procedure cited in text.

CHAPTER 8. RESTITUTION

Unit 27  A. Restitution from Innocent Defendants (Mistake), pp. 489-501; Restatement sections cited in text.

Unit 28  Measuring Restitution, pp. 501-512; Restatement sections cited in text.
Unit 29  B. Recovering More than Plaintiffs Lost: Disgorging Profits of Conscious Wrongdoers, pp. 512-525; Notes in 2015 Supplement; Restatement sections cited in text.

Unit 30  Measuring Profits, pp. 526-538; Notes in 2015 Supplement.

Unit 31  Breach of Contract, pp. 539-551; Notes in 2015 Supplement; Restatement sections cited in text.

Unit 32  Restitutionary Rights in Specific Property: Constructive Trusts, pp. 551-564.

Unit 33  Tracing Property, pp. 564-576; Note in 2015 Supplement; Restatement sections cited in text.

Unit 34  Equitable Liens and Subrogation, pp. 576-587.

CHAPTER 9. ENFORCING THE JUDGMENT

Unit 35  A. The Contempt Power, pp. 601-613.

Unit 36  The Collateral Bar Rule, pp. 625-636.

Unit 37  B. Collecting Money Judgments


CHAPTER 10. ATTORNEY’S FEES

Unit 39  A. Fee-Shifting Statutes, pp. 689-702; Notes in 2015 Supplement; Federal Rule of Civil Procedure and statute cited in text.

Unit 40  B. Fees from a Common Fund, pp. 702-713; Notes in 2015 Supplement; Federal Rule of Civil Procedure and statute cited in text.

*Additional reading assigned as time permits.*
VI. FINAL EXAM

The final exam is currently scheduled for May 4, 2016, 1:15 to 4:15 p.m. Be sure to check the exam scheduled posted prior to exam period for any changes.

VII. FINAL NOTES

Make-Up Classes: Courses that meet on Monday must hold an additional class to make up for the class that will be missed due to Reading day. Time, date, and location to be announced.

Saluki Cares: The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.

Disability Policy: Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Class Recording Policy: This class is not being recorded. Absent a disability-related accommodation arranged through the Associate Dean’s Office, you will not have access to a recording of the class. Absent advance approval of the instructor, audio or video recording by any student of any class is prohibited.

Emergency Procedures: Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency
Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in the Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.