

Remedies

Remedies

Basic Principles, Authorities, and Problems

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SANTA CLARA UNIVERSITY SCHOOL OF LAW



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For Nicole; and for Grayson and Everly.

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Preface

This is a casebook for a course on judicial remedies, designed for the modern law school curriculum. It covers the remedies concepts most likely to be tested on bar exams and encountered by lawyers in practice. It leans toward the practical more than the theoretical; the aim is to provide students with a firm grasp of the basic principles and illustrate how those principles operate in different situations.

Organization of the book tracks the way a remedies issue is approached analytically. Compensatory damages are discussed first, followed by injunctions and other specific relief awarded in situations where damages are not adequate. Tort and contract damages are handled separately, as are equitable remedies particular to contracts. After the major remedies are covered, later topics zoom out for a broader perspective. A chapter on selecting remedies looks at considerations for practitioners in deciding between remedies when multiple options are available. A chapter on remedies for civil rights violations explores how remedies can be an instrument of social justice.

The length of the text is intended to allow for cover-to-cover teaching. Instructors should be able to assign manageable readings and still finish most, if not all, of the chapters in a standard three-unit course.

The book presents the material in an approachable way. Concise, understandable explanations of legal rules are followed by edited cases involving those principles. All cases are preceded by introductory notes that set the stage with a description of the litigation and an overview of the issues.

The cases were chosen not only for their clear statements of the relevant rules along with thoughtful analysis but also for their overall readability. Though edited liberally for brevity, the opinions contain everything necessary to understand the issues and the reasoning behind the decision. (Omitted text is indicated by ellipses; footnotes have been omitted without notation.) Citations within opinions are mostly preserved to provide a reference point for further study if desired.

Contemporary authorities are presented whenever possible so students can see how courts use remedies to resolve disputes arising from today's challenges—for example, devastating wildfires, the COVID-19 pandemic, and racial injustice. But the staples of any remedies course—*Hadley v. Baxendale* and *Winter v. Natural Resources Defense Council*, for example—are here, too.

Instead of extensive notes following the cases, immediately before the cases in each section are several “things to think about,” or questions to consider while

reading. This positioning provides context and allows students to read cases as lawyers do: not aimlessly but searching for an answer to a specific question. Having the questions in mind while reading the cases enhances comprehension and focuses attention on the relevant issues.

Problems are included throughout the text to use as independent study aids or for classroom discussion. The problems present brief, easily digestible factual scenarios that allow the rules discussed in each section to be applied in a new setting.

The ultimate goal is to leave readers with an understanding of the different remedies available to litigants and an appreciation of how those remedies work as part of a system to resolve disputes.

Online Materials

Additional content for *Remedies: Basic Principles, Authorities, and Problems* is available on Carolina Academic Press's *Core Knowledge for Lawyers* (CKL) website.

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