

## **Modern American Remedies: Cases and Materials**

Douglas Laycock, University of Michigan  
Aspen Law & Publishing, 3d ed. 2002)

### **Contents**

(names of principal cases and excerpts from secondary sources omitted)  
(many note headings omitted, especially when section heading conveys similar information)

#### **Chapter 1 Introduction**

Classifying Remedies  
Substitutionary and Specific Remedies  
Legal and Equitable Remedies

#### **Chapter 2 Paying for Harm: Compensatory Damages**

- A. The Basic Principle: Restoring Plaintiff to His Rightful Position
- B. Value as the Measure of the Rightful Position
  - Notes on Value Unique to the Owner
  - Notes on Property That Fluctuates in Value
- C. Reliance and Expectancy as Measures of the Rightful Position
  - Notes on ' 2-708(2) and Attempts to Codify Remedies
  - Notes on the Distinction Between Tort and Contract
- D. Consequential Damages
  - Notes on the Vocabulary of Damages
  - Notes on Consequential Damages from Failure to Pay Money
- E. Limits on the Basic Principle
  - 1. The Parties' Power to Specify the Remedy
    - Notes on Limitation of Remedy Clauses
    - Notes on Liquidated Damage and Penalty Clauses
    - Notes on Underliquidated Damage Clauses
  - 2. Avoidable Consequences, Offsetting Benefits, and Collateral Sources
  - 3. The Scope of Liability
    - Notes on the Economic Harm Rule
  - 4. The Certainty Requirement
  - 5. Substantive Policy Goals
- F. Damages Where Value Cannot Be Measured in Dollars
  - 1. Personal Injuries and Death
    - Notes on the Controversy Over Tort Law
  - 2. Dignitary and Constitutional Harms
    - Notes on Remittitur
- G. Time, Taxes, and the Value of Money
  - Notes on Periodic Payments and Structured Settlements
  - Notes on Damages in Foreign Currency

#### **Chapter 3 Preventing Harm: The Measure of Injunctive Relief**

- A. Preventive Injunctions
  - Notes on Ripeness, Propensity, and the Scope of Preventive Injunctions

- Note on Individual and Class Injunctions
- Notes on Mootness and Propensity
- Notes on Ripeness, Uncertain Consequences, and Prophylactic Injunctions
- Notes on Constitutional and Remedial Ripeness
- Notes on Coercive Relief at Law
- B. Reparative Injunctions
  - Notes on Equitable Discretion
  - Notes on Prophylactic Injunctions
- C. Structural Injunctions
  1. The Scope of the Injunction When Issued
    - a. The School Desegregation Cases
    - b. Other Examples
      - Notes on the Institutional Reform Examples
      - Notes on Plaintiffs' Use of the Rightful Position Standard
      - Note on Paying for the Remedy
      - Historical Notes: The Municipal Bond Cases
      - Note on the *Microsoft* Remedy
  2. Modifying Injunctions
    - Notes on Another Standard: The Prison Litigation Reform Act
    - Notes on Yet Another Standard: The School Desegregation Cases
  3. The Rights of Third Parties

#### **Chapter 4 Choosing Remedies**

- A. Substitutionary or Specific Relief
  1. Irreplaceable Losses
    - Note on Equity in the United States
    - Notes on the Reasons for the Irreparable Injury Rule
    - Notes on Replevin and Injunctions
    - Notes on the Content of the Irreparable Injury Rule
    - Notes on Specific Performance of Contracts
    - Notes on Efficient Breach of Contract
    - Notes on Specific Performance When Cover is Possible
  2. Burdens on Defendant or the Court
    - Notes on the Economics of Undue Hardship
    - Notes on Undue Hardship When Plaintiff Seeks Money
    - Notes on Practicality and Private Litigation
  3. Reasons of Substantive or Procedural Policy
    - Notes on Insolvent Defendants
    - Notes on Prior Restraints
    - Notes on the Right to Jury Trial
    - Notes on Avoiding a "Multiplicity of Suits"
    - Notes on Personal Service Contracts
- B. Preliminary or Permanent Relief
  - Notes on Preserving the Status Quo
  - Notes on Injunction Bonds
  - Notes on Temporary Restraining Orders

- C. Prospective or Retrospective Relief
  - 1. Suits Against Officers in Their Official Capacities
    - Notes on Prospective-Only Remedies
    - Notes on the Evolution of Eleventh Amendment Doctrine
  - 2. Suits Against Officers in Their Personal Capacities
    - Notes on Qualified Official Immunities
    - Notes on Enforcing New Rules of Law
    - Notes on the Fear of Damage Remedies

## **Chapter 5 Preventing Harm without Coercion: Declaratory Remedies**

- A. Declaratory Judgments
  - Notes on Declaratory Judgments and Ripeness
  - Notes on Declaratory Judgments and Irreparable Injury
  - Notes on Suing to Prevent Threatened Lawsuits
  - Notes on Declaratory Judgments and Tactical Advantage
  - More Notes on the *Young* Dilemma
  - Notes on the *Steffel* Solution
  - Notes on Preliminary Injunctions Against Prosecution
- B. Quiet Title and the Like
- C. Reformation
- D. Declaratory Relief at Law
  - 1. Nominal Damages
  - 2. Quo Warranto

## **Chapter 6 Benefit to Defendant as the Measure of Relief: Restitution**

- A. Disgorging Profits
  - 1. The Basic Principle
    - Notes on Recovering More Than Plaintiff Lost
    - Notes on Quasi-Contract
    - Notes on Constructive Trusts and Accounting for Profits
    - Notes on Restitution of Money Not Spent on Safety
    - Notes on Disgorging the Profits from Breach of Contract
  - 2. Measuring the Profits
    - Notes on Apportioning Profits
    - Notes on Calculating Profits
- B. Restitution and Contract
  - 1. The Basics
    - Notes on Rescission
    - Notes on the Benefit Requirement
    - Notes on Election of Remedies
  - 2. New Frontiers, or Dead Ends?
    - Notes on Restitution for Breach of Contract
    - Notes on Losing Contracts Where the Benefit Cannot Be Returned
    - Notes on Disgorging Profits from Plaintiff's Performance
- C. Tracing Defendant's Benefit: Restitution and Insolvency
  - Notes on Restitution from an Insolvent Defendant

- Notes on Tracing
- Notes on Restitution from Third Parties
- Notes on Constructive Trusts and Fraudulent Transfers
- Notes on Equitable Liens (Here Too of Mistaken Improvers)
- D. Subrogation, Contribution, and Indemnity
  - Notes on Volunteers
- E. Replevin, Ejectment, and the Like
  - Notes on Constitutional Restrictions on Summary Actions for Possession

## **Chapter 7 Punitive Remedies**

- A. Punitive Damages
  - 1. Common Law and Statutes
    - Notes on the Standard for Awarding Punitive Damages
    - Notes on Measuring Punitive Damages
  - 2. The Constitution
  - 3. Punitive Damages in Contract
- B. Other Punitive Remedies
  - 1. Statutory Recoveries by Private Litigants
  - 2. Civil Penalties Payable to the Government

## **Chapter 8 Ancillary Remedies**

- A. Enforcing the Judgment
  - 1. Enforcing Coercive Orders: The Contempt Power
    - a. The Three Kinds of Contempt
      - Notes on Coercive Contempt
      - Notes on the *Yonkers* Confrontation
      - Notes on Perpetual Coercion
      - Notes on Contempt of Anticipated Injunctions
    - b. The Collateral Bar Rule
    - c. The Rights of Third Parties
      - Notes on Contempt Citations Against Third Parties
      - Notes on Other Theories for Binding Third Parties
      - Notes on the Notice Requirement
    - d. The Maxim That Equity Acts in Personam
    - e. Drafting Decrees
      - Notes on the Requirement That Injunctions Be Specific
      - Notes on the Rule Against Incorporating Other Documents
      - Drafting Your Own Injunction
  - 2. Collecting Money Judgments
    - a. Execution, Garnishment, and the Like
      - Notes on Exemptions
      - Notes on Other Means of Collecting Money Judgments
      - Note on Bankruptcy
      - Notes on Collecting Money from the Government
    - b. Coercive Collection of Money
  - 3. Preserving Assets Before Judgment

Notes on Attachment  
Notes on Freeze Orders  
Notes on Receivership  
Notes on Ne Exeat

**B. Litigation Expenses**

Notes on the American Rule  
Notes on Exceptions to the American Rule  
Notes on One-Way Fee Shifting  
Notes on the Amount of the Judgment as a Constraint on Fees  
Notes on the Prevailing Party Requirement  
Notes on Calculating the Lodestar  
Notes on the Common Fund Rule  
Notes on Contingency Enhancements  
Notes on Competing Approaches to Calculating Fee Awards  
Notes on Costs  
Notes on Ethical Problems in Fee Awards

**Chapter 9 Remedial Defenses**

- A. Unclean Hands and In Pari Delicto
- B. Unconscionability and the Equitable Contract Defenses
- C. Estoppel and Waiver
  - Notes on Estoppel Against the Government and Waiver by the Government
- D. Laches and Limitations
  - 1. Laches
  - 2. Statutes of Limitation
    - Notes on Continuing Violations and Continuing Injuries
    - Notes on Limitations of Federal Claims
    - Notes on the Discovery Rule
    - Notes on Fraudulent Concealment
    - Notes on Estoppel to Assert Limitations

**Chapter 10 Remedies and Separation of Powers**

- A. Implied Rights of Action
- B. Initiating Criminal and Administrative Remedies
- C. Governmental Immunities
  - 1. Suits Against the Government
    - Notes on the Public Duty Doctrine
    - Notes on the Governmental/Proprietary Distinction
    - Notes on the Discretionary Function Exception
    - More Notes on Federal Waivers of Immunity
    - Notes on Federal Claims Against Municipalities
  - 2. Suits Against Officers -- Absolute Immunity
- D. The Right to Jury Trial
  - Notes on Characterizing Claims as Legal or Equitable
  - Notes on Specialized Tribunals

## **Chapter 11 Fluid Class Remedies**

Notes on the Practical Limits of Class Actions

Notes on Fluid Class Recoveries

Notes on Affirmative Action as a Fluid Class Remedy

Notes on Partially Identifiable Victims