

Levine, Jung, Schoenbrod & Macbeth
Remedies: Public and Private 4th (Thomson/West 2006)

Table of Contents (as edited for AALS Workshop)
David I. Levine, University of California, Hastings College of the Law

Chapter 1. Introduction to the Law of Remedies

- A. A General Approach to Crafting a Remedy
Problem: Country Lodge v. Miller--Remedies in a Traditional Private Case
- B. Private Law and Public Law
Problem: Country Lodge v. Miller (Reprised)--Remedies in a Public Law Case
Abram Chayes, *The Role of the Judge in Public Law Litigation*
- C. Where There's a Right, There's a Remedy?
Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics
Schweiker v. Chilicky
A Digression: Remedial Choice in the Statutory Context

Chapter 2. The Nature, Availability, and Scope of Injunctions

- A. The Nature of an Injunction
Problem: Country Lodge v. Miller (Reprised)--The Choice Between an Injunction and Damages
- B. The Plaintiff's Rightful Position as the Measure of an Injunction
Problem: Country Lodge v. Miller (Reprised)--Defining the Rightful Position
Mt. Healthy City School District Board of Education v. Doyle
Note on Rightful Position as Reconsideration or Remand in Administrative Law
Problem: The Racially Biased Election
Rizzo v. Goode
Newman v. Alabama
- C. The Prerequisites for Injunctive Relief
 - 1. Threat of Harm
Problem: Country Lodge v. Miller (Reprised)--The Threat of Harm
Hecht Co. v. Bowles
Note on Mootness and Ripeness
City of Los Angeles v. Lyons
Note on Who Is Protected by an Injunction
Note on the Relationship Between Threat of Harm and the Scope of an Injunction
 - 2. Inadequate Remedy at Law
 - 3. Practicality of Enforcement
- D. Granting Less or More Than Plaintiff's Rightful Position
 - 1. Granting Less Than Plaintiff's Rightful Position: Balancing the Equities
Problem: Country Lodge v. Miller (Reprised)--Balancing the Equities
Note on When Injunctions are Efficient
Smith v. Staso Milling Co.

Brown v. Board of Education (Brown II)
Tennessee Valley Authority v. Hill
Weinberger v. Romero-Barcelo

2. Granting More Than Plaintiff's Rightful Position: Prophylaxis and Impossibility
 - (a) The Abortion Protest Example
 - (b) The School Desegregation Example

E. Specific Remedies Other Than Injunctions

Chapter 3. Procedures for Formulating, Administering, and Enforcing the Injunction

A. Obtaining Preliminary Injunctive Relief

1. Types of Injunctions
2. Standards for Granting Preliminary Relief
 - Schiavo ex rel. Schindler v. Schiavo (Schiavo I)*
 - Schiavo ex rel. Schindler v. Schiavo (Schiavo II)*
 - American Hospital Supply Corp. v. Hospital Products Ltd.*
3. The Security Requirement
 - (a) The Amount of Security
 - (b) Collecting on the Security

B. Formulating and Administering the Injunction

1. Drafting the Injunction
2. Administering the Injunction
3. Accommodating Changing Circumstances: Interpretation and Modification of the Decree
4. Retaining and Closing a Case
 - (a) Judicial Direction to Terminate Jurisdiction
 - (b) Legislative Direction to Terminate Jurisdiction

C. Enforcement of the Decree

1. The Contempt Power
2. When Are Parties Bound?
3. The Collateral Bar Rule
4. Who Is Bound?
5. Enforcement Against the Government
 - Problem: Country Lodge v. Miller (Reprised)--Injunctions That Require the Cooperation of Public Officials*
 - Note on How Politics Complicates Enforcement*
 - Note on How Immunity Complicates Enforcement*
 - Missouri v. Jenkins (Jenkins II)*
 - United States v. City of Yonkers*
 - Spallone v. United States*
 - Notes on Tactics to Override Legislative Decisions*
 - Alexander Bickel, *The Least Dangerous Branch*

Chapter 4. Declaratory Judgment

Chapter 5. Criminal and Civil Sanctions

A. Distinguishing Criminal and Civil Sanctions

Kennedy v. Mendoza–Martinez

United States v. Salerno

Hudson v. United States

Notes on Differences Between Civil and Criminal Proceedings

B. Proportionality in Sentencing

Ewing v. California

C. Punitive Damages

Grimshaw v. Ford Motor Co.

State Farm Mutual Automobile Insurance Co. v. Campbell

Dunn v. HOVIC

D. Civil Economic Sanctions

E. Forfeiture

Austin v. United States

United States v. Bajakajian

Chapter 6. Damages

A. Introduction

Memphis Community School District v. Stachura

Note on Nominal Damages

Note on Monetary Relief in Law and Equity

Note on the Right to a Jury Trial

B. The Basic Issues

1. A Roadmap to Damages

2. Value

Problems: Valuing the Plaintiff's Loss

State v. Bishop

Ohio v. Department of the Interior

C. An Overview of Tort Damages

Ayers v. Jackson Township

1. Elements of the Award

Bell v. City of Milwaukee

Note on Loss of Consortium

2. Measuring the Damages

Walker v. Ritchie

3. Limits on Recovery: Foreseeable, Certain and Unavoidable

4. Managing Damages Actions: The New Public Law Litigation?

D. An Overview of Contract Damages

1. The Basic Rules
2. Contract or Tort?: The Uncertain Boundary

E. Adjustments to the Damage Award

1. Time and Value: Prejudgment Interest
Problem: Country Lodge v. Miller (Reprised)–Prejudgment Interest
Kansas v. Colorado
2. Time and Money: Discounting to Present Value
Jones & Laughlin Steel Corporation v. Pfeifer
3. Taxation of Damage Awards
Commissioner of Internal Revenue v. Banks

Chapter 7. Restitution and Restitutory Remedies

A. Introduction

B. Restitution and Unsolicited Benefits

Problem: Country Lodge v. Miller (Reprised)–Restitution for Benefits Conferred
Kossian v. American National Insurance Co.

C. Restitution and Wrongfully Acquired Benefits

Problem: Country Lodge v. Miller (Reprised)–A Restitution Option?
Olwell v. Nye & Nissen

D. Restitution and Solicited Benefits

Hutchison v. Pyburn
EarthInfo, Inc. v. Hydrosphere Resource Consultants, Inc.

E. Equitable Restitutory Remedies

Problem: Moore v. Regents of the University of California
Latham v. Father Divine
Snepp v. United States
Torres v. Eastlick (In re North American Coin & Currency, Ltd.)
The Corporation of the President of the Church of the Church of Jesus Christ of Latter-Day Saints v. Jolley
In re Mushroom Transportation Co.

Chapter 8. Collection of Monetary Judgments

A. Provisional Relief

B. Post–Judgment Relief

1. Basic Collection Strategy
2. Exempt Property
3. Foreclosure Sales
4. Body Execution

Chapter 9. Conduct of the Plaintiff: Bars to Obtaining Relief

- A. Unclean Hands and in Pari Delicto
- B. Estoppel
- C. Laches and Statutes of Limitations

Chapter 10. Attorney's Fees

- A. The Power of the Court to Award Attorney's Fees
- B. The Parties That Congress Has Made Eligible for Attorney's Fees
- C. The Measure of the Fees
 - 1. What Work is Compensable?
 - 2. The Rate of Compensation
 - 3. Applying the Lodestar Method
 - Gratz v. Bollinger*
- D. Conflicts of Interest

APPENDIX: SELECTED FEDERAL RULES OF CIVIL PROCEDURE