

## SYLLABUS: REMEDIES (Fall Term, 2008)

### Loyola University of Chicago School of Law

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#### I. Introduction

The course is about judicial remedies in civil cases. Judicial remedies usually refer to the actions that courts and juries take or do not take in civil cases when liability has been judicially established. But this course also considers remedies that legislative or executive branch agencies undertake even when liability has not been judicially established, which remedies the courts nonetheless review. The Supreme Court's 2007 school desegregation decision, *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007)—assigned for the fourth week's reading—is illustrative. And see *Alexander v. Sandoval*, 532 U.S. 275 (2001) (remedies under Title VI of the Civil Rights Act of 1964 cannot be extended by Department of Justice regulations to secure redress for disparate impact discrimination based on national origin).

There are remedial problems in criminal cases as well, but they are rarely a major subject of Remedies courses in law schools, and only a minor aspect of this course.

The structure and the requirements of this course, including the cases assigned for reading, have changed somewhat since I first taught it at Loyola (fall term, 2004). The principal cases assigned for reading this semester, for example, include five Supreme Court cases that were decided in 2007 or 2008. But there are two sets of "truths" about the course that attach to the nature of the subject matter and so have been and will remain constants for so long as I teach it.

First, the subject matter is very broad, and draws on many courses you have taken or may take at Loyola. Contracts, Torts, Constitutional Law, and Federal Civil Procedure bear on the subject matter of this course. So also do courses (*e.g.*, Commercial Transactions, Federal Taxation) that, like Remedies, are grounded, in part, on the reading and application of statutes and implementing regulations or rules,<sup>1</sup> or are "transubstantive," meaning that the problems it considers

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<sup>1</sup> The law of commercial transactions and federal taxation is each based principally on a single statute (and in the case of federal taxation, implementing executive branch agency regulations), though a very complicated one in each instance: the Uniform Commercial Code and the Internal Revenue Code respectively. (This does not suggest that the case law construing these statutes is unimportant; to the contrary, it is an important way we come to understand what the statutes mean.) In contrast, the law of remedies is based only in part on statutes and codified rules, and then on many of them, from multiple sources (the 50 states and the federal government). In federal court cases bearing on the law of remedies, the most common rules and statutes that come into play are the Federal Rules of Civil Procedure and various federal statutes that establish and define available remedies. The most important federal remedial statute for purposes of this course is 42 U.S.C. §1983, the statute that creates a cause of action for violations of federal law by persons acting under color of state law. (Section 1983 itself is the subject of a separate course at some law

arise in all substantive areas of the law. Examples of other transubstantive courses are Federal Civil Procedure, Evidence, and Professional Responsibility.

Second, the law of remedies does not offer up reliable predictors of what a court or jury will do in any particular case, much as the law of liability does not offer up such predictors. That is one reason why so many cases settle. But even in cases that settle, the law of remedies is apt to shape the settlement profoundly. Reading appellate cases and notes about them in a casebook tends to obscure the uncertainty, in terms of predicting the particular remedy, if any, in a case, because the appellate courts are always looking at remedies *ex post*, when the remedy the court or jury extended or did not extend is known and the appellate court is being asked to decide whether any remedy, or a particular remedy, was appropriate. In contrast, remedial issues as they arise in litigation are always *ex ante*: the litigants and their lawyers do not know, at the outset of the case or at any time thereafter until the case is concluded, what will be the remedial resolution. Indeed, in some equitable relief cases, what might be thought of as the “conclusion” of the case, the initial entry of an injunction, may well be just the beginning of a protracted remedial process of enforcing, modifying, and ultimately terminating the injunction, so that remedial issues remain *ex ante* for years or even decades *after* entry of an initial injunction.

## **II. Who Should Take This Course?**

It is difficult to make a strong case for taking any particular elective course in law school, Remedies (at Loyola and at all law schools) being an elective. This is in part because the practice of law is now, in general, so specialized, that no one elective is certain to be of meaningful utility to the law student; whether it will prove to be will turn on his or her specialty. Much more important, experience in practicing law is more efficacious pedagogically than any single law school course: whatever deficits you incur in your law school education by virtue of not taking a course can be made up by work experience.

Having said that, there is, in my view, a stronger case for taking Remedies than many other electives. Several factors warrant this conclusion. First, Remedies is a course about what happens or does not happen in civil litigation, and many lawyers, even if they do not specialize in litigation, do some civil litigation--meaning that litigation related courses are apt to be of much greater practical utility than, say, an elective in patent law or intellectual property law, which attract many fewer practitioners. Second, the course is, as noted, transubstantive, so that remedial problems come up in cases across all subject matter areas, regardless of the type of civil litigation in which law students may eventually become involved in practice. Third, anyone who conducts civil litigation

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schools, though only a relatively small subset of the subject matter of this one; that it sometimes is the subject of a separate course, however, suggests the breadth of the subject matter in this one). The law of remedies is otherwise based on the federal and state constitutions and on federal and state common law. The principal cases assigned for reading illustrate the diversity of the primary authority (federal and state constitutions; federal and state statutes, federal and state rules and regulations, including the Federal Rules of Civil Procedure; federal and state common law) grounding the law of remedies.

will encounter remedial problems *all the time*: the more complex the litigation, the more complex the problems, and the more often they arise--and arise again, sometimes over many years in a single case. Indeed, while it is generally true that courts and juries need not finally resolve remedial issues unless plaintiffs prevail as to liability (no liability; no remedy), the law of remedies is apt to shape, profoundly, the actual litigation of the case (regardless of whether liability is established) because the liability and remedy phases of the litigation are often (not always, to be sure) litigated or settled together. Indeed, sometimes liability is conceded and the entire litigation is about the appropriate remedy. See *Walgreen Co. v. Sara Creek Property Co.*, 966 F.2d 273 (7<sup>th</sup> Cir. 1992). Finally, Remedies is a subject of examination on the Illinois bar examination and, I believe, most other state bar examinations as well.

The last stated reason for taking Remedies is, understandably, one of importance to law students. So, beginning with the fall 2006 incarnation of the course, I sought to make a meaningful course tilt in the direction of bar examination preparation, by paying more attention to the “remedial rules” the case law offers up and that the bar examiners might like to be proffered on the bar examination.

While the course should assist students taking it to prepare for bar examinations that “test” on Remedies, students should *not* take the course, or any law school course for that matter, in order better to prepare for the bar, and should not confuse the “remedial rules” that the course will offer up, with a sophisticated understanding of the subject matter. For one thing, law school courses are not intended to prepare students for the bar examination, but to help them think like lawyers and to impart knowledge about the subject matter being taught. It is bar review courses, which you all will take, that are intended to prepare you for the bar examination, and they are *very* good at what they do. For another, whatever value remedial rules, so-called, might have for purposes of taking a bar examination, they are of much more limited value for purposes of litigating cases. For the remedial result in any particular case will much more often turn on the facts of the case than on any particular remedial rule. Moreover, such rules as the case law or the commentators might proffer are sometimes indeterminate, meaning unsettled or unclear, and, as noted, poor predictors of the result in any particular case to boot, not only because of varying facts among cases, but because of the phenomenon of “result orientation” and the vagaries, including biases, of individual judges.

### **III. Remedial Goals and Principles**

You are blessed--as am I--with an outstanding casebook: *Remedies: Public and Private* (Fourth Edition, 2006). The casebook’s authors are David I. Levine, David J. Jung, David Schoenbrod, and Angus Macbeth. There is a Fall 2008 Supplement to the casebook (“2008 Supplement”). The 2008 Supplement will be provided to you online (or, on request, in hard copy). For purposes of the assigned readings, the 2008 Supplement is part of the casebook, so that students are expected to review the 2008 Supplement insofar as it corresponds to the assigned readings in the casebook proper.

One way to understand the quality of the casebook, including the 2008 Supplement, is to read the preface to its first edition--which is assigned as part of the first week’s reading. There, the authors set for themselves an extraordinarily high standard. In my view, they meet it.

The casebook authors appropriately emphasize three goals bearing on the provision of judicial remedies: rightful position, the declaration of rights, and the punishment of a defendant for wrongdoing. Casebook at 3. These three remedial goals are designed to secure redress for the wronged party or, as to the goal of punishment, arise out of the wrong for which a party seeks redress. (I therefore refer to these goals as “redress goals”). The provision of judicial remedies is also determined by “legal order principles,” which are ones that enforce structural elements of the legal order. Such structural elements include, for example: sovereign immunity; separation of powers; subject matter jurisdiction, justiciability doctrines, such as mootness, standing, and ripeness; various remedial defenses, such as unclean hands, estoppel, waiver, and statutes of limitations; constraints on the availability or scope of particular remedies, such as federalism and the doctrines of avoidable consequences and collateral sources; and the restriction of meaningful access, as by attorney’s fee rules, to legal representation. Such structural elements also include the undercompensation feature of the remedial terrain, which refers to the extent to which, in many cases, damages and injunctive relief, even when awarded, do not fully redress the injury in fact suffered by plaintiffs. The casebook reviews, to a greater or lesser extent, but always knowledgeably, all such structural elements. Yet it does not expressly give focused or sustained consideration to the question of the play and importance of the legal order principles as against the legal redress goals in determining the availability and scope of judicial remedies. A recurring theme in this course is nonetheless the competition, in particular cases and in runs of cases, between the redress goals, especially rightful position, and the legal order principles.

#### **IV. Class Sessions, Queries, Criticisms, And Expert Panels**

The class meets twice a week, for three hours: one hour on Monday (6-7 p.m) and two hours on Wednesday (7-9 p.m.). I recognize that a Loyola hour, like that at most law schools, is in fact 50 minutes.

Every class, except the last one, which will be a review class, will follow the same format.

The usual format will follow, in part, from my commitment to teach the course in a way that will offer some assistance to students in preparation for the bar examination. Thus, the first five to ten minutes of each class session (whether a one hour or two hour class) will be taken up by my review of the basic remedial principles (or “rules” if you like, the type of “rules” you can nicely invoke in response to a bar examination question) that are the subject of the assigned materials for that class session. I do not forswear the familiar Socratic dialogue during this five to ten minute period, but such dialogue will be the exception. Then, following that review, we will turn to the principal cases in the casebook assigned for that week. I will make a strenuous effort to foster discussion, in class, of all of the principal cases assigned for reading during the week for which they are assigned. (It will not, however, be possible to discuss all, or even many, of the notes that follow some of the principal cases). Does this mean that all principal cases assigned will receive equal treatment (equal discussion time)? Surely not; some principal cases merit extended discussion and some do not.

On the first day of class, I will circulate a seating chart. Please assign yourself a seat and sit in the same seat for each class session. On the first day of class, I will also circulate the Registrar’s

enrollment list of students in the class. You are asked to set forth your preferred e-mail address on the list. I'll then utilize the resulting set of addresses to communicate with the class as a whole, when that is appropriate. One appropriate set of opportunities for communicating with members of the class will be to answer questions students pose to me by e-mail. I will try to answer all such questions, though without identifying the questioner. The extent of my answer will probably depend more on the time I have available to answer it than on any other factor. But I will offer some answer to every question posed. A student's grade will not be affected by whether (s)he asks me such questions or what they are. There will, moreover, always be an opportunity to ask questions in class or by appointment with me, which students should not hesitate to request.<sup>2</sup> Finally, the learning process throughout law school demanding reasonably regular and punctual attendance--and the Law School, in any event, requiring such attendance--for each class I will place on my desk a listing of all the students in the class. Please initial this list by the end of each class to denote your attendance at it.

I began to use so-called "expert panels" during the fall term 2005, and they have worked well, both in my view and, apparently, in the view of the students in the class (No student has ever criticized them; many students have praised them). During the first week of class, but not *for* the first week of class, every student will be assigned to an expert panel. The assignments will be by alpha order. There are 14 weeks of classes, but there will be no expert panel for the first and last week of classes. For each of the other 12 weeks of classes, there will be an expert panel assigned for the classes during that week. Expert panel assignments will be such that every student will be assigned to be on an expert panel for the same number of classes, but for no more than three weeks of class sessions.

Expert panel members for a particular week are expected to: (a) attend the class sessions for that week; (b) be "fully prepared" to discuss the assigned material, meaning that they will have fully and closely reviewed this material. During their expert panel assigned weeks, expert panel members will be the students I will call on in the first instance and the students I will expect to offer answers to questions I pose to the class. That a student is not a member of the expert panel for a particular week is not meant to discourage him or her from participating in the class discussion--that is, to the full extent that his or her preparation, ability, and willingness to participate so permits. In other words, even if a student is not on the expert panel for a class, I do expect him or her to be prepared enough that (s)he can benefit from the class discussion and to participate in the discussion as a volunteer.

Any member of an assigned expert panel may switch expert panels with any other student

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<sup>2</sup> Students should also not hesitate to criticize, at any time during the semester (the earlier the better, however), aspects of the course, including, in particular, its instructor (me). Students should be unsparing in this respect; I cannot be properly responsive to legitimate criticisms that are watered down. Moreover, if any students harbor a fear of grade retaliation for criticisms they might make, they may put their fears to rest, as students are free to criticize the course and me, by an e-mail sent from an anonymous e-mail address or by an unsigned note left in my mailbox in the adjunct faculty office.

in the class for one or more of his or her assigned weeks at will and for any reason, and must switch for one of his or her assigned weeks if he or she not going to be in attendance for either of the class sessions for that week. I require only that I be notified of the switch by the beginning of the first class of the originally assigned expert panel week. If switching proves impossible because a student wishing to switch cannot find a willing colleague with whom to switch, then a student may unilaterally re-assign himself or herself to another expert panel. Please notify me of the unilateral re-assignment, prior to the start of first class session of the originally assigned expert panel week.

I recognize that all of you have important and legitimate responsibilities and allegiances outside of this course, and that sometimes, often, or maybe all the time, those responsibilities and allegiances will take precedence over the course. However, such responsibilities do not excuse reasonably regular class attendance (and *perfect* class attendance during one's expert panel weeks) and reasonable preparation for each class, consistent with the flexible expectations set forth above.

Students enrolled in the course are expected to review the syllabus prior to the first class. Neither this expectation, nor that a student who wants to enroll in the course may have missed the first class or two should discourage students from signing up for the course after the beginning of classes, and within the permissible period for adding classes. Students who sign up late will, to be sure, have some catching up to do, but that is a manageable task, achievable in part by reading this syllabus.

## **V. Some Background Principles Bearing On The Law Of Remedies And Some Advice**

Based on my experience in teaching this course, I have found it useful to set forth, in the syllabus itself, some background principles bearing on the law of remedies that students would do well to keep in mind. These principles are as follows.

1. To establish liability—that is, to establish that plaintiff litigants have been wronged--plaintiffs need the court to accept their theory of liability (which is often called a “cause of action” or a “claim for relief”), and they must be able to prove the facts underlying their theory of liability. Not until plaintiffs establish liability need a court or jury *resolve* remedial questions (no liability, no remedy), but the theory of liability may constrain the type and scope of the remedy that may be extended, if liability is established. Moreover, even if liability is not ultimately established, the law of remedies is apt to shape profoundly the actual litigation of the case, because, as noted, the liability and remedial phases of the litigation, especially in more “routine” cases (which is to say, most cases) are apt to be litigated or settled together.

2. A court or jury decides whether plaintiff litigants have been wronged under the substantive law; a court conducts its liability inquiry under the procedural law. While, for some purposes, a court may hold a remedy to be “substantive,” *see Monesson Southwestern Railway Co. v. Morgan*, 486 U.S. 330, 336 (1988), and for other purposes, it may deem it to be “procedural,” *see French v. Dwiggin*, 9 Oh. St. 32, 458 N. E. 2d 827 (1984), it is better to think about the law of remedies as falling somewhere between the law of substance and procedure, distinct from, though overlapping with, both.

3. Under the federal Rules Enabling Act, 28 U.S.C., §2071 *et seq.*, the Federal Rules of Civil Procedure regulate only *procedure*. That is why the Rules do not say anything about the *substantive* law of remedies. That is not to minimize the importance of the Federal Rules in the litigation of cases, so far as the consideration and resolution of remedial questions in the federal courts are concerned.

4. There is something called “federal common law” and there is a federal common law of remedies.

5. The Bill of Rights constrains only governmental conduct, not private conduct and, of all the Amendments, only the Thirteenth Amendment constrains private conduct at all. With some significant exceptions, *e.g.*, U.S. CONST. amend X, XI, XXI, section 2, the amendments to the United States Constitution do not confer any constitutional rights on the government. Most particularly, the government has no “due process” rights, though it may have certain procedural rights, under the Federal Rules of Civil Procedure, or local district rules, or federal common law, that parallel due process rights.

6. The federal constitutional basis for federal and state courts directing state and local officials to do or not to do this or that in order to remedy violations of federal law, is the Supremacy Clause, U.S. CONST., Art VI, cl. 2.

Here is some advice that may help you do well in the course.

First, don’t approach the course as if the goal were to learn sets of remedial rules for cases in different subject matter areas, one set of rules being, for example, appropriate for contract cases, another set for tort cases, another set for land cases etc. For one thing, the casebook is not organized like that, which is what the editors/authors mean when, in Chapter 1, they refer to the casebook’s “transsubstantive” approach. In any event, you will do better to focus on the process of remedial decision making, across subject matter areas and in public and private law cases. One good way to come to understand the process well is to pay extremely close attention to the detailed Table of Contents, for it is nothing less than a topical map and a road map of the entire course.

Second, remedies are often categorized by their function or by their form, *e.g.*, preventive remedies, compensatory remedies, injunctions, damages, specific remedies, substitutionary remedies. It is often useful to think about remedies in terms of both their function and their form, and I encourage you to do so. But you should not become preoccupied with how particular remedies might fit into a particular classification scheme. It is more important to consider what remedies are available, what specific remedies offer, and the factors explaining whether specific remedies are available or not.

## **VI. Answers to *Country Lodge v. Miller* Problems, Final Examination, Grading**

A distinctive and outstanding feature of the casebook is a set of problems, referred to as the *Country Lodge v. Miller* problems (or simply “*Country Lodge* problems”). The problems all present questions arising out of a dispute between Ms. Miller, who owns an apple orchard, but also a plant,

on Rural River, to press and bottle apple cider, and Country Lodge, an inn located downstream from the plant. The initial problem in the casebook, in Chapter 1, is denominated Problem: *Country Lodge v. Miller*. The table attached to this syllabus (“*Country Lodge* Table”) is relevant to study of this initial problem, and understanding the table, as it should be completed, will be helpful to students throughout the course: if you come to understand how and why the *Country Lodge* table is completed as it should be, you will already be a good way along in understanding many of the most important principles of the law of Remedies. Your close attention to the table is therefore strongly recommended. We will, however, not discuss the table as such till the third week of class, if we are able to adhere to the schedule below. Nonetheless, you should review the *Country Lodge* table at the outset of the semester, and, during the first three weeks of class, consider how it might properly be completed.

The problems following the initial *Country Lodge* problem in the casebook are all denominated Problem: *Country Lodge v. Miller (Reprised)*. The “reprised” problems involve factual variations, often wide ones, on the initial problem.

Each student will be required to submit written answers to two “answer eligible” *Country Lodge* problems that are included among the casebook materials assigned for reading.<sup>3</sup> Students must submit at least one answer to Group I problems and one answer to Group II problems. (Four *Country Lodge* problems are designated as “double problems”; treatment of double problems is discussed below). Group I *Country Lodge* problems are the problems included in the case materials assigned from Chapters 2-4 of the casebook; Group II *Country Lodge* problems are the problems included in the case materials assigned from Chapters 5-10 of the casebook. Answers to Group I problems must be submitted within two weeks after, under the syllabus, we will have completed discussion of the materials assigned for the respective chapter. (Thus, answers to *Country Lodge* problems in Chapter 3 must be submitted by October 15, because that date is two weeks after we will, under the syllabus, have completed discussion of the Chapter 3 materials assigned).<sup>4</sup> With one exception, answers to Group II problems must also be submitted within two weeks after, under the syllabus, we will have completed discussion of the materials assigned for the respective chapter. (Thus, answers to *Country Lodge* problems in Chapter 6 must be submitted by November 5, because that date is two weeks after we will, under the syllabus, have completed discussion of the Chapter 6 materials assigned). The exception is that any answers to the *Country Lodge* problem at 887-88—under the syllabus, we will have completed discussion of the materials that include this problem on November 19, 2008—are due by November 30, 2008). The required timing of the submissions of the *Country Lodge* problems is grounded on students’ preparation for the final

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<sup>3</sup> “Answer eligible” *Country Lodge* problems are *all* such problems included in the chapters (or subsections of chapters) that are part of the reading assignments, except for the problems at pages 4 and 582 of the casebook.

<sup>4</sup> Also, the *Country Lodge* problem at p. 5 of the casebook, in Chapter 1, is deemed a Chapter 3 problem for purposes of the *Country Lodge* answers. The same problem is also a “double problem.” See p. 10 below.

examination.<sup>5</sup>

There is a type volume limitation to the *Country Lodge* problem answers: 700 words a problem, which is, roughly, 2½ typed pages (double spaced). The word limitation will be enforced by grade penalties for oversized answers.<sup>6</sup> Students may consult any written materials they wish to in answering the *Country Lodge* problems, though I strongly recommend restricting your “research” to the casebook materials and the class discussions. But students may not consult with one another in writing their answers. The grading will, of course, be anonymous, meaning that the answers must be accompanied either by the student’s Loyola ID number, or, if it is available, the student’s examination number, but not the student’s name. Answers should be submitted in a plain envelope, unmarked on the outside except for the identification of the problem and the student’s ID or examination number. Answers may be submitted to me in class or placed in my mailbox in the adjunct faculty office at the law school.

Because students will be submitting written answers to the *Country Lodge* problems, they will only rarely be the subject of class discussion—except for the initial problem, which we will

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<sup>5</sup> I required written answers to the *Country Lodge* problems for the first time to students in the fall term 2006 Remedies class. Many students in the 2006 and 2007 classes told me that having to write answers to the *Country Lodge* problems was an excellent learning device and helped them considerably in preparing for the final examination.

Answers to the *Country Lodge* will be graded on a 10 point scale. Every grade will be accompanied by a written evaluative comment. (Sometimes, a single evaluative comment will cover several answers). To assist students in preparing for the final examination, I will distribute the comments to all the answers to the *Country Lodge* problems to the entire class (but without identifying the students submitting the answers) prior to the final examination. Specifically, I will employ my best efforts to return all graded answers, with comments, to the Group I *Country Lodge* problems submitted to me within two weeks of their submission but, in any event, not later than October 22. Graded answers with comments to the Group II *Country Lodge* problems will also be returned within two weeks of their submission, but in any event, not later than November 30 (except for answers submitted after November 19 which will be returned not later than December 6). The timing of the corresponding distribution of the comments to all *Country Lodge* problem answers will ensure that all students will receive all such comments prior to the December 8 final examination.

<sup>6</sup> Each answer to a *Country Lodge* problem must be accompanied by a completed certificate reading as follows:

My Loyola [examination or ID] Number is \_\_\_\_\_. I hereby certify that the answer accompanying this certificate includes \_\_\_ words, according to the word counter of the word processing program [identify word processing program] used to prepare the paper. I also certify that I did not consult with anyone else or give or receive assistance to or from anyone else in preparing this answer.

discuss at some length in class, in connection with completion of the *Country Lodge* table.

The double *Country Lodge* problems are in the casebook at: pages 5, 96, 585, and 887-88. Students choosing to answer a double problem will be allotted 1400 words to answer the double problem, and, for a student answering one or more double problems, only the two highest of the grades given to all the answers the students submits will be counted. (Thus, if a student receives a 7 on her answer to a Group I problem, but a 9 on her answer to one of the Group II double problems, then her grades for the *Country Lodge* answers will be “9” and “9”). There is, therefore, a grade incentive to submitting answers to double problems. Please note, however, that students will not be able to meet the requirement that they answer two of the *Country Lodge* problems by answering just one double problem. This is because students are required to answer at least one Group I problem and one Group II problem, and answering just one double problem, but no other problem, will not succeed in answering problems in both groups. Also, if a student submits an answer to a double problem, he or she must submit an answer to the entire problem.

Except for some students, the *Country Lodge* problem answers will count for 25% of the final grade, and the final examination 75% of the final grade. If the size of the class is 25 or more students, all final grades must be keyed to the Loyola curve. If the size of the class is fewer than 25, then I will utilize the Loyola curve as a floor for grades, but not as a ceiling.

Students who consistently distinguish themselves in class discussions will have their classroom performance taken into account in the final grading process, and their grade adjusted upward accordingly by as much as one full grade (“B” to “A”). Accordingly, outstanding class participation will help students achieve a higher grade than they would otherwise, but lesser class participation will not hurt anyone’s grade, unless it is distinctly poor (which would almost certainly be the case only if, during one or more of the student’s expert panel weeks, he or she did not attend the class at all or showed him(her)self to be manifestly unprepared). Finally, achieving such an upwards boost is not a chimera: students in each Remedies class I have taught at Loyola (2004-2007) have won upwards adjustments.

## VII. Reading Assignments <sup>7</sup>

The most prudent approach to the reading assignments will be to have completed all the reading for any week by the first class for that week, and expert panel members will be expected to have done that for their assigned weeks.

### Week One (8/25, 8/27)

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<sup>7</sup> The “2008 Supplement Cases” assigned for reading (all of which are denominated by their case names and citations) refer to cases in the 2008 Supplement. The reading assignments also include “Other Assigned Cases,” which are cited to the official or West reporters. As to these cases, students are expected to download them from LEXIS or WESTLAW and to bring them to class for the class sessions in which they will be discussed.

Casebook: Preface to the First Edition; Preface to the Fourth Edition

Casebook: Chapter 1.A, 1.B, 1.C (introductory note only at 10-12)

Chapter 2.A

Chapter 4 (introductory note only at 418-20)

Chapter 6.A (introductory note only at 558)

Chapter 7.A

Other Assigned Cases:

*Edelman v. Jordan*, 415 U.S. 651 (1974) (majority opinion only).

*Brown v. Bd. of Educ.* 347 U.S. 483 (1954) (“*Brown I*”)

*Brown v. Bd. of Educ.* 349 U.S. 254 (1955) (“*Brown II*”) (in casebook at 107)

Week Two (9/3)

Casebook: Chapter 1 (pp. 13-32)

2008 Supplement Case:

*Wilkie v. Robbins*, 127 S. Ct. 2588 (2007)

Other Assigned Cases:

*United States v. Virginia*, 518 U.S. 515 (1996) (majority and concurring opinions only)

Week Three(9/8, 9/10)

Casebook: Chapter 2.B-C

Supplementary Table:

*Forward Always, Backward Always: Remedies in a Traditional Private Law Case*, see Casebook, Problem (*Country Lodge v. Miller*) at 4.<sup>8</sup>

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<sup>8</sup> The referenced table is attached to this syllabus.

Week Four (9/15, 9/17)

Casebook, Chapter 2.D (excluding notes at 129-31 and chapter 2.D.2(a)), 2.E.

Other Assigned Cases (to be read after *Swann*):

*Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007) (plurality opinion, Kennedy concurrence and Breyer dissent only)

Week Five (9/22, 9/24)

Casebook, Chapter 3.A, B.3-4

Week Six (9/29, 10/1)

Casebook: Chapter 3.C. 1 (pages 310-328 only) 2, 4-5

Week Seven (10/6, 10/8)

Casebook, Chapter 4 (excluding *Poe* and notes following and *Teva Pharmaceuticals USA Inc.*).

2008 Supplement Case:

*MidImmune, Inc. v. Genentech, Inc.*, 127S.Ct.764 (2007)

Week Eight (10/13, 10/15)

Casebook, Chapter 6.A-C (excluding material after notes at page 670).

Week Nine(10/20, 10/22)

Casebook: Chapter 6.D (excluding materials at pages at 693-98), 6 E.1

Supplementary Case:

*Hawkins v. McGee*, 84 N.H. 114, 146 A. 641 (1929).

Week Ten(10/27, 10/29)

Casebook, Chapter 5.B.C.

2008 Supplement Cases:

*Phillip Morris USA v. Williams*, 549 U.S. 346 (2007)

*Exxon Shipping v. Baker*, 128 S. Ct. 1183 (2008)

Week Eleven (11/3, 11/5)

Casebook, Chapters 7.B-E

Week Twelve (11/10, 11/12)

Casebook, Chapter 8

Week Thirteen (11/17, 11/19)

Casebook, Chapter 9.A-C

Week Fourteen (11/24, 12/1, 12/3 (includes make up classes for Labor Day and Thanksgiving Day holidays. Last class session will include at least a one hour review class).

Casebook, Chapter 10 A-C

Lincoln's Second Inaugural Address (at <http://www.yale.edu/lawweb/avalon/presiden/inaug>, among many other sources on the internet).

Loyola University of Chicago School of Law

REMEDIES

Forward Always, Backward Always: Problem, Country Lodge v. Miller (Casebook, p.4)

Remedies in a Traditional Private Law Case \*

	Specific remedies for future harm	Substitutionary remedies for future harm	Substitutionary remedies for past harm
Plaintiff's rightful position			
Defendant's rightful position			
Punishment			
Enforcement of remedies			

\* The completed table and class discussion should illuminate why the table is titled “Forward Always, Backward Always.”. Compare “Forward Always, Backward Always” with “Forward Ever, Backward Never,” usually attributed to Kwame Nkrumah, the first president of Ghana.