

REMEDIES (LAW 628)

FALL 2025

Prof. Conley

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Office Hours: Monday 1:30-3:30 pm & Thursday 8:30-10:30 am

Learning Goals:

- Understanding foundational concepts of types of remedies, including equitable, restitutionary, declaratory and damages.
- Learn and apply the standards for permanent and preliminary injunctions and temporary restraining orders.
- Learn and apply the standards for declaratory judgments and restitution.
- Develop understanding of contract remedies including specific performance, and expectation and reliance damages.
- Develop understanding of damages categories recoverable in tort actions including compensatory damages, punitive damages, and nominal damages.
- Develop understanding of statutory damages and attorney's fees.

Assigned Reading:

- Nicholas Emanuel, Remedies: Basic Principles, Authorities and Problems (Carolina Academic Press 2022)
- Provisions of the Montana Code Annotated are set forth below and accessible on Lexis, Westlaw, or <https://leg.mt.gov/bills/mca/index.html>
- Case excerpts posted on Canvas
- Cases accessible on Lexis or Westlaw

Each student is expected to come to class having read and analyzed the text and assigned cases and/or statutes and be prepared to discuss the assigned reading.

In Class Workshops: Throughout the semester we will do in class workshops to synthesize and apply what we have learned. Students will be expected to come to class having outlined the key rules in applicable statutes and cases studied in preparation for each workshop. The workshop will provide practice exams to students to apply rules and concepts as we learn them. The practice questions will be posted on Canvas.

Graded Assessments:

- There will be an open book mid-term exam (40%) and an open book cumulative final exam (60%).
- The tentative mid-term date is Friday, 10/17 from 1:30 – 4:30 pm.
- The tentative final exam date is Monday, 12/9 from 9 am – 12 pm.
- The mid-term will cover classes 1 – 13, and the final will cover classes 1 – 26.
- For both exams, the following apply:
 - Exams will be graded anonymously and must include student numbers.
 - Students will have access to their computers but will not have access to the internet.
 - Both exams will have a mixture of multiple choice and hypothetical essay questions.

- Cut and paste will be disabled for both exams.
- Essay answers will have a word limit of 750 words.

Attendance: Students will struggle to succeed in this class if they do not attend class regularly. As such, regular attendance is expected.

In class expectations: Each class will have a heavy class participation component. This will include in class applied learning in groups and individually in **every class**. The only way this works is if every student comes to class having fully read and synthesized the readings. There is intentionally less reading in this class to provide space for significant in-class applied learning. Due to the significant amount of in class participation, respectful and supportive communication among all class participants is important and expected.

Office hours: Office 207, Monday 1:30-3:30 pm & Thursday 8:30-10:30 am and by appointment.

Accommodations: The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and the Office for Disability Equity (ODE). If you think you may have a disability adversely affecting your academic performance, and you have not already connected with ODE, please contact ODE through one of the options listed at <https://www.umt.edu/disability/Students/inquire/default.php>. The Law School will work with you and ODE to provide an appropriate accommodation. Retroactive accommodation requests will not be honored, so please, do not delay.

Academic honesty: ABIII Honor Code and UM Conduct Code apply. All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code of the University of Montana. The Code is available for review online at <https://www.umt.edu/campus-life/community-standards/default.php>.

Use of Generative AI

- We may utilize generative AI as a class during in-class exercises.
- Students are **expressly prohibited** from utilizing generative AI for any **graded assessments**.
- Additionally, students are strongly discouraged from using generative AI to summarize assigned cases prior to reading the case. Why?
 - This class is designed to hone the ability to synthesize, assess and digest complex materials. Using generative AI prior to doing this yourself will be a huge missed opportunity to develop this critically important skill. After synthesizing, assessing and digesting the assigned reading, students should feel free to utilize generative AI as a learning tool, but such use should not replace the process.
 - Many former students have communicated how useful this course is as bar prep. Using shortcuts in place of ensuring you understand the material will reduce this benefit for you.
 - Taking the mid-term and final will require that you apply the complex concepts discussed in class. Ensuring you understand these concepts will be crucial to doing well on the exams.
 - Your beautiful brain loves to work out. Don't deprive it of what it loves.

CLASS SCHEDULE AND READING

8/26 – Class 1 – Introduction & Introduction to Equitable Remedies

- Emanuel, 3-9
- Montana Constitution, Article II, Section 16
- MCA 1-3-214

8/28 – Class 2 – Permanent Injunctive relief – General introduction and federal standard

- Emanuel, 237-247
- Perkins Coie LLP v. United States Department of Justice Excerpt (Canvas)

9/2 – Class 3 – Permanent Injunctive relief – state standard

- City of Whitefish v. Town Pump, Inc., 2001 MT 58
- Montana Code Annotated provisions regarding injunctions
 - MCA 27-19-101
 - MCA 27- 19-102
 - MCA 27-19-103
 - MCA 27-19-105

9/4 – Class 4 – Temporary Injunctive Relief – Introduction

- Emanuel, 252-255, 266-280

9/9 – Class 5 – Temporary Injunctive Relief cont'd– Temporary Injunctive Relief cont'd

- Montana Code Annotated 27-19-201 (Read 2025 amended version on Canvas)
- Montana Code Annotated 27-19-315
- Cross v. State Excerpt (Canvas)

9/11 – Class 6 Nationwide Injunctions and Administrative Stays (Canvas)

- Trump v. Casa Excerpt (Canvas)
- Barbara v. Trump (Canvas)
- Trump v. Wilcox (Canvas)

9/16 – Class 7 – Specific Performance – General and state standard

- Emanuel, 357-366
- Montana Code Annotated provisions regarding specific performance
 - When specific or preventive relief permitted. MCA 27-1-401
 - How specific relief given. MCA 27-1-402
 - How preventative relief given. MCA 27-1-403
 - When specific performance of an obligation may be compelled. MCA 27-1-411
 - Obligations which cannot be specifically enforced. MCA 27-1-412
 - Specific performance not to be oppressive. MCA 27-1-413
 - Parties who cannot be compelled to perform. MCA 27-1-415

- Parties who cannot obtain specific performance. MCA 27-1-416

9/18 – Class 8 – In Class Injunctive Relief Workshop

9/23 – Class 9 – Restitution

- Emanuel, 301-302, 325-326
- Cause of action for breach of promise abolished – right to damages for fraud and unjust enrichment preserved. MCA 27-1-602
- Constructive trust. MCA 72-38-123
- Volk v. Goesser, 382 Mont. 382 (2016) (skip paragraphs 29-34, concurrence and dissent)
- Northern Cheyenne Tribe v. Roman Catholic Dioceses 368 Mont. 330 (2013)

9/25 – Class 10 – Contempt

- Emanuel, 415-422, 430 – 434, 437

9/30 – Class 11 – Declaratory Relief – general and federal standard

- Emanuel, 281-291
- 28 USC 2201
- Fed. R. Civ. P. 57

10/2 – Class 12 – Declaratory Relief – state standard

- Gryczan v. State, 283 Mont. 433 (1997)
- Mont. R. Civ. P. 57
- Purpose – liberal construction. MCA 27-8-102
- Scope of power to render declaratory judgments. MCA 27-8-201
- Who may obtain declaratory judgment. MCA 27-8-202
- When a contract may be construed. MCA 27-8-203
- Supplemental Relief. MCA 27-8-313

10/7 – Class 13 – Injunctive Relief, Declaratory Relief, Injunctive Relief and Contempt Workshop

10/9 – Class 14 – Damages – Introduction, Compensatory Damages

- Emanuel, 15-29
- Detriment defined MCA 27-1-201
- Right to Compensatory Damages MCA 27-1-202
- Damages to be Reasonable. MCA 27-1-302

NO CLASS 10/14

NO CLASS 10/16

MID-TERM (TENTATIVE) 10/17 – Classes 1 – 13 will be covered

10/21 – Class 15 – Damages – Tort damages –Bodily Injury – Special and general damages

- Emanuel, 29-33, 39-52, 59-62
- Breach of obligation other than contract. MCA 27-1-317
- §1310 Pleading Special Damages – In general, Fed. Prac. And Proc. Wright and Miller
- MT. R. CIV. P. 9(G), F.R.C.P. 9(G)

10/23 – Class 16 – Damages – Tort damages – Real Property

- Emanuel, 62-74, 34-37

10/24 – Class 17 – Damages cont'd – Contract damages FRIDAY 2:30 – 4:00 PM – MAKE-UP CLASS

- Emanuel, 112-126

10/28 – Class 18 – Contract damages cont'd, Liquidated damages and Limitations of Liability

- Emanuel 135-140
- MCA 27-2-702
- Zirkelbach Construction Inc. v. DOWL LLC (Canvas)
- Exxon Mobil Corp. v. AEC Excerpt (Canvas)

10/30 – Class 19 – Calculating Damages

- Emanuel, 149-50, 157-162, 169-170, 175-191

10/31 – Class 20 – Damages cont'd – Economic Loss Rule – FRIDAY 2:30 – 4:00 PM – MAKE-UP CLASS

- Emanuel, 91-111
- Romo v. Shirley, 2022 MT 249

11/4 – Class 21 – Compensatory damages in-class workshop with refresher on non-damages remedies

11/6 – Class 22 – Statutory damages, nominal damages

- Emanuel, 441-452
- Statutory Damages Provision Examples
 - Damages – Montana Consumer Protection Act. MCA 30-14-133
 - Limitation on Government Liability for damages in Tort. MCA 2-9-108

11/11 NO CLASS

11/13 – Class 23 – Nominal Damages

- Nominal damages when no appreciable detriment. MCA 27-1-204
- Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021)

11/18 – Class 24 – Punitive damages – Process and Liability

- Emanuel, 197-199, 203-217
- Punitive damages – when allowed – limitation. MCA 27-1-220
- Punitive damages – liability – proof – award. MCA 27-1-221(1)-(7)(a)
- Insurance Coverage of Punitive Damages. MCA 33-15-317

11/20 – Class 25 – Punitive damages – Award Amount

- Emanuel, 217-225
- Punitive damages – when allowed – limitation. MCA 27-1-220(3)
- Punitive damages – liability – proof – award. MCA 27-1-221(7)(a)-(c)
- McCulley v. U.S. Bank of Montana, 347 P.3d 247 (2015)

12/3 - Class 26 - Attorney's fees

- Forward Montana v. State, 416 Mont. 175 (2024)
- 42 USC 1988
- Buckhannon Bd. & Care Home Inc. v. W. Va. Dept. of H&HS EXCERPT (Canvas)