SYLLABUS: REMEDIES (REMD-300-E) – Fall 2021
Prof. Randy Gordon; Moderator Munish Barin

I have created a website for this course at the TWEN site associated with Westlaw. Class members are authorized to register with the class:

The **Access Code** is as follows: **RemediesSU2021**

Please review the Ten Guidelines for Zoom Classes on the TWEN site in the Syllabus and Lecture Supplements tabs. Resources concerning reporting sexual assault are also listed with the Syllabus.

1. **Required Texts:**


   b. Supplemental Materials:

      *Selected Articles – See Articles Tab on TWEN site:*


      Public Citizen, Medical Misdiagnosis in Washington: Challenging the Medical Malpractice Claims of the Doctors’ Lobby


Barin, “Lessons Learned in Trial: Credibility is Key & Voir Dire is a Two-Way Street,” WSAJ Trial News (October 2016).

Additional Cases and Statutes


Grover v. Eli Lilly Pharmaceuticals, 63 Ohio St.3d 756, 591 N.E. 2d 696 (Ohio 1992).


RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060; 4.24.010 [Wrongful Death; Beneficiaries; General and Special Survival Statutes; Claims for Injury to Child]

WATCH FOR UPDATES – Legislation passed in Summer 2019.
Washington Pattern Instruction 34.02 [WPI-Civil] for Discounting to Present Value.

2. Course Summary:

We will be exploring together the power of the law to achieve justice through the courts - and the limits of that power – in an ongoing conversation which partakes of both philosophy and pragmatism. Or, to put in another way, we will ask: “How does justice happen in the real world?” The facts of fascinating and often historically significant cases will serve as whetstones to hone our judgment and sense of fairness. In our collective consideration of remedies, legal and equitable, compensatory and punitive, coercive and voluntary, we will undertake a thorough review of basic tort and contract principles, consider injunctive relief, and touch on declaratory judgment, punitive damages, contempt power, sanctions, and mediation. This course format will consist of Socratic lecture, debate and rigorous discussion based on case studies and policy analyses with written clinical exercises, including an opportunity for experience with the legal writing of decrees, motions, and practical applications such as discounting damage awards to present value.

3. Class Schedule – Zoom Virtual Class Experience:

We will meet Monday and Wednesday evenings from 7:30 p.m. sharp to 8:45 p.m. sharp. On rare occasions, some clinical exercises or inspired discussions may make class run late – but only for willing participants. But, with sincere respect for the schedules and personal commitments of students, no student will be required to stay beyond the scheduled class time or be penalized for failure to do so. At the same time, promptness is a virtue and greatly appreciated. This is even more important in the virtual classroom.

Students are requested to make every effort to be present at or before the start of class as the beginning of class will set the stage for the discussions which follow. Unexcused absences or chronic tardiness may adversely affect the class participation component of your grade - you will have to be twice as brilliant the rest of the time!

We are fortunate to have a moderator, respected lawyer and graduate of Seattle University School of Law and this course, Munish Barin, to act as moderator to assure our virtual, Zoom classes run smoothly, to take roll, admit students from the waiting room on the Zoom site, and facilitate recognition of questions.

Virtual learning is learning. Virtual classrooms are classrooms. We will spend as little time as possible bemoaning the circumstances that have made remote learning appropriate this term and spend all our energy making the most of our time together. To that end, please review and heed the Ten Guidelines for Zoom Classes on the TWEN website under both the Syllabus tab and the
4. **Expectations and Grading Policy:**

We will usually cover approximately 25-35 pages of assigned readings per class. The number of pages of reading may fluctuate outside of this range depending on the "density" of the material: case law may, for instance, require closer attention than background articles. An effort will be made to indicate which components of the assigned reading will deserve your special attention the class before. You are expected to have read the assigned materials and thought about them. You will be invited to participate in the questions raised in class. Supplements will be posted on the website which may summarize or amplify upon class discussions of cases.

Many of the issues to be considered involve common sense and life experience: “If someone steals your money and invests it more successfully than you would have, what is the measure of damages? What if your planned investment would have lost money?” Some involve issues of historical importance such as the injunction of the demonstrations in Alabama which led to the arrest of Martin Luther King, Jr. (Walker v. Birmingham) and his letter written from the Birmingham Jail which articulates the justification for nonviolent protest. Your participation and insight enriches the class for everyone. Socratic lecture format means that your questions are welcomed and that you will be asked your thoughts frequently as the subject is explored. The "barrier" between "lecture" and "discussion" is very, very low and we will be shifting back and forth all class.

**Class Participation.** Class participation and attendance will amount to fifteen percent (15%) for general participation. This component of your grade will take into account your attendance and quality of participation including, but not limited to, constructive engagement in class discussions, cogent and creative analysis, ability to articulate your ideas, oral advocacy in debate formats, appropriate and thoughtful questions, ability to sustain civilized and professional discourse, demonstrated command of the course’s core concepts, and level of preparation. Attempts will be made to let you know how you are doing. Thinking on your feet is an important skill.

Expect to be called on. Video on. Mute off. We will think together out loud.

**Working with Classmates; Work Submitted as Your Work Must be Your Individual Work; Procrastination.** Cooperation and collaboration with one’s colleagues is an important part of legal practice. When it comes to submitting work under your own name for which a grade is attached, however, whether it be a quiz, problem, memo, or draft order, it is important that what you submit be your own work. If you are at a loss with regard to a specific assignment, do not rely on the work of another to conceal from me the challenges you are facing with the material. Please let me know and I will make the time available to you to help
you feel confident in the subject area, work with you to come up with an alternative assignment. Remember, the lowest grade is dropped from the problems anyway! Please do not let a lack of confidence or undue reliance on a classmate lead you into the “gray area” of ethics in terms of submitting work with your name upon it. While I applaud your discussion with colleagues for the purpose of clarifying the assignment, in terms of the actual written work product or substantive content or organization of the assignment, I expect the work to be yours alone. Put another way: the words on the page of work, quiz, memo, or other work submitted by you for a grade should originate with you alone, not from the notes, drafts, work product, dictation, organization, issue analysis, or guidance of another person. If you have any question about the propriety of conduct, prospective or retrospective, please present it to me and I will work with you to find an appropriate resolution consistent with the academic and ethical standards of the law school community. Experience has taught me that receiving a draft memo from another student and then using the other student’s work as a template for your own does not pass ethical muster – better to fill a page with your own ideas than cut and paste or modify ideas presented by another – and that such a practice is not only suspect ethically, but unsound as a learning method. Do not yield to the temptation!

Try to comply with the schedule of work in the class: readings, problems, quizzes, and so forth. Procrastination is its own punishment, but it also deprives you of the benefit of learning and relearning materials by taking you out of the sequence of learning outlined in the syllabus. Most subjects will be touched on more than once. All key subjects will be discussed in our end-of-course review guide. Please try not to fall behind. I will work with you to help you stay on track if procrastination is an affliction. Procrastination is a challenge to all lawyers and a source of much professional anxiety - and liability.

Problems. There will also be a number of short clinical problems assigned which relate to materials covered in class and subject matters addressed by Washington law supplemental to those in class which will amount to fifteen percent (15%) of the overall course grade. Three of these problems are required – in addition, some optional problems may be offered. These problems are a method of exploring the issues in the readings and are calculated to focus you on the questions raised and, in some instances, to provide you with direct, hands on contact with Washington case authority and procedure. They are also an opportunity to practice concise analysis and legal writing. Students have found them a positive way of practicing some of the theory set out in the case authority and casebook.

For instance, you may be asked to provide very brief written memoranda (usually to an imaginary Senior Partner), no more than one, single spaced page in length. These problems will be posted on the Website. Or, you may be asked to draft a decree for entry by the court. Your submissions in response to the questions presented will be graded based upon clarity, organization, quality of analysis,
persuasiveness, conciseness, reasonableness, demonstrated command of the core concepts of the assignment, quality of English language expression (spelling counts), and ability to follow rules such as: one page means one page. Late submissions which are unexcused may be penalized; non-complying submissions may be rejected. (To ensure that the papers are a fair measure of your ability, the bottom grade will be dropped – if at least four assignments are completed; in other words, you can do one or more optional problem/s to replace a grade/s you are dissatisfied with.) These relatively short problems will, collectively, amount to 15% of your class grade. Problems will be handed in by delivering them in MS Word format via e-mail at: randy@randygordonlaw.com

Do NOT use the DROPBOX on the site as this has proven to be unreliable in the past. I will return assignments with comments using “track changes” and post general feedback on line. Please note: I provide extensive general feedback based upon the accumulated reflections on the submissions of you and your colleagues over the years – please do not take the extensive nature of the comments as an adverse personal judgment on your work, but as a reflection of the seriousness of my commitment to legal education.

Drafting Motion and Proposed Order. There will also be a clinical exercise involving preparation of a motion seeking a temporary restraining order and proposed order. This exercise will constitute twenty percent (20%) of your class grade. Students will be asked to prepare a motion (which in King County means a legal memorandum of specific format not a separate pleading) in support of no more than eight (8) pages double spaced (my limit for this classwork, not the court’s) in pleading format in support of or in opposition to the assigned motion. The motion will be evaluated utilizing the factors listed above respecting the problems, including special attention to compliance with format requirements. (Although format requirements are somewhat arbitrary, they are also strictly enforced by some trial courts and nearly all appellate courts and, consequently, form an important part of this clinical assignment.)

On-line Quizzes on the TWEN Website. In addition, this term I will be offering four on-line “open book” quizzes on the TWEN website. These will amount to twenty percent (20%) of your grade. On the Menu on the left side of your screen click on the “Quizzes” icon. These will consist of short-answer or multiple choice questions focused on the work covered in the reading or discussion for the preceding class. This assignment is one for which you are individually responsible and should be your own work.

The first answer you submit will be treated as the answer to be graded. Once you open the quiz, you must be prepared to complete it as signing out will result in a final score on only those questions submitted. Please set aside adequate time to commence and conclude the examination and
make sure you have your class notes and casebook or supplemental cases available for easy reference. You may complete the quiz at any time up until the date due.

These questions will total 20% of your total class grade. The on-line quizzes will generally consist of four to five questions. If you are reasonably up-to-date on the coursework, the quiz can be completed in under fifteen minutes. If you are using the quiz as a means of reading and reviewing new materials, you will want to allow for up to an hour to review the materials in connection with your completion of the quiz. If you have technical problems with the quiz, please let me know and I will make sure that the quiz score reflects your actual knowledge.

**Final Examination.** A final exam, which may consist of a small number of short answer questions regarding case holdings of significance, definitions of key concepts, multiple choice, matching, fill-in-the-blank, and other “objective” short answer questions and (sometimes) short essay questions, will count for thirty percent (30%) of your grade. It will be evaluated based upon conciseness, clarity of thought and expression, quality of English language expression, coherence, quality of analysis, mastery of relevant case authority and legal principles, and demonstrated mastery of the core principles of the case law and policy analysis covered by the class materials. It is intended as an opportunity for review of the course materials.

**Allocation of Course Work To Course Grade; Standard Curve.**

To recapitulate the foregoing, your grade will consist of:

Class Participation 15%
Problems 15% (Top Three Scores)
Clinical Assignment 20%
On-Line Quizzes 20%
Final Examination 30%

The above grades will be tabulated and totaled and then set to a curve for the class. This course is required to be graded on the standard curve for upper level classes with multiple sections. The Final Examination is strictly anonymous and will be administered remotely on .

5. **Communication.**

I will make myself available before or after class on most days. I can be reached by e-mail at randy@randygordonlaw.com and will attempt to respond within the day. Conference by Zoom can be scheduled.

**ALL PROBLEMS AND WRITTEN ASSIGNMENTS ARE TO BE HANDED IN BY EMAIL TO: RANDY@RANDYGORDONLAW.COM**
You may wish to copy Munish Barin at mkb@soundinjury.law to be absolutely confident of receipt.

**DO NOT USE THE INACTIVE ASSIGNMENT DROPBOX ON THE WEBSITE.**

I have created a website for this course at the TWEN site associated with Westlaw. Class members are authorized to register with the class access code which is as follows:

**RemediesSU2021**

IT IS VITAL THAT YOU GET ACCESS TO THIS WEBSITE MATERIAL AS YOU WILL BE RESPONSIBLE FOR THE MATERIAL ON THE SITE which will include assignments, lecture supplements, discussion, class announcements, links to course materials, general feedback, and any changes or clarification of the syllabus.

6. **Reading Assignments for Each Session: Remedies 2021:**

*Please read the assignments listed for each class before the class for which it is assigned so that you can participate fully in class discussions. Problems are due as indicated and timely submission is a factor in your grade. Summer Schedule is expedited and requires extra effort to stay on track. If you are having trouble with this, let me know as soon as you can.*

**TIPS:** Always read the Notes following the cases on the assigned pages as our Casebook authors – who are leading scholars – reference many factual applications and analyses of value to our discussions.

**Make a habit of checking the TABLE in Section 7 below for due dates for Problems, Assignments and Online Quizzes.**


**CLASS 2: Wednesday, August 25, 2021:** Value as the Measure of the Rightful Position. Casebook: 18-35 [September 11th Litigation; Trinity Church].
Problem No. 1 due Class 5. Always check TABLE for assignments and due dates below at:

7. Table of Assignments.

NO CLASS MONDAY, AUGUST 30, 2021


Online Quiz No. 1 due Class 7. Always check TABLE for assignments and due dates below at: 7. Table of Assignments. (Last Reminder!!)

NO CLASS MONDAY, SEPTEMBER 6, 2021 - LABOR DAY.


CLASS 5: Monday, September 13, 2021: The Requirement of Certainty: the Indeterminate Plaintiff and Defendant. Cases: Martin v. Abbott Laboratories, 102 Wn.2d 581, 689 P.2d 368 (1984)(En Banc); In Re Agent Orange Product Liability Litigation, 597 F. Supp. 740 (E.D.N.Y. 1984), aff’d, 818 F.2d 145 (2d Cir. 1987) [As this case is very lengthy, skim enough of the case to understand the basic facts and procedural status of this class action, then focus on pp. 819-840 discussing the issues of indeterminate defendants and indeterminate plaintiffs. The Westlaw copy of the case comes in 6 parts; the table of contents is in Part One; the readings begin in Part Three.]

CLASS 6: Wednesday, September 15, 2021: Litigating Damages for Personal Injury and Death; Legislating Remedies; “Non-economic Damages.” Casebook: 167-186, 201-204 [Debus]; RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010 [Wrongful Death; Survival]. NEW STATUTE NOW IN EFFECT. STAY TUNED. Both the Senate (SB 5163) and House (HB 1135) bills made dramatic changes in earlier body of law – effective date 2019!


CLASS 10: Wednesday, September 29, 2021: Taxes; Prejudgment Interest; Discounting to Present Value. Casebook: 136-162 [Review Norfolk & Western Railway, Milwaukee v. Cement Division, and Jones & Laughlin and notes following for the general concepts of whether juries should consider tax effects, prejudgment interest and discounting to present value and post-judgment interest]; Present Value Tables in Appendix pp. 1161 ff. Washington Pattern Instruction Regarding Discounting – See Website Lecture Supplements.

CLASS 11: Monday, October 4, 2021: Guest Lecturer (Munish Barin): My First Civil Jury Trial. Please read Barin, “Lessons Learned in Trial: Credibility is Key & Voir Dire is a Two-Way Street,” WSAJ Trial News (October 2016) under Articles Tab on TWEN site.


Problem No. 2 Distributed (Drafting Decree) - You will be drafting an injunction for issuance by the court based upon the facts of EEOC v. Boh Brothers in the Casebook at pp. 863-864. Read Casebook: 853-862 before you draft your injunction and review Civil Rule 65 and FRCP 65. Contrary to the Problem in the Casebook at pp. 863-864, please do include a brief procedural introduction, findings of facts, conclusions of law and the specific injunctive relief afforded by the court. The Problem contemplates you writing in the “voice’ of the Court and will be presented by you to the Court for signature by the Court.


CLASS 15: Monday, October 18, 2021: Damages or Specific Performance? Considerations of Hardship to Defendant and Burden on Court. Casebook: 381-423 [Pardee; Brooke v. Cullimore; Campbell v. Wentz; Van Wagner; Whitlock].

Begin your review of Preliminary Injunctions and TROs: Washington Practice. Casebook: Review Casebook 449-459, 461-466, 469-471 Civil Rule 65. This material will, in turn, prove helpful to your preparation of your Clinical Exercise.

CLASS 16: Wednesday, October 20, 2021: Preventing Unjust Enrichment: Restitutionary Remedies. Casebook: 641-658, 673-693 [Blue Cross; Somerville; Olwell, Maier].

Problem No. 2 due TODAY. (No Extensions – discussion in class on this problem next class)

Distribution of Clinical Exercise Online - Drafting Motion for TRO and Temporary Restraining Order based on fact pattern in Willing v. Mazzocone in Casebook: 430-434. Clinical Exercise due Class 21


Pre-Halloween Treat: The Dark Side of the Common Law! BOO!

CLASS 19: Monday, November 1, 2021: Declaratory Judgments and the Young Dilemma. Casebook 591-604 [Nashville; Cardinal; Ex Parte Young].


Online Quiz No. 4 due Class 25.

Clinical Exercise due TODAY.


Problem 3 due Class 25.

CLASS 23: Monday, November 15, 2021: GUEST LECTURER, Judge Cynthia (Cindy) Jordan on Indian Law remedies and her experience as Tribal Court Judge. Please read lecture supplements and article: “Introduction to Indian Law and Remedies: A Law School Discussion,” WASHINGTON STATE BAR NEWS, November 2002 [Website exclusive – transcribed discussion of Remedies Fall 2002 Discussion of Indian Law and Tribal Remedies]; see Article Tab on TWEN site.


Problem 3 due TODAY.

Online Quiz No. 4 due TODAY.

NO CLASSES MONDAY, NOVEMBER 22, 2021

WEDNESDAY, NOVEMBER 24, 2021

– THANKSGIVING RECESS.

CLASS 25: Monday, November 29, 2021: Course Review - Part I; Discussion of the Final Examination.

CLASS 26: Wednesday, December 1, 2021: Course Review – Part II; Concluding Lecture with Reflections.

Official End of Classes.
7. **Table of Assignments.**

**ISSUE & DUE DATES OF CLASS ASSIGNMENTS**

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**FINAL EXAMINATIONS:**

In case of any confusion or ambiguity in the Syllabus regarding deadlines, the above is the dispositive answer!!