
Table of Contents

PREFACE TO THE FIFTH EDITION	v
FEATURES OF THIS CASEBOOK	vii
TABLE OF CASES	xxi
HYPOS & EXERCISES	xlv
CHAPTER 1 <i>Overview</i>	1
A. Introduction	1
The Path Ahead	4
Executive Summary	5
CHAPTER 2 <i>Equity and Equitable Remedies</i>	9
A. Historical Perspective	10
Dan B. Dobbs, Handbook on the Law of Remedies	11
B. The Development of Equity in the United States	15
Dan B. Dobbs, Handbook on the Law of Remedies	15
C. Equitable Remedies Today	16
1. Standards for the Availability of Equitable Relief	16
a. Conscience and Equity	16
b. Equitable Remedies Are Granted <i>In Personam</i>	18
c. Inadequacy of Legal Remedy/Irreparable Harm	19
<i>Campbell v. Seaman</i>	19
Points for Discussion: Applying the Adequacy Concept	21
<i>Fortner v. Wilson</i>	23
<i>Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Callahan</i>	26
<i>Van Wagner Advertising Corp. v. S & M Enterprises</i>	28
d. Equitable Relief Is Discretionary	33
<i>Georg v. Animal Defense League</i>	34
<i>Grossman v. Wegman's Food Markets, Inc.</i>	35

D. Equitable Defenses	37
1. Unclean Hands Doctrine.....	37
<i>Salomon Smith Barney Inc. v. Vockel</i>	38
Points for Discussion: More on Account Pilfering	41
<i>Sheridan v. Sheridan</i>	41
Points for Discussion: Unclean Hands and Legal Claims	44
<i>Seagirt Realty Corp. v. Chazanof</i>	46
<i>American University v. Wood</i>	50
2. Unconscionability	53
<i>Campbell Soup Co. v. Wentz</i>	53
Points for Discussion: Calculating Damages.....	55
3. Laches	57
<i>City of Eustis v. Firster</i>	57
Points for Discussion.....	58
<i>Nahn v. Soffer</i>	61
<i>Stone v. Williams</i>	65
Point for Discussion.....	69
4. Estoppel	71
<i>Feinberg v. Pfeiffer Company</i>	71
Points for Discussion.....	73
<i>United States v. Georgia-Pacific Co.</i>	74
E. The Right to Trial by Jury	81
<i>Dairy Queen, Inc. v. Wood</i>	82
Points for Discussion: Counterclaims and the Right to Jury Trial.....	85
<i>Feltner v. Columbia Pictures Television, Inc.</i>	85
Points for Discussion.....	89
<i>Ross v. Bernhard</i>	90
Points for Discussion.....	95
Exercise	98
Executive Summary	99
CHAPTER 3 Enforcement of Equitable Decrees	103
Rule 42. Criminal Contempt	106
A. Contempt Defined	106
<i>In re Little</i>	107
B. Civil v. Criminal	111
Dan B. Dobbs, Handbook on the Law of Remedies.....	111
1. Civil and Criminal Contempt Distinguished	111
<i>United States v. Professional Air Traffic Controllers Organization</i>	111

<i>Yates v. United States</i>	114
<i>Anyanwu v. Anyanwu</i>	116
Points for Discussion.....	125
<i>International Union, United Mine Workers of America v. Bagwell</i>	128
2. Civil Compensatory Contempt.....	136
<i>Time-Share Systems, Inc. v. Schmidt</i>	137
<i>Vermont Women’s Health Center v. Operation Rescue</i>	139
C. Procedural Requirements	142
<i>United States v. Wilson</i>	142
Points for Discussion.....	146
<i>Bloom v. Illinois</i>	147
Points for Discussion: Jury Trials in Civil Contempt Proceedings	150
<i>Illinois v. Allen</i>	152
<i>In re Yengo</i>	156
D. The Duty to Obey: Collateral Challenges	162
<i>United States v. United Mine Workers of America</i>	163
Points for Discussion: Contempt and the Failed Pager.....	169
<i>Walker v. City of Birmingham</i>	170
<i>In re Providence Journal Company</i>	178
Exercise: Child Support Enforcement.....	183
Executive Summary	184
CHAPTER 4 Injunctions and Declaratory Judgments	189
A. Overview on Injunctive and Declaratory Remedies	190
B. Standards for Declaratory Relief	192
Federal Declaratory Judgment Act	194
<i>Aetna Life Insurance Co. v. Haworth</i>	196
Points for Discussion.....	197
<i>National Wildlife Federation v. United States</i>	200
Points for Discussion.....	203
C. Standards for Issuance of Injunctive Relief	206
1. Requirements for Provisional Relief.....	207
Rule 65 (F.R.Civ.P.). Injunctions and Restraining Orders.....	207
<i>Hughes v. Cristofane</i>	208
Points for Discussion.....	211
<i>Winter v. Natural Resources Defense Council, Inc.</i>	215
Points for Discussion: More on the Standards for Preliminary Injunctive Relief	221
<i>Clinton v. Nagy</i>	222

	<i>Washington Capitols Basketball Club, Inc. v. Barry</i>	226
	Point for Discussion: Anticipated Nuisances	232
2.	Hearing Requirement	234
	<i>In re Vuitton et Fils S.A.</i>	234
	<i>American Can Company v. Mansukhani</i>	238
	Points for Discussion.....	241
	<i>Marquette v. Marquette</i>	243
3.	Persons Bound	244
	<i>Planned Parenthood Golden Gate v. Garibaldi</i>	245
	Points for Discussion: A Parallel Approach	248
	<i>State University of New York v. Denton</i>	250
	Points for Discussion: More on Binding Third Parties	252
	<i>Dalton v. Meister</i>	253
	Points for Discussion.....	256
	Rule 25. Substitution of Parties	257
	Rule 19. Required Joinder of Parties.....	258
	<i>Golden State Bottling Co., Inc. v. NLRB</i>	258
	Points for Discussion: Purchasers of Companies Subject to Injunctive Decrees.....	261
4.	Notice Requirement	262
	<i>The Cape May & Schellinger's Landing R.R. Co. v. Johnson</i>	262
	<i>Midland Steel Products Co. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 486</i>	265
	Points for Discussion: More on <i>Midland</i>	267
	<i>Vermont Women's Health Center v. Operation Rescue</i>	268
5.	Bond Requirement	269
	<i>Nintendo of America, Inc. v. Lewis Galoob Toys, Inc.</i>	270
	<i>Coyne-Delany Co., Inc. v. Capital Development Board</i>	273
	Points for Discussion: More on Damages for Wrongfully Issued Injunctions	276
	<i>Smith v. Coronado Foothills Estates Homeowners Ass'n, Inc.</i>	277
	<i>Continuum Co., Inc. v. Incepts, Inc.</i>	279
6.	Permanent Injunctions.....	283
	<i>eBay Inc. v. Mercexchange, L.L.C.</i>	283
	<i>Walgreen Company v. Sara Creek Property Company, B.V.</i>	286
	<i>Weinberger v. Romero-Barcelo</i>	291
7.	Framing the Injunction.....	295
	<i>Murray v. Lawson</i>	296
	<i>Reno Air Racing Association, Inc. v. McCord</i>	299

<i>Kilgrow v. Kilgrow</i>	303
<i>Peggy Lawton Kitchens, Inc. v. Hogan</i>	306
<i>Madsen v. Women’s Health Center, Inc.</i>	308
8. Experimental and Conditional Injunctions	317
<i>Boomer v. Atlantic Cement Company</i>	317
<i>Spur Industries, Inc. v. Del E. Webb Development Co.</i>	322
9. Decrees Affecting Third Parties.....	328
<i>Hills v. Gautreaux</i>	328
<i>General Building Contractors Association, Inc. v. Pennsylvania</i>	332
D. Appeals of Injunction Rulings	336
1. Jurisdiction over Appeals.....	336
<i>Nutrasweet Co. v. Vit-Mar Enterprises, Inc.</i>	336
Points for Discussion.....	340
2. Pre-Appeal Relief.....	341
Rule 8. Stay or Injunction Pending Appeal	341
<i>Washington Metropolitan Area Transit Commission v. Holiday Tours,</i> <i>Inc.</i>	343
E. Modification of Permanent Injunctions	347
<i>Agostini v. Felton</i>	347
Points for Discussion: Modifications Based on a Change in the Law.....	354
<i>Board of Education v. Dowell</i>	356
Points for Discussion: The <i>Freeman</i> Case.....	360
F. Injunctions in Context	361
1. Injunctions Against Criminal Activity	361
<i>State v. H. Samuels Company, Inc.</i>	362
2. Injunctions Against Litigation.....	366
a. State Court Injunctions Against State Litigation.....	366
<i>James v. Grand Trunk Western Railroad Company</i>	367
<i>Tidik v. Ritsema</i>	371
<i>Vanneck v. Vanneck</i>	375
b. State Court Injunctions Against Federal Litigation	379
<i>Donovan v. City of Dallas</i>	379
c. Federal Court Injunctions Against State Litigation	382
<i>Mitchum v. Foster</i>	383
<i>Younger v. Harris</i>	387
3. Structural Injunctions.....	396
<i>Missouri v. Jenkins</i>	396
Points for Discussion: The <i>Teamsters</i> Case	404
<i>Rizzo v. Goode</i>	404

Points for Discussion.....	410
4. Extra-Territorial Decrees.....	413
a. Decrees Affecting Land.....	413
<i>Deschenes v. Tallman</i>	413
<i>Burnley v. Stevenson</i>	415
<i>The Salton Sea Cases</i>	417
Points for Discussion: Requiring Actions in a Foreign Country.....	420
b. Decrees Affecting Personal Property.....	421
<i>Madden v. Rosseter</i>	421
5. National Security.....	423
<i>New York Times Company v. United States</i>	423
Exercise #1: The Rock Quarry.....	432
Exercise #2: The “White Supremacist” Rally.....	433
Exercise #3: The Airport Expansion.....	433
Rules of Court.....	434
Rule 1. Motion Practice.....	434
Rule 2. Briefs, Pleadings and Memoranda; Proof of Service.....	435
Executive Summary	436

CHAPTER 5 Restitution	443
A. General Principles	444
<i>Beacon Homes, Inc. v. Holt</i>	445
Points for Discussion.....	447
Points for Discussion: Benefits Conferred.....	452
B. Defenses to Restitution	455
Points for Discussion.....	455
<i>St. Mary’s Medical Center, Inc. v. United Farm Bureau Family Life Insurance Company</i>	456
Points for Discussion.....	458
C. Measuring the Enrichment	460
<i>Frambach v. Dunihue</i>	460
<i>Pyeatte v. Pyeatte</i>	464
<i>Iacomini v. Liberty Mutual Insurance Company</i>	469
Points for Discussion.....	471
D. Special Restitutionary Remedies	474
1. The Constructive Trust.....	475
<i>Sieger v. Sieger</i>	475
2. Equitable Lien.....	480
<i>Leyden v. Citicorp Industrial Bank</i>	480

<i>Jones v. Sacramento Savings and Loan Association</i>	483
<i>Rolfe v. Varley</i>	487
3. Advantages of Constructive Trusts and Equitable Liens.....	492
a. Tracing.....	492
Points for Discussion.....	492
<i>G & M Motor Co. v. Thompson</i>	492
<i>In re Marriage of Allen</i>	495
<i>Mattson v. Commercial Credit Business Loans, Inc.</i>	501
b. Priority over Other Creditors.....	507
<i>In re Application of Radke</i>	507
<i>Cunningham v. Brown</i>	511
Points for Discussion.....	515
c. Circumvention of Debtor Exemptions.....	517
<i>Palm Beach Savings & Loan Association, F.S.A. v. Fishbein</i>	517
d. Subrogation.....	520
<i>Wilson v. Todd</i>	520
<i>Banton v. Hackney</i>	522
Points for Discussion.....	526
Executive Summary.....	528

CHAPTER 6 | *Damage Remedies*.....531

A. General Damage Principles.....	534
1. The Basic Measure of Damages.....	534
<i>Dealers Hobby, Inc. v. Marie Ann Linn Realty Co.</i>	534
Points for Discussion.....	537
<i>Basiliko v. Pargo Corporation</i>	538
Points for Discussion.....	542
<i>Chatlos Systems, Inc. v. National Cash Register Corp.</i>	542
Points for Discussion.....	546
<i>Liberty National Life Insurance Company v. Sanders</i>	547
Points for Discussion.....	551
2. Property Damage.....	552
<i>Terra-Products v. Kraft Gen. Foods, Inc.</i>	552
Points for Discussion.....	556
<i>O'Brien Bros. v. The Helen B. Moran</i>	559
Points for Discussion.....	561
3. Applying Market Measures.....	563
<i>Semenza v. Bowman</i>	564
Points for Discussion.....	565

	<i>United Truck Rental Equipment Leasing, Inc. v. Kleenco Corp.</i>	568
4.	Losses Beyond Value	574
	<i>Fukida v. Hon/Hawaii Service and Repair</i>	575
	Points for Discussion.....	580
	<i>Semenza v. Bowman</i>	581
	Points for Discussion.....	582
	<i>Mississippi Chemical Corp. v. Dresser-Rand Co.</i>	585
	Points for Discussion.....	590
B.	Limits of Market Measures	591
1.	Subjective Value and Other Alternatives to Market Measures	591
	<i>Mieske v. Bartell Drug Co.</i>	591
	Points for Discussion.....	595
	<i>Landers v. Municipality of Anchorage</i>	597
	Points for Discussion.....	601
2.	Pain, Suffering, Distress, and Loss of Joy.....	602
	<i>Seffert v. Los Angeles Transit Lines</i>	602
	Points for Discussion.....	611
	<i>Wainwright v. Fontenot</i>	615
	Points for Discussion.....	625
	<i>McDougald v. Garber</i>	626
	Points for Discussion.....	634
	<i>Kishmarton v. William Bailey Construction, Inc.</i>	636
	Points for Discussion.....	639
3.	Indignity and Intangible Losses	641
	<i>Joan W. v. City of Chicago</i>	642
	Points for Discussion.....	646
	<i>Memphis Community School District v. Stachura</i>	647
	Points for Discussion.....	655
4.	Wrongful Death.....	656
	<i>DeLong v. County of Erie</i>	658
	Points for Discussion.....	662
	<i>Murphy v. Martin Oil Co.</i>	665
	Points for Discussion.....	669
5.	Loss of Consortium.....	671
	<i>Whittlesey v. Miller</i>	672
	Points for Discussion.....	675
	<i>Belcher v. Goins</i>	676
	Point for Discussion.....	686

C. Limitations on Recovery	688
1. Causation, Foreseeability, and Certainty.....	688
<i>McKennon v. Nashville Banner Publishing Company</i>	689
Points for Discussion.....	694
<i>Schonfeld v. Hilliard</i>	696
Points for Discussion.....	708
Exercise: Drafting for Foreseeability	713
2. Avoidable Consequences and Related Doctrines	715
a. Benefits Rule	715
<i>Troppe v. Scarf</i>	715
Points for Discussion	720
b. Collateral Source (Exception to the Benefits) Rule.....	723
<i>Sunnyland Farms v. Central New Mexico Electric Cooperative</i>	723
Points for Discussion	726
c. The Avoidable Consequences Doctrine	731
<i>S. J. Groves & Sons Co. v. Warner Co.</i>	732
Points for Discussion	737
<i>Parker v. Twentieth Century-Fox Film Corp.</i>	738
Points for Discussion	747
<i>Collins Entertainment Corporation v. Coats and Coats Rental</i> <i>Amusement</i>	748
Point for Discussion: Double Recovery	752
<i>Sawyer v. Comerci</i>	753
Points for Discussion	756
3. Public Policy	759
<i>Troppe v. Scarf</i>	760
<i>Taylor v. Kurapati</i>	761
Points for Discussion.....	765
D. Agreed Remedies	768
1. Liquidated Damages	768
<i>Ridgley v. Topa Thrift and Loan Association</i>	768
<i>Red Sage Limited Partnership v. Despa Deutsche Sparkassen</i> <i>Immobilien-Anlage-Gesellschaft MBH</i>	774
Points for Discussion.....	782
2. Limitations on Damages	788
<i>Pierce v. Catalina Yachts, Inc.</i>	788
<i>Children’s Surgical Foundation v. National Data Corp.</i>	794
Points for Discussion.....	799
E. Statutory Damages	801
Points for Discussion.....	803

F. Punitive Damages	805
<i>Kolstad v. American Dental Association</i>	805
Points for Discussion.....	812
More Points for Discussion	814
<i>Griff, Inc. v. Curry Bean Co., Inc.</i>	817
Points for Discussion.....	819
<i>State Farm Mutual Automobile Insurance Company v. Campbell</i>	823
Points for Discussion.....	833
<i>Mathias v. Accor Economy Lodging, Inc.</i>	835
Points for Discussion.....	840
<i>Philip Morris USA v. Williams</i>	840
Points for Discussion.....	846
<i>Exxon Shipping Company v. Baker</i>	847
G. Attorneys' Fees	860
<i>Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources</i>	861
Points for Discussion.....	872
<i>L.H. v. Hamilton County Dept. of Educ.</i>	873
Points for Discussion.....	882
Executive Summary	885
CHAPTER 7 Remedies in Context	889
A. Potential Harm: Misdiagnosis	889
<i>Matsuyama v. Birnbaum</i>	890
Points for Discussion.....	899
B. Potential Harm: Chemical Exposure	900
<i>Sterling v. Velsicol Chemical Corporation</i>	900
Points for Discussion.....	907
<i>Faulkner v. Caledonia County Fair Association</i>	909
Points for Discussion: Claim Preclusion and Toxic Waste	914
C. Life as Injury	914
<i>Turpin v. Sortini</i>	915
Points for Discussion.....	922
D. The Breaching Employee	923
<i>Pepsico, Inc. v. Redmond</i>	925
<i>American Broadcasting Companies v. Wolf</i>	933
E. The Discharged Employee	938
<i>Ford Motor Co. v. Equal Employment Opportunity Commission</i>	938
<i>Jones & Laughlin Steel Corp. v. Pfeifer</i>	947

F. The Coal Mining Lease	957
<i>Peavyhouse v. Garland Coal & Mining Company</i>	957
G. Transit Fares	961
<i>Eisen v. Carlisle & Jacquelin</i>	962
H. The Vegetarians	968
I. Defamation	968
<i>Gibson v. Philip Morris, Inc.</i>	969
<i>New York Times Co. v. Sullivan</i>	974
<i>Near v. State of Minnesota</i>	980
Points for Discussion.....	983
<i>Kramer v. Thompson</i>	988
Points for Discussion.....	994
J. Privacy	998
<i>Eastwood v. Superior Court</i>	1000
Points for Discussion.....	1005
<i>Galella v. Onassis</i>	1011
K. Leafletting	1017
<i>Organization for a Better Austin v. Keefe</i>	1018
L. Obscenity	1020
<i>Freedman v. State of Maryland</i>	1020
Points for Discussion.....	1024
M. Admission Cases	1025
<i>Falcone v. Middlesex County Medical Society</i>	1026
<i>Blatt v. University of Southern California</i>	1029
Points for Discussion.....	1032
N. Expulsion	1038
<i>Board of Curators of the University of Missouri v. Horowitz</i>	1039
<i>Tedeschi v. Wagner College</i>	1044
O. Covenants Not to Compete	1048
P. Reinstatement via Injunction	1051
Exercises.....	1054
Q. There’s a Remedy for That	1056
Executive Summary	1058
CHAPTER 8 <i>Integrated Problems and Exercises</i>	1065
A. Hypotheticals	1065
B. Exercises	1076
Exercise #1: The Stolen Bull.....	1076
Exercise #2: Geraldine & the Birdwatchers.....	1077

Exercise #3: Commercial Exploitation..... 1079
Exercise #4: Gender Equity 1080
Exercise #5: Key Personnel 1081
Exercise #6: Marital Discord 1081
Exercise #7: La Vendetta..... 1083
Exercise #8: Concluding Problem: Bad Hips 1084
INDEX..... 1087