

# OUTLINE

---

PREFACE .....	V
ACKNOWLEDGMENTS .....	IX
TABLE OF CASES .....	XXI
<b>Chapter 1. Introduction to Remedies .....</b>	<b>1</b>
(A) Coercive Remedies.....	3
(B) Damages.....	5
(C) Restitution .....	8
(D) Attorneys' Fees and Jury Trials .....	9
(E) Declaratory Remedies .....	10
<b>Chapter 2. The Significance of Remedial Characterizations .....</b>	<b>11</b>
(A) Remedies at Law and in Equity .....	12
(B) Limitations on Remedies .....	17
<b>Chapter 3. Preventive Injunctions .....</b>	<b>23</b>
(A) Overview of Preventive Injunctions .....	23
(B) Inadequacy of the Remedies at Law .....	25
1. Inadequacy of Remedies at Law— Generally .....	25
2. Inadequacy of Remedies at Law in Trespass Cases.....	28
3. Inadequacy of Remedies at Law to Protect Constitutional Rights .....	30
4. Inadequacy of Remedies at Law in Intellectual Property Cases.....	31
(C) Irreparable Harm .....	32
(D) Balance of Hardships and Public Interest.....	34

(E) Nationwide or Universal Injunctions .....	39
<b>Chapter 4. Specific Performance .....</b>	<b>43</b>
(A) Requirements .....	44
1. Definite and Certain Terms .....	44
2. Ability to Perform .....	45
3. Inadequate Remedy at Law .....	46
4. Balance of Hardships.....	48
(B) Mutuality of Remedy .....	50
(C) Personal Services.....	53
(D) Uniform Commercial Code .....	55
1. Unique Goods .....	55
2. Other Proper Circumstances .....	56
3. Output and Requirements Contracts .....	57
4. Action for the Price .....	58
(E) Replevin .....	59
<b>Chapter 5. Equitable Defenses .....</b>	<b>63</b>
(A) Laches .....	64
1. Overview.....	64
2. Delay .....	66
3. Prejudice.....	68
(B) Estoppel.....	69
(C) Unclean Hands and In Pari Delicto .....	72
(D) Unconscionability .....	74
(E) Election of Remedies .....	78
<b>Chapter 6. Preliminary Injunctions and Temporary Restraining Orders.....</b>	<b>83</b>
(A) Nature and Purpose of Interlocutory Relief .....	83

(B) Preliminary Injunctions .....	85
1. Preliminary Injunctions—Traditional Test .....	85
2. Preliminary Injunctions—Alternative Test .....	87
3. Preliminary Injunctions—Irreparable Harm Required Under Alternative Test .....	90
4. The Role of Public Interest.....	91
5. Procedural Requirements for Issuing a Preliminary Injunction .....	93
(C) Temporary Restraining Orders .....	94
1. Basic Principles.....	94
2. Appeal.....	95
3. Notice.....	97
(D) Injunction Bonds .....	98
<b>Chapter 7. Contempt.....</b>	<b>105</b>
(A) Overview .....	105
(B) Criminal Contempt .....	109
1. Summary Criminal Contempt .....	110
2. Indirect Criminal Contempt .....	112
(C) Civil Contempt.....	118
1. Compensatory Civil Contempt.....	119
2. Coercive Civil Contempt.....	120
(D) Significance of the Categorization.....	123
<b>Chapter 8. Structural, Restorative, and Prophylactic Injunctions .....</b>	<b>127</b>
(A) Modern Forms and Functions of Injunctions .....	127
(B) Structural Injunctions.....	128
(C) Restorative Injunctions.....	135

(D) Prophylactic Injunctions .....	136
------------------------------------	-----

**Chapter 9. Special Issues in Equity ..... 139**

(A) Statutory Limitations on Discretion .....	139
(B) Enjoining Speech .....	144
(C) Enjoining Civil Litigation .....	147
(D) Enjoining Criminal Prosecutions .....	150
(E) Enjoining Nuisances .....	151
(F) Enjoining Crimes.....	160

**Chapter 10. Breach of Contract**

<b>    Remedies.....</b>	<b>165</b>
(A) Common Law Contract Damages .....	165
1. Expectancy .....	165
2. Reliance .....	166
3. Restitution.....	167
4. General and Special Damages .....	170
5. Cost Rule and Value Rule .....	172
6. New Business Rule .....	174
7. Liquidated Damages.....	175
8. Prejudgment Interest as Damages .....	180
9. Punitive Damages.....	182
(B) Sale of Goods Contracts .....	183
1. Buyers' Remedies.....	183
1–(a). Damages for Non-Delivery or Repudiation of Goods .....	184
1–(a)(i). Cover .....	184
1–(a)(ii). Market Damages for Non-Delivery or Repudiation of Goods.....	185
1–(b). Consequential Damages .....	187

1–(c). Damages from Acceptance of Non-Conforming Goods.....	188
2. Sellers' Remedies .....	189
2–(a). Resale Damages .....	189
2–(b). Market Damages for Non-Acceptance or Repudiation of Goods .....	190
2–(c). Lost Profits .....	191
2–(d). Action for the Price .....	195
(C) Land Sale Contracts.....	197
(D) Equitable Remedies.....	199
1. Rescission .....	199
2. Reformation.....	201

<b>Chapter 11. Tort Damages.....</b>	<b>203</b>
(A) Purposes and Goals of Compensatory Damages in Tort Law .....	203
(B) Personal Property Damages .....	204
1. Personal Property Damages—Generally .....	204
2. Destroyed or Lost Personal Property—Fair Market Value .....	205
3. Destroyed, Converted or Lost Property—Actual Value .....	208
4. Destroyed or Lost Property—Sentimental or Emotional Value .....	211
5. Reparable Personal Property—Cost to Repair .....	213
6. Loss of Use .....	215
(C) Real Property Damages .....	217
1. Damage to Land.....	217
1–(a). Irreparable Damage to Land.....	218
1–(b). Reparable Damage to Land.....	218

1–(c). Temporary and Permanent Damage to Land .....	219
2. Damage to Structures on Land .....	223
3. Damage to Vegetation .....	224
4. Removal of Natural Resources .....	225
(D) Personal Injury Damages .....	226
1. Personal Injury Damages— Generally .....	226
2. Medical Expenses .....	228
3. Future Earning Capacity and Lost Wages.....	231
4. Pain and Suffering .....	232
5. Loss of Consortium .....	234
(E) Wrongful Death and Survival.....	235
<b>Chapter 12. Adjustments to Damages.....</b>	<b>239</b>
(A) Present Value and Inflation .....	239
(B) Prejudgment Interest.....	242
<b>Chapter 13. Limitations on Compensatory Damages .....</b>	<b>247</b>
(A) Foreseeability .....	247
(B) Certainty .....	255
(C) Avoidable Consequences .....	258
(D) Collateral Source Rule .....	264
<b>Chapter 14. Damages for Economic Loss or Distress Alone .....</b>	<b>271</b>
(A) Introduction .....	271
(B) Economic Loss Rule.....	271
1. Economic Loss Rule—Generally .....	271
2. Economic Loss Rule—“Stranger” Cases.....	272

3.	Economic Loss Rule—Contract Cases .....	274
4.	Exceptions to the Economic Loss Rule .....	276
5.	Foreseeability Approach to Economic Loss .....	279
(C)	Distress Damages .....	280
1.	Distress Damages—Generally .....	280
2.	Distress Damages in Contract .....	281
3.	Distress Damages in Tort .....	283
<b>Chapter 15. Punitive Damages .....</b>		<b>285</b>
(A)	Entitlement .....	285
1.	Purposes for Which Punitive Damages Are Awarded .....	285
2.	Scope of Conduct Subject to Punitive Damages .....	286
3.	Relationship to Claim for Compensatory Damages .....	287
4.	Availability of Punitive Damages for Specific Claims .....	288
5.	Vicarious Liability .....	290
(B)	Measurement of Punitive Damages and the Process for Awarding Punitive Damages .....	291
1.	Factors Considered in Determining the Amount of Punitive Damages .....	291
2.	Financial Condition .....	293
3.	Relationship Between Punitive Damages and Compensatory Damages .....	294
4.	Special Issues Posed by Multiple Punitive Damage Awards .....	295

(C) Constitutional Limits .....	296
1. Excessive Fines Clause.....	296
2. Substantive Due Process .....	296
3. Procedural Due Process.....	300
(D) Punitive Damage Reform .....	302
 <b>Chapter 16. Unjust Enrichment .....</b>	<b>305</b>
(A) The Unjust Enrichment Concept .....	305
(B) Benefits Acquired by Agreement or Mistake.....	308
1. Overview.....	308
2. Mistake in Agreements .....	309
3. Mistake in Equity .....	311
4. Mistaken Improvement of Property ....	313
(C) Misrepresentation and Fraud.....	314
(D) Quantum Meruit .....	317
(E) Money Had and Received.....	320
(F) Constructive Trusts.....	321
(G) Equitable Liens .....	324
(H) Waiver of Tort and Suit in Assumpsit .....	327
 <b>Chapter 17. Limits on Restitutionary     Remedies.....</b>	<b>329</b>
(A) Volunteers .....	329
1. Generally .....	329
2. Performance of Another's Duty.....	330
3. Protection of Another Person .....	331
4. Protection of Property.....	331
5. Benefits Conferred by Mistake .....	333
(B) Tracing .....	334
1. Overview.....	334
2. Commingled Funds.....	337

(C) Bona Fide Purchaser .....	341
1. Overview.....	341
2. Notice.....	343
3. Value.....	344
4. Legal Title .....	345
(D) Change in Position .....	345
<b>Chapter 18. Jury Trials .....</b>	<b>349</b>
(A) Source of the Right to a Jury Trial.....	349
(B) Scope of the Right to a Jury Trial .....	350
1. Scope of the Right to a Jury Trial— Generally .....	350
2. Novel Statutory Claims .....	351
3. Substantive Equity .....	352
(C) Mixed Claims of Law and Equity .....	354
1. Equitable Clean-Up .....	354
2. Federal Approach to Mixed Claims .....	355
(D) Substance of the Right to a Jury Trial.....	356
<b>Chapter 19. Attorneys' Fees .....</b>	<b>359</b>
(A) Introduction .....	359
(B) Equitable Exceptions to the American Rule .....	361
1. Bad Faith Litigation .....	361
2. Common Fund.....	363
3. Substantial Benefit Theory .....	364
4. Private Attorney General.....	365
(C) Federal Fee-Shifting Statutes .....	366
1. Entitlement to Fee Awards .....	366
2. Measurement of Fees.....	371
(D) Equal Access to Justice Act .....	374
(E) Costs Under Federal Rules.....	375

<b>Chapter 20. Declaratory Remedies .....</b>	<b>379</b>
(A) Nominal Damages .....	379
(B) Declaratory Judgments.....	380
1. Overview and Function .....	380
2. The Federal Declaratory Judgment Act.....	383
3. Timing .....	385
4. Federalism and Abstention .....	386
INDEX.....	391