

REMEDIES (LAW 628)

FALL 2026

Prof. Conley

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Office Hours: Tuesday 3:30-5:00 pm & Wednesday 10:30-11:30 am and by appointment

Learning Goals:

- Understand 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.
- Understand contract remedies including specific performance, and expectation and reliance damages.
- Understand 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 a closed book mid-term exam (40%) and a closed book cumulative final exam (60%).
- The mid-term will cover classes 1 – 14, and the final will cover classes 1 – 26.
- The tentative mid-term date is Friday, October 16
- For both exams, the following apply:

- Exams will be graded anonymously and must include student numbers.
- Exams are completely closed book and closed note.
- Both exams will have a mixture of multiple choice and hypothetical essay questions.
- Essay answers will have a word limit of 800 words.

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, Tuesday 3:30-5:00 pm & Wednesday 8:30-10:30 am and by appointment.

Accommodations: The University of Montana is committed to providing equal access for all students. If you anticipate or encounter barriers to learning due to a disability, please contact the Office Disability Equity (ODE) at 406-243-2243 or visit umt.edu/disability to request accommodations. Please note that accommodations are not retroactive, so do not delay in making your request.

Recording During Class: Recording class is prohibited unless student has a specific accommodation to record. Students should be aware that class may be recorded should a student in the course have such accommodation.

Academic honesty: 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 pursuant to the Law School's Honor Code. In addition, all law students are subject to the Student Conduct Code of the University of Montana as it also applies to law student conduct.

Attendance Requirements: The law faculty assumes that students will attend all classes in each course for which the student is enrolled. The law school adheres to the ABA policy on attendance which requires "regular class attendance." At a minimum, regular attendance means that a student is present for at least 70 percent of the class sessions. For purposes of meeting the law school's minimum attendance requirement in courses other than clinics, "present" means that the student must attend class in-person unless the course is designated as a remote class. A student who does not regularly attend this course cannot earn credit in this course and will earn a failing grade if they do not voluntarily withdraw. Students who are late for a class will not be considered as having regularly attended that class.

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 read, synthesize, assess and digest complex materials. Using generative AI prior to doing this yourself will be a huge missed opportunity to develop these critically important skills. After reading, 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

8/25 – Class 1 – Introduction & Introduction to Equitable Remedies

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

8/27 – Class 2 – Permanent Injunctive Relief – General Introduction and Federal Standard

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

9/1 – 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

9/3 – Class 4 – Provisional Injunctive Relief – Introduction & Federal

- Emanuel, 252-255, 266-280
- Fed. R. Civ. P. 65

9/8 – Class 5 – Provisional Injunctive Relief – State Standard

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

9/10 – Class 6 – Nationwide Injunctions

- Trump v. CASA, Inc. Excerpt (Canvas)

9/15 – Class 7 – Equitable Contract Remedies - Specific Performance, Rescission and Reformation

- Emanuel, 357-379

9/17 – Class 8 – Contempt

- Emanuel, 415-422, 430 – 437

9/22 – Class 9 – In Class Injunctive Relief Workshop

9/24 – Class 10 – 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
- FRCP and Mt. R. Civ. P. 70(b)
- Volk v. Goesser, 2016 MT 61, 382 Mont. 382, 367 P.3d 378 (2016) (skip paragraphs 29-38, concurrence and dissent)
- Northern Cheyenne Tribe v. Roman Catholic Dioceses, 2013 MT 24, 368 Mont. 330, 296 P.3d 450 (2013)

9/25 FRIDAY – MAKE UP CLASS – Class 11 – Declaratory Relief – General and Federal Standard

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

9/29 – NO CLASS

10/1 – Class 12 – Guest Lecture – Declaratory Actions and Insurance

10/6 – Class 13 – Declaratory Relief – State Standard

- 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
- Gryczan v. State, 283 Mont. 433 (1997)
- Broad Reach Power, LLC v. Mont. Dep't. Pub. Serv. Reg., et al., 2022 MT 227, 520 P.3d 301, 310 Mont. 450
- Mont. R. Civ. P. 57

10/8 – Class 14 – Injunctive Relief, Declaratory Relief and Contempt Workshop

10/13 – NO CLASS

10/15 – Class 15 – 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

Mid-Term Exam – Tentative Date Friday, October 16

10/20 – Class 16 – 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)

10/22 – Class 17 – Damages – Tort damages – Real Property

- Emanuel, 62-74, 34-37

10/27 – Class 18 – Damages cont'd – Contract Damages

- Emanuel, 112-126

10/29 – Class 19 – Contract damages cont'd, Liquidated Damages and Limitations of Liability

- Emanuel, 135-140
- MCA 28-2-702
- MCA 28-2-721
- Zirkelbach Construction Inc. v. DOWL LLC (Canvas)
- Exxon Mobil Corp. v. AECOM Excerpt (Canvas)

11/3 – Class 20 – Calculating Damages & the Collateral Source Rule

- Emanuel, 149-50, 157-162, 169-170, 175-178
- MCA 27-1-307 & 308

11/5 – Class 21 – Damages cont'd – Economic Loss Rule & Exceptions

- Emanuel, 91-92, 101-106
- Romo v. Shirley, 2022 MT 249

11/10 – Class 22 – Compensatory damages in-class workshop with refresher on non-damages remedies

11/12 – Class 23 – Statutory Remedies & Nominal damages

- Emanuel, 439-440
- 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
- Nominal damages when no appreciable detriment. MCA 27-1-204
- Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021)

11/17 – 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

11/19 – 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)

12/1 - Class 26 - Attorney's Fees

- Forward Montana v. State, 2024 MT 75, 546 P.3d 778, 416 Mont. 175 (2024)
- 42 USC 1988
- Buckhannon Bd. & Care Home Inc. v. W. Va. Dept. of H&HS EXCERPT (Canvas)