Learning Goals: This class adds important tools to students’ tool box that will make them more effective practitioners in all areas of practice. Students will learn the various types of relief that federal and state courts provide while also reflecting on the nature of judicial power. Students will learn the applicable standards and issues associated with various types of relief. Students will gain the ability to analyze and identify remedial issues. Students will engage in significant in-class problem solving and class participation, thereby honing issue spotting skills and verbal advocacy.

Reading: The assigned text is Principles of Remedies Law, Fourth Edition, Russell L. Weaver and Michael B. Kelly, from the Concise Hornbook West series. It is available at the bookstore or electronically on Westlaw.

In addition, case excerpts and statutes are assigned reading. They are listed in the syllabus for each class and posted on moodle for each class. Each student is expected to come to class having read the text and assigned cases and/or statutes.

I have also listed optional applicable Montana Code Annotated provisions in the syllabus. These will be discussed in class and are listed as references. Students are encouraged, but not required, to review these statutes prior to each class.

Assessment: There will be four graded assessments in this class, which includes the final. The first assessments will be in class.

The second assessment will be cumulative and administered via moodle. The assessment can be taken any time between Friday, October 14 at 9 am and Sunday, October 16 at 8 pm. You will have 90 minutes to complete the second assessment.

The third assessment will be on moodle and will cover Classes 16-21. You can take the assessment any time between Friday, November 4 at 9 am and Sunday, November 6 at 8 pm. You will have 90 minutes to complete the third assessment.

The fourth assessment will be the cumulative final exam administered at the scheduled exam time for this course.

Each assessment and the final will be open book.

Each of the first 3 assessments is worth 20% (60%).

The final exam is worth 30%.

Class participation will make up 10% of the final grade in this course. Class participation factors include ability to answer questions regarding reading, participation in in-class activities and discussions, and
Attendance: Students will struggle to succeed in this class if they do not attend class regularly. As such, regular attendance is expected. If a student is going to miss a class in which there is an assessment, the student must tell me in advance by email, and arrange a time to take the assessment as close in time to the class as possible based on the circumstances. Students who miss an in-class assessment must strictly adhere to the ABIII honor code and UM student code of conduct.

In-class expectations: After the first two classes, 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 8:30 – 9:30 and Wednesday 8:30 – 9:30 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 anticipate or experience barriers based on disability, please contact the ODE at: (406) 243-2243, ode@umontana.edu, or visit www.umt.edu/disability for more information. Retroactive accommodation requests will not be honored, so please, do not delay. As your instructor, I will work with you, the Assistant Dean of Students – Student Success, Student Services, and the ODE to implement an effective accommodation.

**Academic honesty:** ABIII Honor Code and UM Conduct Code apply.

**Class Schedule and Reading**

**Aug. 23 – Class 1 - Introduction**
- Reading
  - Weaver & Kelly - Chapter 1.A – pp 1-6: Overview
  - Montana Constitution, Article II, Section 16
  - MCA 1-3-214

**Aug. 25 – Class 2 - Equity and equitable remedies & the common law legal heritage**
- Reading
  - Weaver & Kelly - Chapter 2A-2C
- **Optional** MCA provisions
  - MCA 1-3-208 Own wrong – no advantage
  - MCA 1-3-212 Benefit – burden
  - MCA 1-3-218 Vigilance

**Aug. 30 - Class 3 - Injunctive relief – federal standard**
- Reading
  - Weaver & Kelly - 2D, Chapter 4: Injunctions

**Sept. 1 - Class 4 - Injunctive relief – state standard**
- Reading
  - City of Whitefish v. Town Pump, Inc., 2001 MT 58
  - Montana Code Annotated provisions regarding injunctions
    - Definition of injunction. MCA 27-19-101
    - When final injunction may be granted to prevent reach of obligation. MCA 27-19-102
- When injunction may not be granted. MCA 27-19-103
- Form and scope of injunction or restraining order. MCA 27-19-105

Sept. 6 - Class 5 - Injunctive relief – federal standard cont’d
   - Reading

Sept. 8 - Class 6 - Temporary Injunctive Relief – Preliminary Injunctions and Temporary Restraining Orders – federal standard
   - Reading
     - Weaver & Kelly - Chapter 5: Temporary injunctive relief
     - Fed. R. Civ. P. 65

Sept. 13 - Class 7 - Temporary Injunctive Relief – Preliminary Injunctions and TROs – state standard
   - Reading
     - Provisions regarding preliminary injunctions
       - Mont. R. Civ. P. 65
       - When preliminary injunction may be granted. MCA 27-19-201
     - MCA Provisions regarding temporary restraining orders
       - Temporary restraining order. MCA 27-19-314
   - Optional MCA provisions regarding preliminary injunctions
     - Notice of application – hearing. MCA 27-19-301
     - Time of granting injunction, evidence required. MCA 27-19-303
     - Security for damages. MCA 27-19-306
     - Application to dissolve or modify injunction. MCA 27-19-401
     - When injunction dissolved or modified. MCA 27-19-404
   - Optional MCA Provisions regarding temporary restraining orders
     - When restraining order may be granted without notice. MCA 27-19-315
     - Contents and filing of restraining order granted without notice. MCA27-19-316
     - Extension of expiration date. MCA 27-19-317
     - Application for injunction to be heard without delay. MCA 27-19-318
     - Motion to dissolve or modify restraining order. MCA 27-19-319

Sept. 15 – Class 8 – First Graded In-Class Assessment on Classes 1 – 7

Sept. 20 - Class 9 - Specific Performance – Federal and state standard
   - Reading
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

- Optional MCA Provisions regarding specific performance
  - Kinds of relief – when given. MCA 27-1-107
  - 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
  - Specific performance of agreement to transfer property – distinction between real and personal property. MCA 27-1-419
  - No specific performance of an agreement to buy property when title not clear. MCA 27-1-420.

**Sept. 22 - Class 10 – Restitution**
- Reading
  - Weaver & Kelly – 7A-C
  - Cause of action for breach of promise abolished – right to damages for fraud and unjust enrichment preserved. MCA 27-1-602

**Sept. 27 - Class 11 – Restitution cont’d – Special Restitutionary Remedies**
- Reading
  - Weaver & Kelly – 7D, 2F
  - Constructive Trusts
    - Constructive trust. MCA 72-38-123
    - Constructive Trusts - Restatement of Restitution section 160
    - Volk v. Gosser, 382 P.3d 378 (2016)
    - Northern Cheyenne Tribe v. Roman Catholic Dioceses 296 P.3d 450 (2013)

**Sept. 29 - Class 12 - Equitable defenses**
- Reading
  - Weaver & Kelly – 2E
  - Unclean hands
    - Own wrong – no advantage. MCA 1-3-208
    - Roundup Cattle Feeders v. Horpestad, 184 Mont. 480
  - Unconscionability
- Arrowhead School Dist. v. Klyap, 2003 MT 294
  - Laches
    - Order denying writ of mandamus, Morris v. Election Administrator, DV-20-135
  - Estoppel
    - City of Whitefish v. Town Pump, Inc., 2001 MT 58

**Oct. 4 - Class 13 - Contempt - federal and state standard**
- Reading
  - Weaver & Kelly - Chapter 3: Contempt
  - What Acts or Omissions are Contempts – Civil and Criminal Contempt. MCA 3-1-501
- **Optional** MCA provisions
  - Contempt Committed in Presence of Court. MCA 3-1-511
  - Procedure – Contempt not in the Presence of the Court. MCA 3-1-512
  - Warrant – Statement of Charge. MCA 3-1-513
  - Hearing on Contempt Not Committed in Immediate View and Presence of Court or Judge at Chambers. MCA 3-1-518
  - Penalty to Compel Performance. MCA 3-1-520.
  - Judgment And Orders In Contempt Cases Final – Family Law Exception. MCA 3-1-523

**Oct 6 - Class 14 - Declaratory Relief – federal standard**
- Reading
  - Weaver & Kelly - Chapter 8
  - Federal Rule of Civil Procedure 57
  - 28 USC 2201
  - Phoenix v. Boland, 229 F.Supp.3d 1183

**Oct. 11 - Class 15 - Declaratory Relief – state standard**
- Reading
  - 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
- **Optional** MCA provisions
  - Declarations concerning administration of trusts and estates. MCA 27-8-204
  - Enumeration not restrictive of general powers. MCA 27-8-205
  - Court’s discretion to refuse to render judgment. MCA 27-8-206
  - Necessary Parties. MCA 27-8-301
  - Costs. MCA 27-8-311

**Oct. 13 - Class 16 - Damages – Introduction and Plaintiff’s Rightful position**
• Reading
  o Weaver & Kelly - Chapter 9A – C
  o Detriment defined. MCA 27-1-201
  o Right to compensatory damages. MCA 27-1-202
  o Right to damages for detriment resulting after suit brought and for future detriment. MCA 27-1-203
  o Damages to be reasonable. MCA 27-1-302

Oct. 18 - Class 17 - Damages cont’d – Direct Loss and ensuing loss
  • Reading
    o Weaver & Kelly - Chapter 9.D and E
    o McEwen v. MCR, LLC, 368 Mont. 38 (2012)

Oct. 20 - Class 18 - Damages cont’d – Intangible loss
  • Reading
    o Weaver & Kelly - Chapter 9.F
    o Damages for emotional or mental distress prohibited from contract actions – exception MCA 27-1-310
    o Albinger v. Harris, 310 Mont. 27 (2002)

Oct. 25 - Class 19 - Damages cont’d – Limitations on recovery
  • Reading
    o Weaver & Kelly - Chapter 9.G
    o Montana Code Annotated Statutory Limitations on Damages
      ▪ Limitation on damages for breach of obligation. MCA 27-1-303.
      ▪ Value of written instrument. MCA 27-1-304.
      ▪ Breach of contract. MCA 27-1-311
      ▪ Breach of agreement to convey real property. MCA 27-1-314
      ▪ Breach of agreement to buy real property. MCA 27-1-315
      ▪ Conversion of personal property. MCA 27-1-320
    o Collateral source rule in Montana
      ▪ SB251 (2021)
    o Economic Loss Doctrine in Montana
      ▪ Jim’s Excavating Service, Inc. v. HKM Assoc., 265 Mont. 494 (1994)

Oct. 27 - Class 20 - Damages cont’d – Agreed upon remedies, statutory damages, nominal damages
  • Reading
    o Weaver & Kelly - Chapter 9H and I
    o Contractual liquidated damages provisions
      ▪ When provision fixing liquidated damages valid. MCA 28-2-721
      ▪ Arrowhead School Dist. v. Klyap, re-read from Class 12
    o Statutory damages caps
      ▪ 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

**Nov. 1 - Class 21 - Damages cont’d – Punitive damages**
- Reading
  - Weaver & Kelly - 9.J
  - Punitive damages – when allowed – limitation. MCA 27-1-220
  - Punitive damages – liability – proof – award. MCA 27-1-221
  - Insurance Coverage of Punitive Damages. MCA 33-15-317

**Nov. 3 - Class 22 - Attorneys fees and costs**
- Reading
  - Weaver & Kelly - 9.K
  - Fees
    - Bitterroot River Protective Ass’n v. Bitterroot Conservation Dist., 359 Mont. 393 (2011)
    - Mahach-Watkins v. Depee, 593 F.3d 1054 (9th Cir. 2010)
- **Optional** Reading
  - Montana Rule of Conduct 1.5
  - Costs - MCA 25-10-101, 102, 103, 104, 105, 106, 107, 201, 205

**Nov. 10 - Class 23 - Civil rights remedies**
- Reading
  - ConsentDecree-ChiefGoesOutv.Missoula County, 9:12-cv-00155-DWM (Oct. 31, 2013)

**Nov. 15 - Class 24 - Case study – Campus Voting Bill**
  - Complaint
  - TRO
  - Preliminary Injunction
  - Menahan Order Enjoining SB319
  - Order on Attorneys Fees (if issued)

**Nov. 17 - Class 25 - Remedies in property disputes**
- Reading
  - Quiet title authorized. MCA 70-28-101
  - Wrongful occupation of property. MCA 27-1-318
- Willful holding over of real property. MCA 27-1-319
- Treble Damages MCA 70-27-206
- Forcible detainer defined. MCA 70-27-103(1)
- Removal of unauthorized person or trespasser. MCA 70-24-113

**Nov. 22 - Class 26 - Review**