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The Challenge of Remedies

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THE CHALLENGE OF REMEDIES

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INTRODUCTION

Remedies are the primary reason for litigation. Most plaintiffs bring lawsuits to receive some recourse for a wrong or to prevent an impending harm. A Remedies class teaches the rules and principles guiding how to fashion these forms of relief. It explores how damages should be calculated, whether an injunction should be awarded, what that injunction should look like, and countless other topics about how to right wrongs.

Despite the importance of Remedies, the class on Remedies receives surprisingly little attention in law school. My sense from informal conversations is that schools do not always offer it, and it is often not heavily enrolled. The majority of classes in law school focus on whether a plaintiff is entitled to relief under substantive law. They rarely spend much time on what that relief should look like. At best, most students might have spent a day or two on remedies in Contracts and perhaps Torts. Or they might have spent some time in Criminal Procedure on why exclusion is an appropriate remedy for constitutional violations.

A Remedies class should be a more central component of law school. It should be offered more, and more students should take it. That topic is the first thing I talk about in this Essay. To that end, I provide a synopsis of the lecture I give to students on the first day of Remedies class explaining why they should take Remedies.

Part II of this Essay is devoted to highlighting two challenges that arise in teaching Remedies. First, a Remedies course merges together two historically separate areas of law and equity into one course.[1] Although similar principles

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1. *See* Douglas Laycock, *How Remedies Became a Field: A History*, 27 REV. LITIG. 161, 162 (2008). Law refers to common law and statutes, the violation of which the courts of law, such as the King's Bench, had jurisdiction to remedy. *See, e.g.*, Eric A. White, Note, *Examining Presidential Power Through the Rubric of Equity*, 108 MICH. L. REV. 113, 117 (2009). Equity developed at the hands of the Chancery Court, whose role was to dispense justice in cases in which the law did not provide a remedy. JAMES P. HOLCOMBE, AN INTRODUCTION TO EQUITY JURISPRUDENCE, ON THE BASIS OF STORY'S COMMENTARIES, WITH NOTES AND REFERENCES TO ENGLISH AND AMERICAN CASES, ADAPTED TO THE USE OF STUDENTS 14–15 (1846). The goal of

apply to law and equity, they differ in significant ways, and care must be taken to ensure that students keep them straight. Second, the law of Remedies cuts across other areas of the law. The same law of Remedies applies to remedy breaches of contracts, commissions of torts, and violations of constitutional law. Although the trans-substantive nature of Remedies makes it ideal to illustrate broader principles in law, it often causes at least some consternation—if not confusion—among students.

I. WHY REMEDIES?

In all my classes, I start the first day with an explanation for why the class is important. In first year classes like Civil Procedure, the talk is designed mostly to give the students some information about what is to come. In upper level classes like Remedies, the talk not only gives information about the course; it also is intended to let them know why students should take this class as opposed to another.

For Remedies, the sell is easy. Remedies are what make lawyers marketable. Remedies are the deliverables that lawyers provide their clients. Clients come to lawyers because they perceive that they have been grieved and they are seeking some sort of recourse. They are not particularly interested in the legal theory. Sure, there are some people who are more interested in establishing a doctrine through judicial decision than in obtaining a remedy to right a wrong in a particular case.[2] But they are the exception. The vast majority of clients want whatever they are due under the law. A client who walks in the door and complains that his prize goose has been stolen from his yard is not interested in substantive doctrine about the elements of conversion. He wants something done about the theft—his goose returned or some compensation.

Although students are aware that the driving force behind cases is getting a remedy, they often do not realize the centrality of remedies. They think that the primary role of the court is to expound on the law, not to provide remedies to the injured. Remedies are just something that happens after the court has finished its legal discussion. That this happens is not surprising. Most classes, especially in the first year, focus on the development of doctrine and precedents through court decisions. Also contributing to this problem is the

equity was to deter, not punish, and the chancellor had broad discretion to accomplish that goal. Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944).

2. *See* STEPHEN L. WASBY, RACE RELATIONS LITIGATION IN AN AGE OF COMPLEXITY 31–32 (1995) (arguing that one reason that public interest groups bring suit is "that there are principles to defend"); F. Andrew Hessick, *Standing, Injury in Fact, and Private Rights*, 93 CORNELL L. REV. 275, 323 (2008).

fascination with the Supreme Court—a court whose role is much more to resolve legal questions than to award remedies.[3]

Remedies also provide the tools of the trade, the weapons that lawyers use to get things done. Students know about the basics of damages and injunctions from other classes, and they might have some sense about writs of mandamus from their discussion of *Marbury v. Madison*[4] in Constitutional Law, but their knowledge is limited. They are generally unaware of the variety of tools that the law provides to accomplish results. Remedies opens their eyes to ejectment, restitution, and an assortment of other more exotic remedies that serve uniquely useful functions, as well as the preliminary forms of relief like temporary restraining orders and preliminary injunctions.

The focus on providing solutions for clients also means that a Remedies class provides an excellent opportunity to develop problem-solving skills. There has been a push recently for law schools to help law students develop problem-solving skills, and for good reason. Clients often come to attorneys seeking a solution to a problem, not to develop doctrine. For example, a client might come to a firm seeking to fight global warming. There are many ways to deal with that problem: one can petition the EPA for regulations, file nuisance suits against major polluters, lobby Congress, write op-eds, or create a non-profit devoted to solving global warming. All of these approaches work together towards the single aim of solving the problem.

Doctrinal classes, on the other hand, do not provide much of an opportunity for problem-solving. They usually do not address how the material being studied can be used in tandem with the material taught in other classes to accomplish particular results; instead, they focus on how the substantive material can be used as one way to solve a problem. A class on administrative law, for example, will teach how to bring an arbitrary and capricious challenge against a rulemaking, but it will not spend much time exploring other avenues in case the challenge fails.

A Remedies class provides a nice opportunity to focus on problem-solving. Consider the client with the stolen goose. There are a variety of options available. He can sue for damages, seek restitution, bring an action for replevin, request an injunction—the list goes on and on. Each form of relief has its advantages and disadvantages. Choosing among the various remedies requires the student to be creative and to figure out how best to achieve the client's goals while at the same time imposing the fewest costs.

For all its practicality, Remedies still carries plenty of theoretical heft. Whether a remedy should be available in a particular case, and determining what that remedy should be, raises interesting questions about the goals of our

3. *See* Carolyn Shapiro, *The Limits of the Olympian Court: Common Law Judging Versus Error Correction in the Supreme Court*, 63 WASH. & LEE L. REV. 271, 278–79 (2006).

4. 5 U.S. (1 Cranch) 137 (1803).

legal system. Should remedies seek to promote efficiency, fairness, justice, or some other goal? Each of these frameworks can lead to different remedies for identical violations.

A Remedies course also raises important questions about the role of the courts in enforcing rights. Every time a court provides a remedy, it changes the status quo. The remedy requires A to do something (or refrain from doing something) for B. When this change in the status quo affects future conduct, it raises questions about the appropriate role of the courts, because telling people how they should act in the future is essentially a policy question. This is one of the reasons that injunctions are considered exceptional remedies, to be provided only in the last resort and only when the overall benefit exceeds the cost.[5] An injunction by its nature dictates how people should act in the future. That an injunction involves policy decisions is particularly clear in cases where there are various ways that the legal violation can be cured. Consider school bussing. Courts ordered bussing to end racial segregation following *Brown v. Board of Education*.[6] But bussing is not the only possible injunction that the courts could have entered. They could have ordered simply that schools integrate without specifying the means for achieving that integration.

The policy effects are often not limited to the precise terms of an injunction. As Judge Easterbook has noted, telling a school district that it must bus students reduces the incentive for the community to invest in its local schools.[7] Those schools no longer educate just the residences' children; they educate the children of others.

The policy implications are not limited to injunctions. They extend to every form of remedy. Consider compensatory damages. Compensatory damages are meant not to deter but to provide redress for harm that the individual plaintiff has suffered because of the defendant's wrongdoing.[8] Even so, compensatory damages do have a deterrent effect, at least when the costs of the harm exceed the benefits that the defendant receives.[9] But legal wrongs can have virtually infinite consequences.[10] To avoid overdeterrence, courts limit

5. *See* Weinberger v. Romero-Barcelo, 456 U.S. 305, 312–13 (1982).

6. 347 U.S. 483 (1954); *see also* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 30 (1971) (mandatory bussing implemented on district-wide basis).

7. Frank H. Easterbrook, *Civil Rights and Remedies*, 14 HARV. J.L. & PUB. POL'Y 103, 106 (1991).

8. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003) ("Compensatory damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." (internal quotation marks omitted)).

9. Kemezy v. Peters, 79 F.3d 33, 34 (7th Cir. 1996) ("Knowing that he will have to pay compensation for harm inflicted, the potential injurer will be deterred from inflicting that harm unless the benefits to him are greater.").

10. *See* Jennifer H. Arlen, *Reconsidering Efficient Tort Rules for Personal Injury: The Case of Single Activity Accidents*, 32 WM. & MARY L. REV. 41, 58–59 (1990).

the availability of compensatory damages. For this reason, plaintiffs cannot recover for consequential damages that are not reasonably foreseeable for breach of contract,[11] since no person in his right mind would enter into a contract without knowing his exposure.[12] Likewise, plaintiffs cannot recover damages to compensate for detention that resulted from evidence recovered in a search that violated the Fourth Amendment.[13] Awarding damages for the detention would overdeter officers; plaintiffs accordingly may recover only for the illegal search itself.[14]

The issue of the appropriate role of the court is particularly acute when it comes to remedies entered against governmental entities. On the one hand, remedies for wrongs committed by the government should be available not only to make injured persons whole but also to hold government actors accountable. On the other hand, requiring the government to act or abstain from acting or ordering another government body to pay damages can amount to a serious intrusion on the powers of that body. Requiring the government to expend resources to comply with an injunction or pay damages diverts resources from solving other problems.[15]

These concerns underlie sovereign and qualified immunity, though neither are technically doctrines about remedies. But even when immunity does not preclude suit, these concerns lead courts to be cautious in fashioning remedies against government bodies. In *Horne v. Flores*, for example, the Court considered whether an injunction should continue against Arizona requiring it to fund programs to teach English to non-native speakers.[16] One reason the Court provided while concluding that continuing the injunction was improper was that respect for federalism demanded that the federal courts interfere as little as possible in the state's decisions about education.[17]

II. CHALLENGES OF REMEDIES

Remedies is a difficult subject, both to teach and to learn. Even topics that seem like they should be relatively easy often are not. Consider expectation

11. *See* RESTATEMENT (SECOND) OF CONTRACTS §§ 347, 351 (1981).

12. *See, e.g.*, Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 869 P.2d 454, 460 (Cal. 1994).

13. Townes v. City of New York, 176 F.3d 138, 148 (2d Cir. 1999).

14. *Id.*

15. *See* Horne v. Flores, 557 U.S. 433, 448 (2009) ("When a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs."); Catherine T. Struve, *Sovereign Litigants: Native Americans in Court*, 55 VILL. L. REV. 929, 949–950 (2010) ("Immunity protects the sovereign's monetary resources and permits those resources to be directed according to the decisions made by the political branches of the sovereign's government." (footnotes omitted)).

16. *Horne*, 557 U.S. at 439–45.

17. *Id.* at 452.

damages for breaches of contract. Students often have difficulty ascertaining what a plaintiff could legitimately expect under a contract and grasping that those damages may be mitigated, especially when the mitigation leads to the counterintuitive result of no damages.

There are also broader issues that do not pertain to a single topic but instead underlie the entire Remedies course. One of these issues is that Remedies is actually an amalgam of two classes, one on equity and the other on law. Another is that, even though the question of what remedy to award is separate from the question whether the substantive law was violated, substantive law can still influence the types of remedies available. I find it useful to point these issues out to students so that they may more easily identify and understand unifying principles and themes that run through Remedies.

A. Two Different Classes

The biggest challenge derives from the fact that Remedies is in some sense two classes combined into one. Historically, there were two threats of remedies—remedies from the law courts and remedies from the chancellor.[18] They were separate systems, and in some places still are.[19] Once upon a time, classes reflected these differences. Law schools offered a class on equity and taught damages in other classes.

Merging law and equity into one class has benefits. Conceptually, all remedies should be taught in one class for the same reason that it made sense to merge the two judicial systems into one. All remedies serve the same goals of seeking to make the plaintiff whole in some sense and preventing future wrongdoing, either directly, as in the case of an injunction, or indirectly through deterrence.[20] Moreover, joining the two subjects into one class presents an opportunity for discussing the interactions, similarities, and differences between the two systems. Although some other classes, notably Civil Procedure and Federal Courts, discuss the relationship between law and equity to some extent, they do not do so in the depth that Remedies does.

18. *See, e.g.*, Todd J. Zywicki, *The Rise and Fall of Efficiency in the Common Law: A Supply-Side Analysis*, 97 NW. U. L. REV. 1551, 1601 (2003). Of course, equity could operate only when the law provided no remedy. But competition with equity led to the recognition of new common law rights and remedies. 2 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 456 (4th ed. 1936).

19. For example, Delaware still maintains separate courts of chancery and courts of law. *Compare* DEL. CODE tit. 10, § 341 (2012) ("The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity."), *with* DEL. CODE tit. 10, § 541 (2012) (defining jurisdiction of superior courts to hear matters of "law[]").

20. *See* Albemarle Paper Co. v. Moody, 422 U.S. 405, 417–18 (1975) (noting the deterrent effect of monetary damages).

On the other hand, combining the topics into one class presents several challenges. One is that there is a lot of material to cover. The topic of equity has not gotten any smaller from the times when it was taught as its own course. Indeed, there is enough material in equity alone—public injunctions, private injunctions, contempt, defenses, to name a few—that covering everything in one course is difficult to do. Damages could likewise easily consume an entire course. One could spend days discussing the basic theories of damages, how to use actuarial tables and other statistics to assess damages, what constitutes a harm potentially warranting compensation, how to apportion harm among tortfeasors, why the law does not provide compensation for some types of harms, how damages may be calculated differently for different types of actions, whether courts should award punitive damages, and so on.

More importantly, even though the law has merged remedies, the merger is not complete. Different principles still apply to equity and law. Equity depends on discretion and flexibility to do justice while damages generally follow more rigid rules.[21] Consequently, courts have developed requirements for securing injunctive relief that do not apply to damages.[22]

Some of these different rules make a good deal of sense because of the different functions and consequences of law and equity, but others make less sense. Consider laches and statutes of limitations. The purpose underlying both is to ensure that a plaintiff brings suit within a reasonable amount of time to avoid prejudicing the defendant.[23] For laches, the judge says what is reasonable;[24] for statutes of limitations, a statute declares what constitutes a reasonable amount of time.

One explanation is that equity traditionally depended on the court's discretion and fixing a time period would be inconsistent with that tradition. But that concern has largely fallen by the wayside. Although fixed time periods might have been too rigid once upon a time, today they accommodate discretion through the doctrines of tolling and estoppel.[25]

Another explanation is that damages are retroactive relief from a harm arising from some past event while equity seeks to remedy an ongoing or

21. Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944).

22. *See, e.g.*, Weinberger v. Romero-Barcelo, 456 U.S. 305, 312–13 (1982).

23. *See* United States v. Marion, 404 U.S. 307, 322–23 (1971) (statute of limitations); Gardner v. Panama R.R. Co., 342 U.S. 29, 31 (1951) (laches).

24. *See* McKnight v. Taylor, 42 U.S. (1 How.) 161, 168 (1843) (stating that to avoid laches, "[t]here must be conscience, good faith, and reasonable diligence, to call into action the powers of the court").

25. Equitable estoppel, which applies when a plaintiff files a claim out of time based on the defendant's misconduct, prevents a defendant from raising the statute of limitations at all. *See* Bennett v. U.S. Lines, Inc., 64 F.3d 62, 65 (2d Cir. 1995). Equitable tolling permits a plaintiff to avoid the bar of the statute of limitations if, despite his best efforts, he cannot file a claim. *See* Cada v. Baxter Healthcare Corp., 920 F.2d 446, 451–52 (7th Cir. 1990).

future violation[26]—there is a new legal wrong for every instant the injunction is not granted—so requests for injunctions are less likely to require evidence created at the time of the initial wrongdoing. Consequently, there should be greater leeway in seeking an injunction after a substantial period of time has passed since the initial violation.

But that explanation is unsatisfactory. On the one hand, even though injunctions target ongoing wrongs, some injunctions present the same proof problems as damages claims because they depend on proving events at the time of the initial wrongdoing. Obtaining an order directing the return of stolen goods requires the plaintiff to prove that he owned the goods and that they were stolen.[27] On the other hand, some damages claims are like injunctions in that, although they arise from past acts, they seek relief from ongoing harms, as where a person seeks damages for a continuous trespass on his property.[28]

The similarities between the two doctrines have led courts to bring them closer together.[29] They have made statutes of limitations more like laches by recognizing tolling doctrines and concluding that for continuous harms, the limitations period starts anew every day.[30] And they have made laches more like statutes of limitations by looking to statutes of limitations in determining whether laches should apply.[31]

B. The Link Between Rights and Remedies

The law of Remedies is not tied to one particular substantive area of the law like Torts or Contracts. It cuts across substantive areas of the law. Substantive law establishes whether a person has an entitlement; the law of Remedies establishes what the person can get. For the most part, the law of Remedies is independent from substantive law. Damages are calculated in the same basic way for assault as they are for trespass. For this reason, a Remedies

26. F. Andrew Hessick, *Probabilistic Standing*, 106 NW. U. L. REV. 55, 61 (2012).

27. *See, e.g.*, Pacific M. Int'l Corp. v. Raman Int'l Gems, Ltd., No. 10 Civ. 9250(DAB), 2012 WL 3194968, at *8 (S.D.N.Y. Aug. 7, 2012).

28. *See, e.g.*, Sporn v. MCA Records, Inc., 448 N.E.2d 1324, 1325 (N.Y. 1983).

29. Further complicating matters is that there are occasions when a person seeks relief that ordinarily would be obtained through a legal remedy but must proceed through equity because of the procedural posture of the case, as when a claim for damages is based on a violation of a consent decree. *See, e.g.*, Cook v. City of Chicago, 192 F.3d 693, 695 (7th Cir. 1999).

30. *See, e.g.*, Pugliese v. Superior Court, 53 Cal. Rptr. 3d 681, 686 (Cal. Ct. App. 2007) ("[W]here a tort involves a continuing wrong, the statute of limitations does not begin to run until the date of the last injury or when the tortuous acts cease.").

31. *See, e.g.*, Warner v. Sun Ship, LLC, No. 11–7830, 2012 WL 1521866, at *3 (E.D. Pa. Apr. 30, 2012) ("[W]here the statute does not contain a limitations period, the Court begins its analysis by looking to the most analogous state statute of limitations to determine whether the presumption of laches attaches.").

class need not be confined to one area of the law. In the course of illustrating one concept, a class might discuss conversion, trespass, and securities fraud.

Teaching a subject that cuts across substantive areas of the law has many benefits. Focusing on one specific area like Torts—or more accurately negligence since most Torts classes rarely focus on other torts—misses broad, unifying principles that underlie rights and remedies in our system. The subject-specific nature of law classes leads students to compartmentalize the various areas of the law as opposed to seeing them as part of one continuous whole. A Remedies class provides a thread that links these topics together. For example, it reveals to students that the same general principles guide the remedy for a breach of contract, a private tort, or a constitutional violation.

But the divide between substantive law and remedies is not complete. The nature of the right giving rise to a remedy can affect the remedy. For example, an injunction is appropriate only if the plaintiff will suffer irreparable harm.[32] Often, this requires a showing that damages would be too speculative or that damages cannot be measured in a way that would make the plaintiff whole.[33] But many courts have dispensed with this requirement for constitutional claims,[34] instead presuming irreparable harm for those claims. (Historically, courts also invoked the presumption for some statutory claims, though recent decisions have cast doubt on that practice.[35])

32. *E.g.*, Monsanto Co. v. Geertson Seed Farms, 130 S. Ct. 2743, 2756 (2010) (listing "irreparable injury" as one of the four factors that must be met for an injunction).

33. *See* Doug Rendleman, *The Inadequate Remedy at Law Prerequisite for an Injunction*, 33 U. FLA. L. REV. 346, 346 (1981) ("Plaintiff's injury is irreparable by money when it cannot be measured, compensated, restored, or repaired." (footnote omitted)); *see also, e.g.*, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952) (enjoining seizure of steel mills on the ground that the seizure was "bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement").

34. *See* 11A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). The justification is that constitutional rights protect "intangible" interests that must be "jealously safeguarded." Ezell v. City of Chicago, 651 F.3d 684, 699 (7th Cir. 2011). But that justification seems inadequate. Many, if not all, common law rights similarly protect intangible interests. The law against conversion, for example, not only protects the direct interest in ownership; it also provides the indirect benefit of promoting society-wide stability in property ownership, which encourages ownership and facilitates market exchanges.

35. *See* eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 394 (2006) (overruling longstanding presumption of irreparable harm in patent infringement cases); Anthony DiSarro, *A Farewell to Harms: Against Presuming Irreparable Injury in Constitutional Litigation*, 35 HARV. J.L. & PUB. POL'Y 743, 773 (2012) ("[T]he trend is against the presumption of irreparable harm for federal statutory claims.").

The underlying substantive right can also shape an injunction. The purpose of an injunction is to prevent unlawful action.[36] But injunctions need not be limited to the unlawful conduct; courts can fashion prophylactic injunctions that also regulate lawful conduct if doing so will prevent the unlawful activity from occurring.[37] However, courts are hesitant to do so, because ordering a remedy that goes beyond addressing the specific wrongdoing involves courts in a form of policymaking. Identifying the permissible scope of an injunction requires knowing precisely what was unlawful. Substantive law thus limits and defines the available remedies.

Likewise, remedies can influence substantive law. When interpreting laws, courts often consider the cost of the remedy.[38] When a remedy is particularly costly, courts have limited the liability. The defense of qualified immunity provides an example. Qualified immunity applies when a private individual seeks damages against an official for injuries caused by unlawful conduct.[39] Requiring an officer to pay damages for his actions risks overdeterrence. To combat that overdeterrence, courts created qualified immunity under which officers are liable only if no reasonable person would have thought their actions were lawful at the time the officer committed them.[40]

The cost of the remedy also can define the content of the right itself. For example, the remedy for searches conducted in violation of the Fourth Amendment is exclusion of the evidence gathered through that search.[41] Because exclusion is a costly remedy in that it prevents the jury from considering evidence that might be dispositive of guilt, courts have recognized a number of exceptions to the warrant requirement.[42]

36. State *ex rel.* Douglas v. Wiener, 370 N.W.2d 720, 722 (Neb. 1985) ("[T]he purpose of an injunction is to prevent continuing unlawful activity.").

37. *See* EEOC v. Wilson Metal Casket Co., 24 F.3d 836, 842 (6th Cir. 1994) ("In fashioning relief against a party who has transgressed the governing legal standard, a court of equity is free to proscribe activities that, standing alone, would have been unassailable." (quoting Ky. Fried Chicken Corp. v. Diversified Packaging Corp., 549 F.2d 368, 390 (5th Cir. 1977))).

38. Scholars disagree whether the remedy defines the right itself, or whether the remedy merely influences the court's implementation of that right through doctrine. *Compare* Richard H. Fallon, Jr., *Judicially Manageable Standards and Constitutional Meaning*, 119 HARV. L. REV. 1274, 1315–17 (2006) (arguing that constitutional rights exist independent of their remedies), *with* Daryl J. Levinson, *Rights Essentialism and Remedial Equilibration*, 99 COLUM. L. REV. 857, 858 (1999) (arguing that rights are defined by their remedies). *See generally* Kermit Roosevelt III, *Aspiration and Underenforcement*, 119 HARV. L. REV. F. 193, 194–95 (2006) (describing the disagreement).

39. *E.g.*, Ashcroft v. al-Kidd, 131 S. Ct. 2074, 2080 (2011); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

40. *Harlow*, 457 U.S. at 818.

41. Mapp v. Ohio, 367 U.S. 643, 648 (1961).

42. *See* Wesley MacNeil Oliver, *Toward a Better Categorical Balance of the Costs and Benefits of the Exclusionary Rule*, 9 BUFF. CRIM. L. REV. 201, 208–31 (2005).

CONCLUSION

Remedies is an important class, and its importance is often underappreciated. Remedies provide the way that law is translated from concepts into real world effects. They are an essential component of any litigator's practice, and they are the core reason for the existence of the judiciary.

Teaching Remedies can be extremely rewarding, both for the instructor and for the students. Because the same remedial principles apply across subject areas, the course provides an opportunity to draw together many areas of the law. It also provides an opportunity for students to learn what it is like to work as an attorney. That is so not only because the course focuses on the thing that most clients will be concerned about. It is also so because the course reveals that for every problem there are multiple solutions, and the task of the attorney is to be able to identify the costs and benefits of those solutions.