Introduction

By way of background, I have taught Remedies (we call it Equity & Remedies at Cooley Law School) on and off at this law school beginning in 1977, and at two other schools as a visiting professor during academic sabbaticals. I have taught Remedies using several books, including both casebooks and problem books.

As law school subjects go, Remedies is a relatively new field of study, dating only from the second half of the 20th century. The Remedies course is an amalgam of what had been separate courses on Damages, Equity, and Restitution. The first Remedies casebook was published in 1955,2 the first hornbook in 1973.3 Teachers have called Remedies everything from a “capstone course”4 to a “black hole” of the curriculum.5 It has also been described as “the garbage can of legal education; all the leftovers

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1 This chapter is adapted from Norman Otto Stockmeyer, An Open Letter to a Colleague Preparing to Teach Remedies, 12 T.M. COOLEY J. PRAC. & CLINICAL L. 115 (2010).
2 CHARLES ALLAN WRIGHT, REMEDIES (West 1955).
3 DAN B. DOBBS, A HANDBOOK ON REMEDIES (West 1973).
4 Russell Weaver and David Partlett, Remedies as a “Capstone Course,” 27 REV. OF LITIG. 269 (2008).
are thrown in including some materials previously digested in other courses."\(^6\)

Here’s the description that I prefer:

Archilochus, famously quoted by Isaiah Berlin in *The Hedgehog and the Fox*, wrote that "The fox knows many things, but the hedgehog knows one big thing." Archilochus referred to the fox's wide variety of ideas versus the hedgehog's single defining idea. Remedies is the law of Archilochus's fox.\(^7\)

Remedies is a very practice-oriented course. As one of the subject's leading scholars has written: "Remedy choice and remedy measurement are central to not only getting the best recovery but also to the tactics of litigation. ... Remedies is also relevant to lawyer-planners, for example, to lawyers who draft contracts and who must forecast or contract about possible remedies."\(^8\)

The centrality of Remedies to law practice is one reason why Equity & Remedies is part of the required curriculum. Only at Cooley, among Michigan’s five law schools, is the course required for graduation.\(^9\) It is generally taken by students in their final year because it is good preparation for the bar examination. Indeed, Equity or Remedies or both are listed by 22 states as tested on the essay portion of their bar exam, including New York, California, Florida, Illinois, and Michigan.\(^10\) Moreover, the

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10. *Id.* at 37 n. 51.
Multistate Bar Examination (MBE) tests both rights and remedies embodied in Contract, Property, and Tort law.¹¹

In developing a Remedies course, attention must be given to organization and teaching method. Some Remedies courses are organized remedy-by-remedy: “Today we will discuss punitive damages.” In my view, a more practice-oriented approach is to study Remedies wrong-by-wrong: “Today we will discuss remedies for fraud.” Under this “transactional” approach, after a few weeks of studying the basic characteristics of various remedies, students compare and contrast remedies available for a particular legal wrong (tort, breach of contract, misdealing, etc.).

As for teaching method, I have come to prefer the problem method of instruction for Remedies. Instead of briefing cases, students master legal doctrine by studying assigned readings in a hornbook. Students then attempt to apply what they have learned by analyzing assigned problems similar to those that an associate might be asked to prepare a memo on. It is at the application stage that students see -- some for the first time -- the point of all the black-letter law they learned in their first-year courses.

What is the problem method?

With the problem method, class discussion consists of a collaborative, brainstorming approach to analyzing and resolving the problems, and hypotheticals derived from the problems. Recall the scene that would open episodes of the TV series L.A. Law (NBC television broadcast, 1986-1994), in which members of the McKenzie, Brackman law firm sit around the conference-room

table to discuss their pending cases. That is how the typical problem-oriented class begins.\(^\text{12}\)

In my view, the problem method has several pedagogical advantages over the traditional case-recitation and lecture methods of teaching. First, it simulates law practice. Clients and partners bring problems; our graduates will need to look up the law to help resolve them. Second, it is contemporary. A problem-based approach suits the learning styles of today’s students. Third, it is engaging. Third-year students are notoriously difficult to motivate.\(^\text{13}\) The problem method encourages active participation. And enough with briefing cases. Lawyers rely heavily on texts after all, as do judges.

The problem method is part of the movement toward Problem-Based Learning (PBL). Beyond business schools, which have used it for three-quarters of a century and call it the “case method,” PBL was pioneered in medical schools beginning in the 1960’s and has since spread to other professional schools, including dentistry, optometry, pharmacy, nursing, social work, architecture, and engineering.\(^\text{14}\) A review of the literature suggests that “PBL develops more positive student attitudes, fosters...”

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\(^\text{13}\) “The LSSSE [Law School Survey of Student Engagement] data indicate growing student dissatisfaction with law schools as they progress through the curriculum. Much of that dissatisfaction arises from the continued use of Socratic dialog throughout their entire law school careers. Students report that by their third year they have mastered the skills necessary for case analysis and synthesis and are bored.” Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 TOURO L. REV. 1239, 1291 (2012).

deeper approach to learning and helps students retain knowledge longer than traditional instruction.”

The Association of American Law Schools (AALS) in 1966 sent out questionnaires to 1,000 law professors to determine how many used the problem method and how they felt about it; 134 responses were received from 52 law schools. Professors who used the problem method predominantly “perceived it as being ‘much better’ by a margin of 4-to-1 in its development of student abilities.”

How does it work?

I teach the problem method by assigning passages from the seminal Remedies hornbook and problems from a paperback set of problems, which we then lawyer-up in class. How might a damages recovery be maximized (or minimized)? What equitable relief might be available? Is there a restitutionary alternative? Comments on students’ performance provide welcome feedback and a valuable formative learning experience.

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18 Dan B. Dobbs & Kathleen Kavanagh, PROBLEMS IN REMEDIES (2nd ed. 2001).
19 Compare Gregory Ogden, The Problem Method in Legal Education, 34 J. L. EDUC. 654, 655 (1984) (“The method has three parts to it: 1) assignment of problem statements for solution; 2) use of course or other materials to solve problems; and 3) discussion of solutions in class.”)
And the experience of having their analysis critiqued is itself good preparation for practice.

Students soon come to realize that, as with litigation, often there is no one right answer. Multiple remedies may be available, and outcomes can be unpredictable. But whereas knowing “the rule” will not necessarily tell students who will win the case, it will at least show them what evidence they need to produce.20

Supplementing the hornbook and problem book is a robust TWEN (The West Education Network) website that makes available the course syllabus, class schedule, classroom policies, course materials (no more handouts), quizzes, announcements, links to CALI (Computer Assisted Legal Instruction) lessons on Remedies topics, a sample final examination, links to Remedies items available on the web, and, most importantly, a forum where students can post questions or other items for discussion. Studies have shown a strong positive correlation between the frequency of course website use and grades.21

The final examination in Equity & Remedies mirrors the type of bar exam that students will encounter in most jurisdictions. It consists partly of multiple-choice questions of the multistate bar exam variety and partly of essay questions. The essay questions are much like the problems students have encountered throughout the course. This relationship between what is being learned and what is being tested is comforting to students and consistent with best practices.22

20 “Damages strategy sometimes goes unresolved until it is too late to implement the optimal approach, to obtain the necessary discovery, or retain the right expert.” George P. Roach, Rescission in Texan: A Suspect Remedy, 31 REV. OF LITIG. 493, 494 (2012).
21 Norman Otto Stockmeyer, Link Between Course Website Use and Law School Grades Confirmed, 21 MICH. COMPUTER LAWYER 16 (September-October 2003).
22 See Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP at 176 (2007) (describing typical grading practices as “unfair, counterproductive, demoralizing, and arbitrary” due to a
I had taught Remedies for several years, out of a couple different casebooks, before embarking on the problem method in 1986. Thus, I was familiar with the doctrines and leading cases beforehand. Trying to teach Remedies for the first time using the problem method would be a more difficult undertaking.


Caveats

Not all Remedies teachers who try the problem method stick with it. A colleague who switched back to a casebook reported to me that “the older students were into [the problem method] because ‘it’s more like the practice of law’,,” but the traditional students “didn’t like it because it was hard work.” This colleague also found that the problem method was better suited to smaller classes: “As our classes get larger (I have 118 in one section this term) the problem method gets more difficult.” A faculty member at another law school agrees: “[O]wing largely to lack of relationship between the “classroom experience and the end-of-semester examination”). A fellow Remedies teacher makes the point this way: “The typical exams we use [in law school] are, in effect, problems. ‘We have been teaching by the case method and testing by the problem method.’ The problem method restores assessment integrity by matching the form of testing with the form and goals of teaching.” Tracy A. Thomas, Teaching Remedies as Problem-Solving: Keeping it Real” 57 ST. LOUIS L.J. 673, 685 (2013) (internal citation omitted).
class size, I have reverted to a less intensive approach and assigned a traditional Remedies casebook ....”23

Because Remedies generally is taught in multiple sections, providing students with a choice between different methods of instruction is a good thing. Students who self-select the problem approach are more likely to appreciate it. I have asked students to comment on the problem method on course evaluation forms and my running total is 75% favorable, 25% unfavorable. Representative positive comments have included:

“The law firm format made being called on less threatening (‘user friendly’).”

“The problem method took a while to get used to, but helped in learning how to apply the material to sets of facts.”

“I liked the problem method, but it is difficult to feel confident in any answer as there are so many possibilities to any one problem.” (Yup – welcome to the real world.)

“I liked the Equity & Remedies problem method. I thought it was more hands on and easier to learn.”

“I absolutely loved the problem method! It was easier for me to remember things and allowed me to apply the readings as if I were a practicing lawyer.”

“Anything beats reading cases.”

Most students who responded with negative comments criticized the hornbook as boring or expressed annoyance that I do not provide model answers to the problems.

Conclusion

Remedies is a capstone of the law school curriculum. It is also a monster of a course to teach. “While a number of topics were raised [at a 1995 AALS panel discussion on teaching Remedies], the most interesting and resonant by far was the almost unanimous agreement that teaching Remedies was difficult and challenging, even for the most experienced of teachers, indeed even casebook authors.”

Practicing law is difficult and challenging as well. Except for clinics, skills courses, or an externship, taking Equity & Remedies taught by the problem method is about as close to the practice of law as students are likely to come.

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24 Channick, supra note 5, at 686.