

AN OPEN LETTER TO A COLLEAGUE PREPARING TO TEACH REMEDIES

*Norman Otto Stockmeyer**

Dear John,

Congratulations on your appointment to the faculty. The Dean has informed me that you will be teaching Remedies and suggested that I may be able to assist you.

By way of background, I have taught Remedies (here we call it Equity & Remedies, for reasons I could explain if you are interested) on and off at this school since 1977 and at two other schools during academic sabbaticals. I have taught Remedies using several books, including both casebooks and problem books.

If you are interested in the origins of Remedies as a distinct law school subject, *see* Douglas Laycock, *How Remedies Became a Field*, 27 REV. LITIG. 161 (2008). The goal of Remedies as a course is well stated in Doug Rendleman, *Remedies – The Law School Course*, 39 BRANDEIS L.J. 535 (2001).

The Remedies course has been called everything from a “capstone course” (Russell L. Weaver & David F. Partlett, *Remedies as a “Capstone” Course*, 27 REV. LITIG. 269 (2008)) to a “black hole.” (Susan A. Channick, *Learning to Teach Remedies*, 39 BRANDEIS L.J. 685, 685 n.1 (2001) (quoting a colleague)). It has also been described as “the garbage can of legal education; all the leftovers are thrown in including some materials previously digested in other courses.” KELLIS E. PARKER, MODERN JUDICIAL REMEDIES: CASES AND MATERIALS xlviii (Little Brown & Co. 1975).

A. SELECTING A BOOK

One of the first decisions you will need to make is selecting a book. The second decision you need to make is whether you will use the casebook approach or the problem method. If you decide to use

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the casebook approach, the third decision to make is whether to use a casebook organized remedy-by-remedy or wrong-by-wrong.

Because the casebook approach is the traditional one, let me start there. Some Remedies casebooks are organized remedy-by-remedy (“Today we will discuss punitive damages.”). The leading casebook of this variety is DOUGLAS LAYCOCK, *MODERN AMERICAN REMEDIES: CASES AND MATERIALS* (Aspen Publishers 3rd ed. 2002). In my view, a more practice-oriented approach is the study of Remedies wrong-by-wrong (“Today we will discuss remedies for fraud.”). After a few weeks of studying the basic characteristics of various remedies, students compare and contrast remedies available for a particular injury (tort, breach of contract, misdealing, etc.). A leading casebook organized this way is DOUG RENDLEMAN, *REMEDIES: CASES AND MATERIALS* (West, 7th ed. 2006).

B. MY PREFERENCE

I have come to prefer the problem method of instruction for Remedies. Instead of briefing cases and reciting them in class, students master legal doctrine by studying assigned readings in a hornbook and then they attempt to apply what they have learned by analyzing problems similar to those an associate might be asked to prepare a memo on. Class discussion consists of a collaborative approach to resolving the problems and hypotheticals derived from them.

Do you 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 upcoming cases? That is how a problem-oriented class begins. The problem method is described in Myron Moskovitz, *Beyond the Case Method: It's Time to Teach With Problems*, 42 J. LEGAL EDUC. 241 (1992); see also Myron Moskovitz, *From Case Method to Problem Method: The Evolution of a Teacher*, 48 ST. LOUIS U. L. J. 1205 (2004).

In my view, the problem method has several pedagogical advantages over the case-recitation and lecture methods of teaching. It is particularly suited to third-year courses, where students are notorious-

ly difficult to motivate. It mirrors law practice; clients have problems and lawyers research the law to help resolve them.

C. ABOUT THE PROBLEM METHOD

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. Gabriel Moens, *The Mysteries of Problem-Based Learning: Combining Enthusiasm and Excellence*, 38 U. TOL. L. REV. 623, 624 (2007). A review of the literature suggests that “PBL develops more positive student attitudes, fosters a deeper approach to learning and helps students retain knowledge longer than traditional instruction.” Michael Prince, *Does Active Learning Work? A Review of the Research*, J. OF ENGINEERING EDUCATION, 223, 229 (2004). Similar findings are reported in PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY* 39 (Ashgate Publishing Limited 2007).

In 1966, the Association of American Law Schools (AALS) 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.” Cynthia Hawkins-Leon, *The Socratic Method – Problem Method Dichotomy: The Debate Over Teaching Methods Continues*, 1998 BYU EDUC. & L. J. 1, 11 (1998). Suggestions from an academic support professional on how to help law students profit from the problem method are offered in Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723 (2009).

D. HOW IT IS DONE

The “pure” problem method is taught by assigning both Dobbs’ one-volume hornbook, DAN B. DOBBS, *LAW OF REMEDIES* (West, 2d ed. 2001), and DOBBS & KAVANAGH, *PROBLEMS IN REMEDIES* (West, 2d ed. 2001). 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 leading cases beforehand. Trying to teach Remedies for the first time by using the problem method would be a more difficult undertaking.

Fair warning: not all Remedies professors who try the problem method stick with it. *See* Channick, *supra*, at 687 n.2 (“Although I thoroughly respect Professor Dobbs’ problem approach which I intuitively believe to be the appropriate way to teach the course, I was not able to make the problem method work.”). And here at our school, 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 is better suited to smaller classes: “As our classes get larger (I have 118 students in one section this term) the problem method gets more difficult.” Professor James Fischer at Southwestern University School of Law agrees: “[O]wing largely to class size, I have reverted to a less intensive approach and assigned a traditional Remedies casebook” (James Fischer, *Teaching Remedies Versus Learning Remedies*, 39 *BRANDEIS L. J.* 575, 582 (2001)).

A middle ground approach is the “mixed” problem method, using the Dobbs and Kavanagh problems book (or your own made-up problems) with a casebook, or using a casebook that intersperses cases and problems. One problem-oriented casebook that I have used successfully before transitioning to the pure problem method, and which is organized wrong-by-wrong is ROBERT S. THOMPSON, ET AL., *REMEDIES: DAMAGES, EQUITY, AND RESTITUTION* (LexisNexis, 4th ed. 2009).

I think that whether a course is case-based or problem-based depends primarily on what goes on in class: reciting cases or analyzing

problems? See Gregory Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL 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.”).

Actually, there may be as many as 50 ways to teach a Remedies course (Weaver and Partlett, *supra*, at 269) and at least nineteen ways to use the problem method (Fischer, *supra*, at 582 n.11 (quoting Professor Dan Dobbs)). Knock yourself out.

E. WHAT WE DO HERE

There are at least eight relatively current Remedies casebooks on the market. At this law school, two of us favor the Dobbs problem method, three use the Rendleman casebook, six use the Laycock casebook, and one is using DAVID I. LEVINE ET AL., *REMEDIES: PUBLIC AND PRIVATE* (West, 5th ed. 2009). There are benefits in adopting a book that others use. Your colleagues’ syllabuses and teaching notes are available, and it is easier to enlist a substitute should you have to miss a class.

If you decide to choose the problem method, I have posted a sample syllabus, my introductory remarks and class notes, and a typical final exam -- a virtual course-in-a-box -- on West’s Law School Exchange. See Dobbs’ Problem Method Users Group, available at <http://exchange.westlaw.com/Groups/Group.aspx?GroupID=289&f=2>.

Because Remedies is generally taught in sections, providing students with a choice between the two methods of instruction is a good thing. When I have taught Remedies, I have asked the Registrar to include the following advisory in the course registration materials: “Equity & Remedies: Professor X’s section will be taught by the traditional casebook method. Professor Stockmeyer’s section will use the hornbook/problem method.”

I think that students who self-select the problem approach are more likely to be disposed 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*)

“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.

F. CONCLUSION

I hope that these pointers will be of some assistance to you as you begin your preparation to teach Remedies. It is a capstone of the curriculum, but it is also a blockbuster of a course to teach. Channick, *supra*, at 686 (“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.”).

I think that you will come to appreciate Professor Rendleman’s observation that “People who teach and write about Remedies, most of whom are optimists and pragmatists, deal with a world where broken dreams leave only second best solutions.” (Rendleman, *supra*, at 535). (That is *not* how I describe the course in the syllabus, however.)

Please feel free to call me whenever questions arise and best wishes.