

# Equity

Davis

Fall 10

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## Office hours:

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Drop in anytime to see if I am available

## **COURSE MATERIALS:**

Cases and Materials on Equitable Remedies, Restitution and Damages, 7th ed.

by: Lewill, Love, Nelson

## **SECONDARY RESOURCES:** (Not required)

- 1) Hornbook, Dobbs, Handbook on the Law of Remedies
- 2) Tilley's Alabama Equity, 4<sup>th</sup> ed., Penny Davis

## **CLASS ATTENDANCE**

Law School policies on attendance, exams, grading, and academic misconduct apply. (See your Student Handbook ([www.law.ua.edu/students/handbook.pdf](http://www.law.ua.edu/students/handbook.pdf)) for copies of these documents and Associate Dean Marsh for questions you might have.)

## **EXAM**

The exam will be a traditional law school type exam. (Old exams on line or in the library). The exam will **“Float”** for one week beginning on the first day of exams . It will be a timed exam. Each student may bring into the exam a 25 page Summary. **The Summary must have been prepared by the individual student and may not include anything that has been “cut and pasted” from any source.**

**Grading:**

I will follow Law School policy regarding class participation and all other matters. Class participation may affect your grade as permitted by law school policy.

**ADA Accommodations:**

The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s associate deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Jenelle Marsh, Associate Dean for Students/Academic Services at 205.348.5750 or jmarsh@law.ua.edu so that the individual’s needs for support services can be evaluated and accommodated in a timely manner.

**EQUITY**

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**COURSEBOOK:**

Cases and Materials on Equitable Remedies, Restitution and Damages, 7th ed.  
by: Lewill, Love, Nelson

**COURSE CONTENT:**

- I. Injunctions .....pp.13-161
- II. Contempt .....pp. 178-280

- III. Specific Performance ..... pp. 1081-89; 1159-64; 1181-1216; 1262-1296
- IV. Declaratory Judgment.....(TBA)
- V. Reformation..... (TBA)
- VI. Restitution ..... (TBA)
- VII. Rescission ..... (TBA)
- VIII. Selected Tortuous Wrongs
- IX. Statutory Bill to Quit Title (Ala. material)
- X. Fraudulent Conveyance §§ 8-9A-1 through 12
- XI. Removal of Disabilities of Non-age (Ala. material)
- XII. Mortgage Foreclosure in Equity (Ala. material)

**SECONDARY RESOURCES:** (Not required)

- 1) Hornbook, Dobbs, Handbook on the Law of Remedies
- 2) Tilley's Alabama Equity, 4<sup>th</sup> ed., Penny Davis

**ATTENDANCE:** Follow Law School Guidelines. See Student Handbook

**EXAMS: “Floating”** for one week beginning on the first day of exams . It will be a timed exam. Each student may bring into the exam a 25 page Summary. **The Summary must have been prepared by the individual student and may not include anything that has been “cut and pasted” from any source.**

**COURSE OBJECTIVE:** This course covers the basic principles of equity including such equitable remedies, as injunctive relief, specific performance and restitution, This course demonstrates how the law of equity may be applied to other areas of substantive law, such as torts, contracts, and property. Although taught from a national law prospective, Alabama case and

statutory laws are included to enhance the student's awareness of the practical application of the legal theories.

**THE FOLLOWING IS A TENTATIVE LIST OF CASES AND STATUTES THAT WE WILL STUDY FOR THE SPECIFIC REMEDIES.**

**DECLARATION JUDGMENT**

Declaration Judgment: Alabama Cases

**EACH FIRM WILL BE ASSIGNED  
FOUR (4) CASES TO PREPARE FOR CLASS.**

- A. Declaratory judgment on behalf of public officials
- |         |  |
|---------|--|
| FIRM1   | 1. <u>City of Dothan v. Eighty- Four West Inc.</u> , 738 So. 2d 903 ( Ala. Civ. App. 1999) |
| No Firm | 2. Willis v. Kincaid, 983So.2d 1100 ( Ala. 2007).  |
- B. Declaratory judgment against public officials
- |       |   |
|-------|---|
| FIRM2 | 1. <u>Moss v. Williams</u> , 489 So. 2d 575 (Ala. 1986) |
|-------|---|

FIRM3                    2.    Ex parte McLeod,, 718 So 2d 682 ( Ala. 1997)

FIRM4                    3.    Ex parte Craft, 727 So 2d 55 ( Ala. 1999)

C.    Declaratory judgment for construction of statute and ordinance

FIRM1

1.    Hudson v. Gray, 285 Ala. 546, 234 So. 2d 564 (1970)

FIRM 2

2.    Ellis v. Pope, 709 So. 2d 1161 (Ala. 1997)

D.    Declaratory judgment for construction of legal instruments

1.    Wills

FIRM3                    a.    Hudson v. Hudson, 701 So. 2d 13 (Ala. Civ. App. 1997)

FIRM4                    b.    Calhoun v. Thomas, 274 Ala. 111, 145 So. 2d 789 (1962)

1.    Contracts

FIRM1                    a.    Nance v. Person, 567 So. 2d 265 (Ala. 1990)

2.    Deeds



7. Common Law Marriage

FIRM4 a. Creel v. Creel, 763 So. 2d 943 (Ala. 2000 )

Specific Performance  
Class Assignment

TEXT: pages  
1081-1089  
1159-1162  
1181-1216  
11262-1296

Alabama Code: sections  
8-1-40—47  
35-4-33  
7-2-716

Alabama Cases:

Davis v. Skinner, 474 So.2d 1136 (Ala. Civ. App. 1985)

Wadsworth v. Hannah, 431 So.2d 1186 (Ala. 1983)

Hudson v. H, 701 So.2d 13 (Ala. Civ. App. 1997)

Cullman Broadcasting Co., Inc. v. Bosley, 373 So. 2d 830 (Ala. 1979)

James S. Kemper & Co. Southeast, Inc. v. Cox & Assoc., Inc. ,434 So. 2d 1380  
(Ala. 1983)

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Dobbins v. Getz Exterminators of Alabama, Inc.,382 So.2d 1135 (Ala.Civ.App., 1980)

Orkin Exterminating Co. v. Etheridge 582 So. 2d 1102 (Ala. 1991)

## **Rescission**

### **Section: 1. Disaffirming The Contract: Rescission and Restitution P.1089**

3. Kracl v. Loseke, ..... Neb., 1990 **P.1089**

3. Earthinfo Inc. V. Hydrosphere Resource Consultants, Col,  
1995,..... **P.109**

### **Section: 2. Election of Remedies..... P.1104**

2. Lightning Litho v. Danka Industry, .....**p. 1104**

3. Merritt v. Craig, .....**p. 1107**

### **Section: 3. Contracts Relating to Sale of Personal Property (Sale of Goods) P.1158**

Note Case: Melms. V. Mitchell,..... **P.1158**

### **Section : 4.**

#### **Contracts Re**

4. Utemark v. Samuel, Cal. 1953.....**p. 1174**

2. Harper v. Adametz, Conn. 1955 .....**p.1178**



**REFORMATION**  
**EQUITY**

**In the textbook, please read pages 1120-1126. Each law firm will be responsible for the reading the statutes and cases corresponding to the number of the law firm.**

**Cases**

1. Pinson v. Veach, 388 So. 2d 964 (1980)      2. Buckmaster, Ltd v. Action Archery, Inc., 915 F. Supp. 1188 (MD Ala. 1996)
3. Monroe v. Martin, 726 So. 2d 701 (Ala. Civ. App. 1998)
4. Corson v. Universal Door Systems, Inc., 596 So. 2d 565 (Ala. 1991)
1. King v. Westbrook, 358 So. 2d 727 (Ala. 1978)
2. Fadalla v. Fadalla, 929 So 2d. 429 (Ala. 2005)
3. Alabama-Traders Nat. Bank v. Henderson, 222 Ala. 426, 133 So. 36 (1931)

**Defenses to Reformation**

**Failure to Read Instrument**

4. Commercial Casualty Ins. Co. v. Hosey, 238 Ala. 335, 191 So. 343 (1939)
1. Greil v. Tillis, 170 Ala. 391, 54 So. 524 (1910)

2. American Allied Life Ins. Co. v. Wales, 355 So. 2d 703 (Ala. 1978)

### **Latches**

3. Davis v. Thomaston, 420 So2d 82 (Ala. 1982)
4. Jones v. Braggs 637 So. 2d 1356 (Ala. Civ. App. 1994)

### **Bona Fide Purchasers/Parol Evidence Rule**

1. Greene v. Hanover Insurance Co., 700 So. 2d 1354 (Ala. 1997)

### **Alabama Code:**

35-4-153

8-1-2

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## **Selected Tortuious Wrongs**

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Heninger v. Dunn, Col. 1980 .....p.699

Miceli v. Riley, N.Y. 1981 ..... p. 723

Glover v. Santangelo, Org. 1984 ..... p.745

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<u>Radach v. Gunderson</u> , Washington, 1985.....	p. 753
<u>Dun &amp; Bradstreet, Inc. v. Greenmoss Builders</u> , U.S. 1985.....	p.983
<u>Kramer v. Thompson</u> , (3rd Cir. 1991) .....	p. 997
Carter v, Knapp Motor Co. 11 So. 2d 383 ( Ala. 1943)	
<u>Galella v. Onassis</u> , 2nd Cir. 1973 .....	p. 1015
Borra v. Borra, NJ. 2002 .....	1028
<u>Note Case: Schutz v. Schutz</u> , (Fla. 1991) .....	p. 1033
<u>Lyon v. Izen</u> , (Ill. 1971) .....	p. 1036
<u>Marquette v. Marquette</u> , OK. 1984 .....	p. 34

## Statutory Bill to Quiet Title

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Ala. Code Sections:

6-6-540—546

6-6-560—573

## **RESTITUTION**

### Assignment

**Constructive Trust** ..... p. 393

1. Hunter v. Shell Oil Co., (5th Cir. 1952) ..... p. 393

2. G & M. Motor Co. v. Thompson, Ok. 1977 ..... p. 399

**Equitable lien** ..... P.405

1. Verity v. Verity, ..... P.405

**Subrogation** ..... P.413

a) Cedar Lane Investments v. American Roofing Supply of Colorado Springs. ..... P.413

**Restitution: Personal and Intangible Prop. Interest**

1. John A. Artukovich & Sons, Inc. v. Reliance Truck Co.,

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Arz. 1980 ..... p. 543

**Restitution: Interference with Real Property and  
Environmental Interest P.688**

- 2. Trespass and improvement P.688
  - A. Somerville v. Jacobs, W. Virg. 1969..... p. 695
  - B. Note case: Chesney v. Stevens, Penn., 1994 P.854  
(Cite in book)

**Restitution: Interference with Dignity Interest p. 788**

- 1. Ventura v. Titan Sports, Inc. 8<sup>th</sup> Cir., 1995 P.862

**Restitution: Contracts Relating to Sale of Real Property  
p.1053**

- 1. Harper v. Adametz P.1057

**Restitution: Contracts Relating to Service P.1115**

- 1. Coon v. Schoeneman, Tx. 1972 ..... p.1115
- 2. Rosenberg v. Levin, Fla. 1982..... p. 1120
- 3. Alabama cases:
  - a. Jacks v. Sullinger, 224 So 2d 583 (Ala. 1969)
  - b. Gaines, Gaines & Gaines, v. Hare, Wynn, 554 So 2d 445 (Ala. Civ. App. 1989)