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Book Review

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Handbook on the Law of Remedies: Damages—Equity—Restitution. By Dan B. Dobbs. St. Paul: West Publishing Co., 1973. Pp. xxiii, 1067.

There has long been a pressing need for a treatise on the law of Remedies. Prior to the publication of *Dobbs on Remedies*, there was no recognized common law treatise which purported to cover the entire scope of remedies. True, there have been treatises on particular areas of the field, but they are generally out-dated and there are large gaps in their composite coverage. Thus there are several texts on Damages, but the standard in the field, McCormick, was published in 1935. The standard texts in Equity—McClintock, de Funiak and Walsh—are also out of date. Pomeroy, the multi-volume treatise in Equity had its last edition—the fifth—published in 1941. Some of the earlier editions of Pomeroy had contained two valuable volumes on equitable remedies, but they were last published in 1919. There is no American treatise on Restitution, though the bifurcated—legal and equitable remedies treated separately—*Restatement of Restitution* was published in 1937. Actually, the latest American text in the field is *Woodward on Quasi Contracts*, published in 1913.

Nor do the other repositories of the law do much better in treating the subject. The legal encyclopedias scatter the subject among so many different topics that one has to know all about the subject to find what he is looking for. And the digest system simply breaks down and loses its utility when it comes to the subject of remedies.

All of this presents a dismal picture. Looking at it, one might come to the conclusion that the reason why there have been no recent texts or treatises is that there has been no real demand for them. The answer to this is two-fold. First, a treatise on remedies requires a qualified author. He must be procedure-minded, but fully acquainted with the substantive law. He must have been collecting case auanalysis and structure. And he must have been collecting case authorities for years to give him a nucleus to build on in collecting the cases which are scattered and hidden throughout the digest system. Only a courageous—or even a foolhardy—person would undertake it.

Second, the legal profession has never had a treatise of this sort, and it could not have realized what it was missing until it was shown.

The demand had to be created. A lawyer who has a problem of substantive law is normally aware of the fact that there is a problem and of his need for researching it. So he looks for a text in the field. But a lawyer who has an opportunity to choose between several possible remedies may not be aware of the several remedies and therefore not realize that he needs to research the topic. He needs to be made aware of the problem that he has, as well as the answer to it.

Professor Dan Dobbs has now supplied us with a legal text on the subject. It had to be a pioneering work since there were no models. The problems must have been many, and the major one must have been in organization of the treatment. There are two ways of going about the organization. The first is to build around the individual remedies, to group or classify them, but to treat them separately in showing their attributes and advantages. The other is to build the organization around fact situations or substantive-law groupings, and to describe the competing remedies in each, with their relative advantages and disadvantages.

Mr. Dobbs decided to take both approaches in the same book. First he collects the remedies under the three groupings of equitable remedies, damage remedies and restitutionary remedies, discussing the pervading principles and substantive background for each group. Then he takes up the factual groupings—such as personal injury, harm to tangible property or interests of ownership in it, harm to intangible interests, breach of contract, fraud and deceit, mistake, and others. The arrangement works out very satisfactorily. It utilizes the advantages of both types of organization and involves less duplication than might be supposed. Once a reader studies the table of contents carefully, he has little trouble in finding what he is looking for.

Throughout the treatment there is the problem of the relationship of the remedy to the substantive right, and the question of how far it is necessary to expound the substantive law in order to comprehend the remedy. The determination here must depend more on expediency than upon any rigid conceptual line. Mr. Dobbs' sense of judgment and his feel for the place to draw the line are good. One of the most valuable features of the book is the way in which he has fitted the several remedies in with the modern law of Civil Procedure.

The book is well written. The diction is clear and smooth and understandable. The style is informal—some might say that it is occasionally a little too informal. It is not difficult to read, but provides an interesting discussion, leading one to read additional pages for the pleasure of it. Indeed, for most lawyers it will be used not just for locating a particular point in issue, but could be classed as recreational reading for spare time. The analysis is quite incisive, and the reasoning is customarily spelled out in a convincing fashion. The citation to authority is varied, containing a good balance of cases and law review articles.

At times the citations are sparse. This is understandable, since cases are often not digested in such a way to make them easily discoverable for some points. With the essentials of his organization now established, Mr. Dobbs will be able to collect authorities between the first and second editions, and to augment considerably the number of citations in the next edition.

The standard for a single-volume legal text with which I like to compare other texts is *Prosser on Torts. Dobbs on Remedies* is not yet on the same level with Prosser, but it compares favorably, and will, I feel sure, improve with each succeeding edition. It will be valuable to each element of the legal profession and ought to have a wide following as soon as its worth is discovered.

Since the publication of the book I have had occasion to use it in several respects. One is in teaching a course in Restitution. Another is in working on the revision of chapters 47 and 48 of the *Restatement of Torts, on Damages and Injunction.* On practically every occasion the book proved to be helpful. My colleague, Ted Smedley, who teaches Damages and Equity, and who is currently working on teaching materials for a short first-year course on Remedies, has also found it very helpful. We are in full agreement that it is a good hornbook. Our only disargeement is whether to call it real good or damn good.

I had thought of enumerating a few instances in which my analysis or explanation of the specific legal problem would differ somewhat from that of Mr. Dobbs. But they are generally minor and are generally more semantic than substantive, and I have decided to eschew them.

A few suggestions as to the organization or coverage of the book may be helpful, as the author begins to think about a second edition. They have to do primarily with rounding out the coverage so as to make the text a source of information on all legal remedies. The remedy of self-help is referred to only incidentally. The extraordinary legal remedies such as *quo warranto,* prohibition or habeas corpus, might be the subject of a chapter in which they are briefly described and their uses set forth; there would be no need of an exhaustive treatment. Ancillary equitable remedies, such as receivership or sequestration, ought also to be described. Some remedies which would be much more significant if they were better known should be treated. Take marshaling of assets, for instance. It is seldom to be found in any legal text except perhaps one on Mortgages, and is generally treated as limited to the substantive law of mortgages or security. Yet it can have much wider usage. It is a much better explanation, for example, for some of the decisions on tracing of funds than the fictitious language of presumptions in making withdrawals from a mixed fund. Or take exoneration. It is often overlooked because not known. Or, again, estoppel. It might not be technically correct to call it a remedy, but it is a form of relief which can be extremely helpful in many factual situations. There are uncommon writs like *ne exeat* or *coram nobis.* I intend no suggestion that all of these be treated in detail, though some might fit into the discussion at suitable places. Perhaps it would be useful to have an appendix which lists and defines all of the remedies or forms of relief and indicates any places in the text where they are treated. This would make the book the starting place for any consideration of the remedies which might be available for a particular fact situation. It would become a true *vade mecum.*

But all of this is speculation about the future; the present volume is most usable. As I said in the beginning, there has long been a pressing need for a treatise on Remedies. That need has now been fully met.

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