

REMEDIES
CASES AND PROBLEMS
THIRD EDITION

ELAINE W. SHOBN
WILLIAM MURRAY TABB
RACHEL M. JANUTIS

UNIVERSITY CASEBOOK SERIES

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To our supportive families

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PREFACE

Few casebooks are prepared to accommodate a well-established fact about law professors: They never teach a book from start to finish, nor do they always teach it in the order and manner that the authors intend. This practice in part reflects differences in the curriculum at schools, such as the number of units assigned to the course and the degree of students' legal knowledge from other courses. It also reflects professors' independence of thought—the very quality that brought their entry into the teaching profession. It therefore seems likely that strict adherence to a text is more a fantasy of authors than a practical reality.

This casebook is designed to provide law teachers with a flexible book to accommodate that reality. Each chapter and section can be used selectively or rearranged without damaging the development of the central themes. A similar philosophy of flexibility is reflected in the internal design of each section. The most important coverage comes first so that any topic can be covered on a “once over lightly” basis by assigning only the material through the first case or two.

Several other features also define the character of this casebook: (1) The overall organization is by the major groups of remedies: Injunctions & Specific Performance, Damages, and Restitution. (2) The book seeks to achieve a balanced coverage of these areas as well as to provide introductory text and problems for discussion, and concluding materials on jury trials, attorneys' fees and declaratory relief. (3) There are complex problems for class discussion integrated with the case materials to provide a daily choice of teaching style. (4) The cases are generally very recent ones, often decided within the past few years, in addition to the classic cases that are traditional to the course. (5) The book provides a broad coverage of the field, with more extended coverage in certain areas that are rarely mentioned in other courses, such as contempt.

Integration of Cases and Problems

This book features a thorough integration of problems with related cases. The problems are ones without solutions provided by existing caselaw; instead they are constructed with elements of several cases or issues uniquely combined. Only future litigation of such a case would provide an “answer” to the problems, although the text provides guidance on the relative strength of the parties' positions under existing law.

The problems can be used flexibly. An entire class session could be focused around one of them; on such days the class can accomplish case coverage indirectly by relating the cases to the problem. Alternatively, the professor can pass quickly over the problem and focus on the surrounding cases. Complex problems are a wonderful tool for teaching Remedies, but teaching from them constantly is difficult for everyone on both sides of the podium. Their frequent appearance throughout the book allows daily choice of teaching style.

Each section of the book begins with a textual introduction and a “model case” that gives a factual reference point for established principles. The model case offers a simple example to contrast with the cases and complex problems later in the section. It also encourages students to work with factual comparisons when dealing with abstract concepts. The overall purpose of this approach is to provide students with an early foundation of knowledge that allows quick progression to more difficult issues.

Structure

The structure of this book was designed to provide law teachers with maximum flexibility in arranging the course to meet individual needs and preferences. Each chapter and section is designed such that selective use or rearrangement of them would not damage the overall structure of the course. Although the remedial themes occur throughout the book, the sections and chapters are not interwoven so strongly that re-arrangement of the order would be confusing to the students. This book was designed for professors who want flexibility.

This book also adapts well to the necessity of last minute coverage changes as the semester progresses. The core material is presented in the earliest chapters of each major subject so that the professor can decide if there is enough time for the more extended coverage that comes at the end of each subject area. For example, if the budgeted class time for the chapters in the Part on Injunctions & Specific Performance is exceeded before the subject is completed, it is possible to omit the long chapter on “Special Issues in Equity” without doing serious damage to the coverage of the general subject area. The same organizational structure allows early termination of Damages to move easily on to Restitution.

The book achieves this flexibility with the use of the “Special Issues” chapters at the end of both the Part on Injunctions & Specific Performance and the one on Damages. These chapters contain interesting materials that are not essential to the course and that invite selective use.

A similar philosophy is reflected in the design of each section. The most important coverage comes first so that a topic could be covered quickly by assigning the earliest material. Conversely, if a professor wishes to dwell at greater length on a topic, there is more extended coverage at the end. Everyone has a favorite area in which greater depth of coverage can bring a greater depth of the students’ understanding of the overriding principles. This approach allows maximum choice of that area.

Coverage

The book seeks to achieve a balanced coverage of injunctions, damages, and restitution. Within those broad areas, we further attempted to provide a balanced coverage of the topics as well. Professors who have a clear and strong preference for one area or another already have other excellent choices for their courses. This book is for a traditional survey course on Remedies.

In addition to the rule of balance that governed the structure of the book, there was a second guiding principle: Special attention was given to areas that are rarely covered even briefly elsewhere in the curriculum. For example, most students receive exposure to general damages issues in other courses, but contempt is rarely studied or even mentioned. Similarly, the equitable defenses such as unclean hands are unlikely to cross the consciousness of most law students except as a joke in the student newspaper.

There are several other Remedies topics that we identified as ones to which students typically lack any prior introduction. There are interlocutory injunctions, structural injunctions, inflation and prejudgment interest, punitive damages, attorneys' fees, and declaratory judgments. Whereas the goal in other areas, such as contract damages, is to build upon the students' basic knowledge from other courses, the goal in these areas is to provide a broad exposure to the issues.

Case Selection

We have kept in mind two goals in our case selection. First, we have attempted to use recent cases whenever possible. In our experience students enjoy modern cases mixed with the old classic gems. Second, we have tried to limit the number of cases in which the holding states the minority position on a topic or in which the dissent takes the apparently better position. When such cases are best for the topic we use them, but excessive use deadens their provocative effect. Some cases include excerpts from dissenting opinions when the effect is to illustrate why the issue presented is more difficult than the majority opinion makes it appear.

The philosophy of this book is to teach the well established principles quickly with the textual materials at the beginning of every section. The cases then function to present the troublesome issues in the area rather than to illustrate some basic point.

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