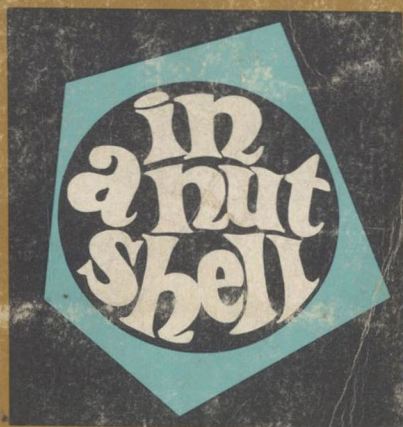


Torts

Injuries to Persons and Property



EDWARD J. KIONKA

TORTS

IN A NUTSHELL

**INJURIES TO PERSONS AND
PROPERTY**

By

EDWARD J. KIONKA

Professor of Law

Southern Illinois University School of Law

ST. PAUL, MINN.

WEST PUBLISHING CO.

1977

COPYRIGHT © 1977

By

WEST PUBLISHING CO.

All rights reserved

Library of Congress Catalog Card Number: 77-78248

Nutshell Series
of
WEST PUBLISHING COMPANY

P.O. Box 3526

St. Paul, Minnesota 55165

August, 1981

Administrative Law and Process, 2nd Ed., 1981, approx. 440 pages, by Ernest Gellhorn, Professor of Law, University of Virginia and Barry B. Boyer, Professor of Law, SUNY, Buffalo.

Agency-Partnership, 1977, 364 pages, by Roscoe T. Steffen, Late Professor of Law, University of Chicago.

American Indian Law, 1981, 288 pages, by William C. Canby, Jr., former Professor of Law, Arizona State University.

Antitrust Law and Economics, 2nd Ed., 1981, 425 pages, by Ernest Gellhorn, Professor of Law, University of Virginia.

Church-State Relations—Law of 1981, 305 pages, by Leonard F. Manning, Professor of Law, Fordham University.

Civil Procedure, 1979, 271 pages, by Mary Kay Kane, Professor of Law, University of California, Hastings College of the Law.

Civil Rights, 1978, 279 pages, by Norman Vieira, Professor of Law, University of Idaho.

Commercial Paper, 2nd Ed., 1975, 361 pages, by Charles M. Weber, Professor of Business Law, University of Arizona.

Conflicts, 3rd Ed., 1974, 432 pages, by Albert A. Ehrenzweig, Late Professor of Law, University of California, Berkeley.

NUTSHELL SERIES

Constitutional Analysis, 1979, 388 pages, by Jerre S. Williams, former Professor of Law, University of Texas.

Constitutional Power—Federal and State, 1974, 411 pages, by David E. Engdahl, former Professor of Law, University of Denver.

Consumer Law, 2nd Ed., 1981, 418 pages, by David G. Epstein, Dean and Professor of Law, University of Arkansas and Steve H. Nickles, Professor of Law, University of Arkansas.

Contracts, 1975, 307 pages, by Gordon D. Schaber, Dean and Professor of Law, McGeorge School of Law and Claude D. Rohwer, Professor of Law, McGeorge School of Law.

Contract Remedies, 1981, approx. 325 pages, by Jane M. Friedman, Professor of Law, Wayne State University.

Corporations—Law of, 1980, 379 pages, by Robert W. Hamilton, Professor of Law, University of Texas.

Corrections and Prisoners' Rights—Law of, 1976, 353 pages, by Sheldon Krantz, Professor of Law, Boston University.

Criminal Law, 1975, 302 pages, by Arnold H. Loewy, Professor of Law, University of North Carolina.

Criminal Procedure—Constitutional Limitations, 3rd Ed., 1980, 438 pages, by Jerold H. Israel, Professor of Law, University of Michigan and Wayne R. LaFave, Professor of Law, University of Illinois.

Debtor-Creditor Law, 2nd Ed., 1980, 324 pages, by David G. Epstein, Dean and Professor of Law, University of Arkansas.

Employment Discrimination—Federal Law of, 2nd Ed., 1981, 402 pages, by Mack A. Player, Professor of Law, University of Georgia.

NUTSHELL SERIES

- Energy Law, 1981, approx. 330 pages, by Joseph P. Tomain, Professor of Law, Drake University.
- Estate Planning—Introduction to, 2nd Ed., 1978, 378 pages, by Robert J. Lynn, Professor of Law, Ohio State University.
- Evidence, Federal Rules of, 1981, 428 pages, by Michael H. Graham, Professor of Law, University of Illinois.
- Evidence, State and Federal Rules, 2nd Ed., 1981, 514 pages, by Paul F. Rothstein, Professor of Law, Georgetown University.
- Family Law, 1977, 400 pages, by Harry D. Krause, Professor of Law, University of Illinois.
- Federal Estate and Gift Taxation, 2nd Ed., 1979, 488 pages, by John K. McNulty, Professor of Law, University of California, Berkeley.
- Federal Income Taxation of Individuals, 2nd Ed., 1978, 422 pages, by John K. McNulty, Professor of Law, University of California, Berkeley.
- Federal Income Taxation of Corporations and Stockholders, 2nd Ed., 1981, 362 pages, by Jonathan Sobeloff, Late Professor of Law, Georgetown University and Peter P. Weidenbruch, Jr., Professor of Law, Georgetown University.
- Federal Jurisdiction, 2nd Ed., 1981, 258 pages, by David P. Currie, Professor of Law, University of Chicago.
- Future Interests, 1981, 361 pages, by Lawrence W. Waggoner, Professor of Law, University of Michigan.
- Government Contracts, 1979, 423 pages, by W. Noel Keyes, Professor of Law, Pepperdine University.
- Historical Introduction to Anglo-American Law, 2nd Ed., 1973, 280 pages, by Frederick G. Kempin, Jr., Professor of Business Law, Wharton School of Finance and Commerce, University of Pennsylvania.

NUTSHELL SERIES

- Injunctions, 1974, 264 pages, by John F. Dobbyn, Professor of Law, Villanova University.
- Insurance Law, 1981, 281 pages, by John F. Dobbyn, Professor of Law, Villanova University.
- International Business Transactions, 1981, 393 pages, by Donald T. Wilson, Professor of Law, Loyola University, Los Angeles.
- Judicial Process, 1980, 292 pages, by William L. Reynolds, Professor of Law, University of Maryland.
- Jurisdiction, 4th Ed., 1980, 232 pages, by Albert A. Ehrenzweig, Late Professor of Law, University of California, Berkeley, David W. Louisell, Late Professor of Law, University of California, Berkeley and Geoffrey C. Hazard, Jr., Professor of Law, Yale Law School.
- Juvenile Courts, 2nd Ed., 1977, 275 pages, by Sanford J. Fox, Professor of Law, Boston College.
- Labor Arbitration Law and Practice, 1979, 358 pages, by Dennis R. Nolan, Professor of Law, University of South Carolina.
- Labor Law, 1979, 403 pages, by Douglas L. Leslie, Professor of Law, University of Virginia.
- Land Use, 1978, 316 pages, by Robert R. Wright, Professor of Law, University of Arkansas, Little Rock and Susan Webber, Professor of Law, University of Arkansas, Little Rock.
- Landlord and Tenant Law, 1979, 319 pages, by David S. Hill, Professor of Law, University of Colorado.
- Law Study and Law Examinations—Introduction to, 1971, 389 pages, by Stanley V. Kinyon, Late Professor of Law, University of Minnesota.
- Legal Interviewing and Counseling, 1976, 353 pages, by Thomas L. Shaffer, Professor of Law, Washington and Lee University.

NUTSHELL SERIES

- Legal Research, 3rd Ed., 1978, 415 pages, by Morris L. Cohen, Professor of Law and Law Librarian, Yale University.
- Legislative Law and Process, 1975, 279 pages, by Jack Davies, Professor of Law, William Mitchell College of Law.
- Local Government Law, 1975, 386 pages, by David J. McCarthy, Jr., Dean and Professor of Law, Georgetown University.
- Mass Communications Law, 1977, 431 pages, by Harvey L. Zuckman, Professor of Law, Catholic University and Martin J. Gaynes, Lecturer in Law, Temple University.
- Medical Malpractice—The Law of, 1977, 340 pages, by Joseph H. King, Professor of Law, University of Tennessee.
- Military Law, 1980, 378 pages, by Charles A. Shanor, Professor of Law, Emory University and Timothy P. Terrell, Professor of Law, Emory University.
- Post-Conviction Remedies, 1978, 360 pages, by Robert Popper, Professor of Law, University of Missouri, Kansas City.
- Presidential Power, 1977, 328 pages, by Arthur Selwyn Miller, Professor of Law Emeritus, George Washington University.
- Procedure Before Trial, 1972, 258 pages, by Delmar Karlen, Professor of Law, College of William and Mary.
- Products Liability, 2nd Ed., 1981, 341 pages, by Dix W. Noel, Late Professor of Law, University of Tennessee and Jerry J. Phillips, Professor of Law, University of Tennessee.

NUTSHELL SERIES

Professional Responsibility, 1980, 399 pages, by Robert H. Aronson, Professor of Law, University of Washington, and Donald T. Weckstein, Professor of Law, University of San Diego.

Real Estate Finance, 1979, 292 pages, by Jon W. Bruce, Professor of Law, Stetson University.

Real Property, 2nd Ed., 1981, approx. 440 pages, by Roger H. Bernhardt, Professor of Law, Golden Gate University.

Remedies, 1977, 364 pages, by John F. O'Connell, Professor of Law, Western State University College of Law, Fullerton.

Res Judicata, 1976, 310 pages, by Robert C. Casad, Professor of Law, University of Kansas.

Sales, 2nd Ed., 1981, 370 pages, by John M. Stockton, Professor of Business Law, Wharton School of Finance and Commerce, University of Pennsylvania.

Secured Transactions, 2nd Ed., 1981, 391 pages, by Henry J. Bailey, Professor of Law, Willamette University.

Securities Regulation, 1978, 300 pages, by David L. Ratner, Professor of Law, Cornell University.

Titles—The Calculus of Interests, 1968, 277 pages, by Oval A. Phipps, Late Professor of Law, St. Louis University.

Torts—Injuries to Persons and Property, 1977, 434 pages by Edward J. Kionka, Professor of Law, Southern Illinois University.

Torts—Injuries to Family, Social and Trade Relations, 1979, 358 pages, by Wex S. Malone, Professor of Law Emeritus, Louisiana State University.

NUTSHELL SERIES

Trial Advocacy, 1979, 402 pages, by Paul B. Bergman, Adjunct Professor of Law, University of California, Los Angeles.

Trial and Practice Skills, 1978, 346 pages, by Kenney F. Hegland, Professor of Law, University of Arizona.

Uniform Commercial Code, 1975, 507 pages, by Bradford Stone, Professor of Law, Detroit College of Law.

Uniform Probate Code, 1978, 425 pages, by Lawrence H. Averill, Jr., Professor of Law, University of Wyoming.

Welfare Law—Structure and Entitlement, 1979, 455 pages, by Arthur B. LaFrance, Professor of Law, University of Maine.

Wills and Trusts, 1979, 392 pages, by Robert L. Mennell, Professor of Law, Hamline University.

Hornbook Series
and
Basic Legal Texts
of

WEST PUBLISHING COMPANY

P.O. Box 3526

St. Paul, Minnesota 55165

August, 1981

Administrative Law, Davis' Text on, 3rd Ed., 1972, 617 pages, by Kenneth Culp Davis, Professor of Law, University of San Diego.

Agency, Seavey's Hornbook on, 1964, 329 pages, by Warren A. Seavey, Late Professor of Law, Harvard University.

Agency and Partnership, Reuschlein & Gregory's Hornbook on the Law of, 1979 with 1981 Pocket Part, 625 pages, by Harold Gill Reuschlein, Professor of Law, St. Mary's University and William A. Gregory, Professor of Law, Southern Illinois University.

Antitrust, Sullivan's Handbook of the Law of, 1977, 886 pages, by Lawrence A. Sullivan, Professor of Law, University of California, Berkeley.

VIII

HORNBOOKS & BASIC TEXTS

- Common Law Pleading, Koffler and Reppy's Hornbook on, 1969, 663 pages, by Joseph H. Koffler, Professor of Law, New York Law School and Alison Reppy, Late Dean and Professor of Law, New York Law School.
- Common Law Pleading, Shipman's Hornbook on, 3rd Ed., 1923, 644 pages, by Henry W. Ballantine, Late Professor of Law, University of California, Berkeley.
- Constitutional Law, Nowak, Rotunda and Young's Hornbook on, 1978 with 1979 Pocket Part, 974 pages, by John E. Nowak, Professor of Law, University of Illinois, Ronald D. Rotunda, Professor of Law, University of Illinois, and J. Nelson Young, Professor of Law, University of Illinois.
- Contracts, Calamari and Perillo's Hornbook on, 2nd Ed., 1977, 878 pages, by John D. Calamari, Professor of Law, Fordham University and Joseph M. Perillo, Professor of Law, Fordham University.
- Contracts, Corbin's One Volume Student Ed., 1952, 1224 pages, by Arthur L. Corbin, Late Professor of Law, Yale University.
- Contracts, Simpson's Hornbook on, 2nd Ed., 1965, 510 pages, by Laurence P. Simpson, Late Professor of Law, New York University.
- Corporate Taxation, Kahn's Handbook on, 3rd Ed., Student Ed., Soft cover, 1981, 614 pages, by Douglas A. Kahn, Professor of Law, University of Michigan.
- Corporations, Henn's Hornbook on, 2nd Ed., 1970, 956 pages, by Harry G. Henn, Professor of Law, Cornell University.
- Criminal Law, LaFave and Scott's Hornbook on, 1972, 763 pages, by Wayne R. LaFave, Professor of Law, University of Illinois, and Austin Scott, Jr., Late Professor of Law, University of Colorado.

HORNBOOKS & BASIC TEXTS

Damages, McCormick's Hornbook on, 1935, 811 pages, by Charles T. McCormick, Late Dean and Professor of Law, University of Texas.

Domestic Relations, Clark's Hornbook on, 1968, 754 pages, by Homer H. Clark, Jr., Professor of Law, University of Colorado.

Environmental Law, Rodgers' Hornbook on, 1977, 956 pages, by William H. Rodgers, Jr., Professor of Law, University of Washington.

Equity, McClintock's Hornbook on, 2nd Ed., 1948, 643 pages, by Henry L. McClintock, Late Professor of Law, University of Minnesota.

Estate and Gift Taxes, Lowndes, Kramer and McCord's Hornbook on, 3rd Ed., 1974, 1099 pages, by Charles L. B. Lowndes, Late Professor of Law, Duke University, Robert Kramer, Professor of Law Emeritus, George Washington University, and John H. McCord, Professor of Law, University of Illinois.

Evidence, Lilly's Introduction to, 1978, 486 pages, by Graham C. Lilly, Professor of Law, University of Virginia.

Evidence, McCormick's Hornbook on, 2nd Ed., 1972 with 1978 Pocket Part, 938 pages, General Editor, Edward W. Cleary, Professor of Law Emeritus, Arizona State University.

Federal Courts, Wright's Hornbook on, 3rd Ed., 1976, 818 pages, including Federal Rules Appendix, by Charles Alan Wright, Professor of Law, University of Texas.

Future Interest, Simes' Hornbook on, 2nd Ed., 1966, 355 pages, by Lewis M. Simes, Late Professor of Law, University of Michigan.

HORNBOOKS & BASIC TEXTS

Income Taxation, Chommie's Hornbook on, 2nd Ed., 1973, 1051 pages, by John C. Chommie, Late Professor of Law, University of Miami.

Insurance, Keeton's Basic Text on, 1971, 712 pages, by Robert E. Keeton, former Professor of Law, Harvard University.

Labor Law, Gorman's Basic Text on, 1976, 914 pages, by Robert A. Gorman, Professor of Law, University of Pennsylvania.

Law Problems, Ballentine's, 5th Ed., 1975, 767 pages, General Editor, William E. Burby, Professor of Law Emeritus, University of Southern California.

Legal Writing Style, Weihofen's, 2nd Ed., 1980, 332 pages, by Henry Weihofen, Professor of Law Emeritus, University of New Mexico.

New York Practice, Siegel's Hornbook on, 1978, with 1979-80 Pocket Part, 1011 pages, by David D. Siegel, Professor of Law, Albany Law School of Union University.

Oil and Gas, Hemingway's Hornbook on, 1971 with 1979 Pocket Part, 486 pages, by Richard W. Hemingway, Professor of Law, University of Oklahoma.

Partnership, Crane and Bromberg's Hornbook on, 1968, 695 pages, by Alan R. Bromberg, Professor of Law, Southern Methodist University.

Poor, Law of the, LaFrance, Schroeder, Bennett and Boyd's Hornbook on, 1973, 558 pages, by Arthur B. LaFrance, Professor of Law, University of Maine, Milton R. Schroeder, Professor of Law, Arizona State University, Robert W. Bennett, Professor of Law, Northwestern University and William E. Boyd, Professor of Law, University of Arizona.

HORNBOOKS & BASIC TEXTS

Property, Boyer's Survey of, 3rd Ed., 1981, 766 pages, by Ralph E. Boyer, Professor of Law, University of Miami.

Real Estate Finance Law, Osborne, Nelson and Whitman's Hornbook on, (successor to Hornbook on Mortgages), 1979, 885 pages, by George E. Osborne, Late Professor of Law, Stanford University, Grant S. Nelson, Professor of Law, University of Missouri, Columbia and Dale A. Whitman, Professor of Law, University of Washington.

Real Property, Burby's Hornbook on, 3rd Ed., 1965, 490 pages, by William E. Burby, Professor of Law Emeritus, University of Southern California.

Real Property, Moynihan's Introduction to, 1962, 254 pages, by Cornelius J. Moynihan, Professor of Law, Suffolk University.

Remedies, Dobbs' Hornbook on, 1973, 1067 pages, by Dan B. Dobbs, Professor of Law, University of Arizona.

Sales, Nordstrom's Hornbook on, 1970, 600 pages, by Robert J. Nordstrom, former Professor of Law, Ohio State University.

Secured Transactions under the U.C.C., Henson's Hornbook on, 2nd Ed., 1979, with 1979 Pocket Part, 504 pages, by Ray D. Henson, Professor of Law, University of California, Hastings College of the Law.

Torts, Prosser's Hornbook on, 4th Ed., 1971, 1208 pages, by William L. Prosser, Late Dean and Professor of Law, University of California, Berkeley.

Trial Advocacy, Jeans' Handbook on, Student Ed., Soft cover, 1975, by James W. Jeans, Professor of Law, University of Missouri, Kansas City.

HORNBOOKS & BASIC TEXTS

Trusts, Bogert's Hornbook on, 5th Ed., 1973, 726 pages, by George G. Bogert, Late Professor of Law, University of Chicago and George T. Bogert, Attorney, Chicago, Illinois.

Urban Planning and Land Development Control, Hagman's Hornbook on, 1971, 706 pages, by Donald G. Hagman, Professor of Law, University of California, Los Angeles.

Uniform Commercial Code, White and Summers' Hornbook on, 2nd Ed., 1980, 1250 pages, by James J. White, Professor of Law, University of Michigan and Robert S. Summers, Professor of Law, Cornell University.

Wills, Atkinson's Hornbook on, 2nd Ed., 1953, 975 pages, by Thomas E. Atkinson, Late Professor of Law, New York University.

Advisory Board

Professor JESSE H. CHOPER

University of California School of Law, Berkeley

Professor DAVID P. CURRIE

University of Chicago Law School

Dean DAVID G. EPSTEIN

University of Arkansas School of Law

Professor ERNEST GELLHORN

University of Virginia School of Law

Professor YALE KAMISAR

University of Michigan Law School

Professor WAYNE R. LaFAVE

University of Illinois College of Law

Professor RICHARD C. MAXWELL

Duke University School of Law

Professor ARTHUR R. MILLER

Harvard University Law School

Professor JAMES J. WHITE

University of Michigan Law School

Professor CHARLES ALAN WRIGHT

University of Texas School of Law