

**COMPLEX LITIGATION:
INJUNCTIONS,
STRUCTURAL REMEDIES,
AND CONTEMPT**

DOUG RENDLEMAN

FOUNDATION PRESS

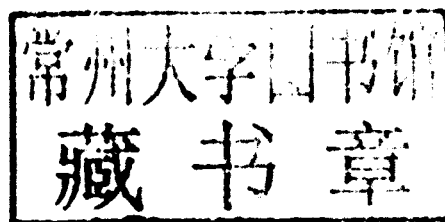
COMPLEX LITIGATION: INJUNCTIONS, STRUCTURAL REMEDIES, AND CONTEMPT

by

DOUG RENDLEMAN

Robert E. R. Huntley Professor of Law

Washington and Lee University School of Law



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PREFACE

An injunction is the most ambitious and the most human exercise of judicial power. Although an injunction may merely remind the defendant to behave within the bounds of the law, *Brown v. Board of Education* launched the injunction on a new career. The civil rights era focused on individual and group rights on both sides of the injunction. Beginning in the 1970s, judges transferred their school-desegregation experience into other bureaucracies that were mismanaged in ways that frustrated public values—prisons, jails, institutions for the mentally ill and retarded, and public housing. *Brown's* idealism and judicial activity are alive and well.

Since the period beginning in the 1970s has been a conservative one, the dissenting voices in the 1950s and 60s became a chorus. The political and legal dialogue that resulted has focused us on the legacy of the civil-rights injunction. Perplexing jurisprudential issues augment intricate procedure and technical doctrine. These form the crucible that this book brings into the classroom.

Complex Litigation: Injunctions, Structural Remedies, and Contempt is a successor to Owen Fiss and Doug Rendleman, *Injunctions* (Second 1984). Owen didn't formally participate. But this casebook continues the momentum of his uniquely innovative pedagogy from the first and second editions of *Injunctions*. This book also features Owen's masterful scholarly contributions from the time between *Injunctions*, Second and the present.

Complex Litigation supplements first-year procedure courses with legal history of Chancery and Common Law courts. If you want to know where you are, it helps to know where you have been. The issues that stem from equitable discretion, limiting the injunction with a remedial hierarchy, and the public force of contempt are old and enduring ones.

Complex Litigation builds the new on that foundation of history. In the 1970s and 80s, the two-jurisdiction injunction that commands an entire chapter in this casebook was only emerging. Legislatures were beginning to consider statutes authorizing specialized domestic-abuse injunctions. The abortion-clinic protest and injunction were in their infancy. *Complex Litigation* adds or increases coverage of intellectual property, environmental law, business and commercial litigation, noncompetition covenants, and offshore asset-protection to augment traditional property injunctions, structural injunctions, strikes, and protest demonstrations. State decisions reflect those courts increasing injunction and contempt activity.

After an introduction chapter, *Complex Litigation* follows roughly the chronology of a lawsuit. The trial and appeal lead to separate chapters on the structural injunction and the two-jurisdiction injunction. Chapters on the contempt doctrines are next. A concluding chapter on prior restraint

examines delicate free-expression topics and reviews almost every issue in the earlier chapters.

A word about editing. I usually edited decisions lightly, often to retain policy and doctrinal conflict within the court. The questions in the Notes focus a student's attention on parsing those divided decisions. In aid of readability, citations are often deleted, sometimes marked [citation]. Citations to decisions elsewhere in the book are indicated only by name. The book uses frequent cross references to refer to recurring themes in major decisions. At first, I moved footnotes to the text because of word processing conversions, but improved readability convinced me that, if something is worth reading, it's worth reading in large print, a technique that changed some paragraphs.

Thanks to the Frances Lewis Law Center for support.

DOUG RENDLEMAN

Lexington, Virginia
Summer 2009

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