
Van Hecke: Cases and Materials on Equitable Remedies

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Holmes. The author is an experienced guide, having taught law students for some years, recently as Professor of Law at the University of Michigan. Moreover, he has described his book, as "an attempt to aid law students in their study of law by demonstrating the relationship between the work they do in law school and the work they will do in practice."³

One pardonable imperfection in Professor Cooper's fourth and latest monograph is his occasional lapse into platitudes, reminiscent of the doctrinaire; nevertheless, it is the work of a highly literate lawyer, with an informed insight into the needs of his profession.

ROBERT Q. KELLY*

³ The University of Michigan Law Quadrangles Notes 9 (January, 1959).

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Cases and Materials on Equitable Remedies. By MAURICE T. VAN HECKE. St. Paul: West Publishing Co., 1959. Pp. xxii, 651.¹ \$10.50.

The opening chapter consists of eleven pages of text on "Equity in the English and American Courts." The second chapter, "Specific Performance of Contracts," contains at the outset the fugitive real estate case of *Hazelton v. Miller*,² the knowledge of which would shock most real estate brokers, wherein specific performance of a contract to purchase real estate for \$9,000 was denied as the buyer had already contracted to sell it for \$14,395. Accordion like, about forty-eight cases fan out to show the scope of the equitable remedy of specific performance. An interesting case note included is *Zelleken v. Lynch*,³ where the unsuccessful litigant did not understand how a Judge could grant specific performance of a contract that involved among other things personal services. Judge Burch in his opinion said: ". . . If scientific or other considerations demand a formula governing the subject, whoever needs can phrase one on that basis" (fraud). In the chapter are land contracts, contracts involving chattels, one relating to a restaurant and retail liquor business, another concerned with shares of stock, also a loan agreement, statutory arbitration, providing for a minor, house repairs, a cooperative contract, purchase of a funeral home, and one concerning an oil and gas lease. Some cases involved the "unclean hands" doctrine, the principle of "laches," the rule of "equitable conversion," the application of the Uniform Commercial Code, and the scope of "practicability." One of the outstanding cases in the chapter is *Campbell Soup Co. v. Wentz*.⁴ It shows that a lawyer may be too smart and as a result of drawing up an over-claused contract, will be denied specific performance. The court said, "We do think, however, that a party who has offered and succeeded in getting an agreement as tough as this one is, should not come to a chancellor and ask court help in the enforcement of its terms."

"Reformation and rescission for Mistake" in chapter three consists of fifty pages. Involved are mistake of fact, mutual mistake, unilateral mistake, mistake of law, and a mistake of law superinduced by a mistake of fact, and negligent mistake.

¹ In a letter from the West Publishing Company, January 7, 1959, it states, "Remember to reduce your classroom assignments as there is 21% more material on this modern type page than on the conventional page."

² 25 App. D.C. 337 (1905).

³ 80 Kan. 746, 104 P. 563 (1909).

⁴ 172 F.2d 80 (C.A. 3d, 1948).

Chapter four on "Rescission for Misrepresentation" includes sixteen modern cases.

One of the most important sections of the volume is Chapter five on "Restitution of Benefits." It makes up about little less than a fourth of the book. It has sections on (1) The Restitutionary Remedies, (2) Enforceable and Unenforceable Contracts, (3) Misrepresentation and Mistake, (4) Duress and Undue Influence, (5) Illegal, Disloyal and Tortious Transactions, (6) Volunteers and Intermeddlers.

Chapter six shows the scope of the injunction as a tool in Chancery. It was used by a religious sect to protect its religious interests from interference by a city; in another instance to prevent the banning of Negroes from public swimming pools in violation of their civil rights; in a case involving political rights the injunction sought was denied; the injunction was granted to prevent a divorced parent changing the name of the children involved although personal rights were the issue; in another variation the wife sought to restrain the husband from associating with another woman; the plaintiff sought to enjoin publication and distribution of a book allegedly entitled either "Krebiozen"—The Great Cancer Mystery," or "The Great Cancer Mystery;" and the eminent conductor, Koussevitzky sought to injunct the publication of an unauthorized biography of his life. In section two of this chapter there are about ten cases involving injunctions against nuisances and in section three about a dozen cases relating to encroachments. In the latter section is the famous set-back case of *Welton v. 40 East Oak Street Building Corp.*⁵ Section four, relating to chattels withheld, exposes the doctrine of equitable replevin and shows equity in action although the subject matter is personal property. At the same time it contains an excellent example of the "clean up maxim," in equity for one purpose, in for all. This chapter concludes with cases on "Restraining Enforcement of Legislation," and "Government Injunctions."

It was wise on the part of the author to include in Chapter seven, the important topics: Bills of Peace, Interpleader, Quieting Title, and Declaratory Judgments.

Chapter eight is titled, Enforcement of Decrees, and Chapter nine, the last, covers Jurisdiction in Equity, which in most books is the first chapter.

This excellent selection of topics and modern cases on Equitable Remedies fills a gap in the curriculum. Teachers of other courses do not have the time to willy-nilly cover the important matter in this book. This comment must be read in connection with the school of thought that states there is no need for a separate course of Equity. In my opinion all schools need such a coverage in their curriculum.

The typography is excellent and the new printing format of breaking the page into two columns should be pleasing to those who do not favor the single column style. But I find it is not new as in 1898 the West Publishing Company published *Cases on the Law of Real Property*, printed in the double column style of the 1958 volume. History is merely repeating itself. There is an interesting preface by the author, a valuable list of acknowledgments, a Summary of Contents, a Table of Contents, a fine Index and a Table of Cases which unfortunately does not include the leading Illinois case of *Gavin v. Curtin*.⁶

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⁵ 293 U.S. 590 (1934).

⁶ 171 Ill. 640 (1898).

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