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Cases and Other Authorities on Equity (2nd Ed.); and Cases and Other Authorities on Equity (One Volume Ed., 2nd Ed.) (Book Review)

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CASES AND OTHER AUTHORITIES ON EQUITY. Second edition. By Walter Wheeler Cook. St. Paul: West Publishing Company, 1932, Vol. 1, pp. xvi, 680, $6.00; Vol. 2, pp. xv, 662, $6.00; Vol. 3, pp. xvi, 862, $6.50.

CASES AND OTHER AUTHORITIES ON EQUITY. One volume edition. By Walter Wheeler Cook. Second edition. St. Paul: West Publishing Company, 1932, pp. xxi, 1222, $6.50.

The above volumes comprise second editions of the case material in Equity of Professor Cook. The first edition of the above was published as follows: the first volume of the first edition in 1923, the third volume in 1924, and the second volume in 1925. The first publication of the single volume was in 1926.

These volumes of the second edition were received too late for review in the last number of this law review. Reviews of the first editions of the three-volume work and also of the three-volume work of the second edition have already appeared in leading law journals.[1] These reviews expressing the criticisms and opinions of high authority have been so thorough and painstakingly rendered, that little more need be said. But the one-volume work which has met with widespread adoption in law schools and promises to become even more popular, has not received the attention by reviewers that its position as a case-book of major importance warrants.

The arrangement of the one-volume is practically the same as that of the three-volume work. By the omission of certain material in Quasi Contracts and by deleting other portions of the book, the three-volume work has been reduced to a single volume of cases contained in 1209 pages. By footnotes the author has indicated the connection of this part of Equity with Common Law and has referred to the relevant material in the three-volume set.

The author's purpose is "first of all, to acquaint the student with the general position of Equity in our legal system." [2] Following this, a further object is to get the student to be able to determine whether the remedy at law need be inadequate, meaning of inadequacy, meaning of the statement that equity will give complete relief if it takes jurisdiction, whether equity protects property rights only and other questions as to the nature of equity. The material used to accomplish these objects is selected for the most part from the field of torts.

The material to accomplish this prime purpose is arranged under the topical heading of "The General Nature and Scope of Equity Injunctions" and forms Part I of the course. This material covers the first 348 of the 1209 pages of the book. The topical headings, the arrangement, and the cases used to develop the general nature, make a different approach than that of most courses. Dean Pound speaks of it as analytical. He points out that this treatment is aimed at putting "the powers of those courts (equity) with respect to specific relief in their analytical place in a complete system." Whereas the approach of Dean Ames was "historical," Professor Cook says the animating purpose has

[1] Book Review (1924) 37 HARV. L. REV. 396; Book Review (1926) 396 *id.* at 794; Book Review (1926) *id.* at 1105; Book Review (1933) 46 *id.* at 1209.

[2] Vol. 1, 1st ed., ix.

been "to present a picture of the fundamentals of the equity law as it exists today."

That equity as we know and think of it today should be treated in the classroom from the point of view of merger and fusion, that it should be seen as a part of a present-day system as it functions, is a sound and correct attitude, and part one contains material designed to achieve that end. But may it not be attained by an arrangement such as that of Ames? For example, tort cases having to do with the doctrine of personality involving the property right requirement are offered in the early part of the course (pp. 203-266). These cases, together with rich footnotes containing references to, and citation of, the leading law review articles, deal with a miscellany of fact situations involving equity's protection of ownership of literary property, trade information, unfair competition in labor disputes, in situations involving boycotts, against libel, against injuries to business, of rights arising out of domestic relations, and of rights of privacy. Herein the author's purpose is well maintained. The requirement of a property right as a condition of equitable relief is often a formidable barrier to justice and the growing tendency of equity to discard the rule as a dry formula and protect a right of personality is illustrated by a number of late cases. Old and new cases in which courts of equity refuse to enjoin crimes or to attempt to regulate morals by injunction, and others wherein that result is obtained, render this part of the book a field for interesting study.

The cases on the protection of public and social interests (pp. 267-299) also are arranged with regard to the fundamental problems of equity jurisdiction rather than in a grouping of cases illustrative of the substantive rules of a specific tort. Some of these cases are quite difficult but there is so much material that these can be omitted entirely or kept for future discussion, if the teacher has time.

Part 2 (pp. 360-509) is made up of cases on bills of peace, interpleader, *quia timet,* and to remove cloud on title including declaratory judgments and statutes and cases illustrative thereof; the latter material is especially noteworthy, for it seems to the reviewer that this is a proper setting for the treatment for these statutes.

Although the arrangement of material throughout the book is based upon an analytical or functional approach, historical perspective is also considered in the excellent notes on the origin of equity, found in the first eighteen pages, and the introductory note on the history of Specific Performance based upon the writings of Professor Barbour. The cases and other materials on Specific Performance (pp. 509-866) are arranged under topics not unlike that of other well-known case-books. The cases are for the most part taken from American decisions, but twenty-four of them, including one Irish and one Canadian case, are taken from English source. Many of them are quite recent.

The inadequacy of damages at law is neatly illustrated by *Croker* v. *New York Trust Co.*[3] (Cook, p. 534). In developing this case the student will wish to know whether the decree for money can be enforced through compulsion of contempt proceedings. Due to constitutional provisions and the New York

[3] 245 N. Y. 17, 156 N. E. 81 (1927).

Civil Practice Act, this probably could not be done.[4] Professor Cook's material on enforcement of equitable decrees points to the contrary as being the rule.[5]

The cases on the Statute of Frauds are good to develop the fundamental rules as to what constitutes part performance and the requirement that conduct must be unequivocally referable to the promise. A note on the sufficiency of the memorandum as a matter of law would not be out of place in presenting the Statute of Frauds.[6] In fact, does not "functional" treatment call for a display of how these rules operate in business transactions?

Parts 4 and 5, taken from the third volume, "represent an attempt to combine the material usually presented in advanced equity courses dealing with reformation, rescission and restitution with that contained in the course commonly called Quasi Contracts." If there is no separate course in Quasi Contracts given, then this material is valuable. It is arranged under interesting topic heads.

The three-volume work is so large and contains so much material that it is subject to the criticism that it could not be covered in anything less than an extended course. But every teacher of the subject should have it and it should be available to students. The one-volume work, on the other hand, makes for a complete course, and a student under proper teaching who masters it has gone a long way in developing an equity technique. The test of any case-book is classroom experience and results, and from its wide use these tests have proven satisfactory.

Whether negative covenant cases should be placed alongside of such cases as *Epstein* v. *Gluckin* is a question of pedagogy. It seems to the reviewer that the thread of Mutuality is a good one on which to string *Lumley* v. *Wagner* and the other cases involving negative covenants. There is sufficient material to illustrate the variations of the rule and to point out the jurisdictions in which it is not followed.[7]

The material which involves the questions arising from overhanging walls, cornices, etc., and the action of ejectment or to remove encroachments in equity, involving the question of jury trial, would be improved by notes showing the historical development and confusion that has arisen in some code states such as New York.[8]

The absence of material dealing with Equitable Assignments and Subrogation indicate that perhaps the author's well-known views on assignments of choses in action prompt him to put them in a course of Contracts, but the historical development of choses in action has an appeal to include them in Equity. The author's masterly analysis of "Some Effects of a Partial Assign-

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[4] N. Y. CIVIL PRACTICE ACT §§504, 505; Walters v. Reinhoudt, 225 N. Y. Supp. 123 (1927).

[5] Cases and footnotes involving New York Statutes, pp. 26-36.

[6] Irvmor Corp. v. Rodewald, 253 N. Y. 472, 171 N. E. 747 (1930) is an interesting case in point.

[7] Pp. 573-595.

[8] See DURFEE'S CASES ON EQUITY (1928), notes pp. 452-454, for an excellent summation, especially of the New York cases.

ment of a Chose in Action" is read by the reviewer's Equity classes with interest and profit.[9]

The practice of inserting provocative questions and notes so much used in recent case-books, especially those of former colleagues of Professor Cook, has not been followed. Opinions vary as to the desirability and value of this innovation, but the reviewer believes that it is helpful for the student to have suggested to him in advance thoughts or ideas that the case should bring out.[10]

The terms "functional" and "functional approach" have come into vogue largely through the efforts of teachers who believe that the day of the old-type case-book has passed and that arrangement of material in law schools should be overhauled. A study of this book, however, reveals nothing revolutionary or even radical. To the reviewer, the arrangement is that of a method which differs only in degree and not in kind from that formerly used. The light that history throws upon the problems of the law is not extinguished or even dimmed. Earnest teachers are always seeking for a better way, always looking for the pot of gold at the rainbow's end.

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EXPENDITURES OF PUBLIC MONEY FOR THE ADMINISTRATION OF JUSTICE IN OHIO. By Ruth Reticker, with the collaboration of Leon Marshall. Baltimore: The Johns Hopkins Press, 1933.

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[9] 28 YALE L. J. 395 (1919). Also the articles of the author found in 29 HARV. L. REV. 816 (1916) and 30 *id.* at 449 (1917), as well as those of Professor Williston in reply, are assigned in the reviewer's Equity classes.

[10] This method has been used to great advantage by Professor Kennedy, Fordham Law School, in his Cases on the Law of Personal Property (1932).