

The Restatement in the Courts (Fourth Edition) (Book Note)

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BOOK NOTES

THE RESTATEMENT IN THE COURTS. Fourth Edition. St. Paul: American Law Institute Publishers, 1939, pp. 560.

Although three years (1932-1935) elapsed between the first and second editions of this report, each of the last two has spanned two years (1935-1937; 1937-1939). The increase in the number of cases in which the various restatements have been cited and followed can be measured with substantial accuracy by applying a ruler to the thickness of each new volume, or by comparing increases in the number of the pages, which is the same thing. One notices that the enlargement proceeds at an accelerating rate. This is due partly to the fact that courts are becoming more aware of the restatements and partly to the fact that there are more restatement volumes of which to be aware.

The Preface announces the completion of the Torts Restatement with the publication of volumes three and four in 1938 and 1939 respectively. Some of their materials have already been used in the courts, as the citation part of the volume (pp. 75-560) shows in pages 489-494.

A reminder inadvertently omitted from my note on the third edition (XII St. John's L. Rev. 395) must be made here of the inclusion in these reports of parallel tables of old (Tentative Draft) and new (Official Draft) section numbers. They are most important. Yet their existence is hardly known except to those who participate in the Institute's work. Possibly the explanation of this lies partly in the fact that they are not included in the (table of) Contents, though they are mentioned in the Preface.

They are found subject by subject, the table for each appearing immediately before the paragraph group of court citations of the restatement of the subject, and are preceded by a list of signed reviews of the restatement of that subject. Thus the tables for Agency appear in pages 76-79; for Conflict of Laws in pages 157-160; for Contracts in pages 224-226; for Property in pages 359 and 360; for Restitution on page 371; for Torts in pages 384-390 (this is the restatement most frequently cited and, for its size, least frequently disapproved); and for Trusts in pages 496-498.

The Glossary of Terms Defined in the Restatement is indexed in the Contents table as located beginning at page 21, though the Preface continues to insist that the Glossary appears "in the back of the book". Once it did, but when the third edition was published the location was changed. Undoubtedly the increasingly difficult task of the Institute's staff has caused him who changed the place to overlook the need for notifying the prefacer through two editions. One is led to wonder if, as more and more restatements make necessary commiseration with more and more annotators, the opportunity for intra-office communication decreases with the growth of outside correspondence.

Since the last edition more state annotations have appeared. Those of Agency have increased from eleven to thirteen; of Conflict of Laws from eighteen to nineteen; of Contracts from twenty-four to twenty-six; of Torts from two to four; of Trusts from two to twelve; and Property annotations have appeared in four states.

New York, which at the time of the publication of the previous edition had annotations of Contracts and Conflict of Laws, has not received any others.

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HANDBOOK OF INTERNATIONAL LAW. Third Edition. By George Grafton Wilson. St. Paul, Minn.: West Publishing Co., 1939, pp. xxiv, 623.

It is probably not too much to say that no lawyer has ever found the solution to a difficult legal problem in a Hornbook. And it is doubtful whether the chancellories of the world will frequently consult this volume as an aid in the disposition of the current pressing problems that beset them. Life does not put questions as a rule that can be answered, true or false. The ayes do not have it and the noes do not have it. And at least in the realm of international law, there is currently no way that the "right" answers of the books can be expected to obtain in practice.

The uncertainty of the law is now a commonplace. Only recently, Mr. Justice Frankfurter said:¹

"We recognize that *stare decisis* embodies an important social policy. It represents an element of continuity in law, and is rooted in the psychological need to satisfy reasonable expectations. But *stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience."

At the same Term of court, we have been treated to an almost unprecedented series of reversals and repudiations of prior decisions, in the pursuit, no doubt, of policies "intrinsically sounder, and verified by experience".

As a body of legal principles, international law shares with all other branches of jurisprudence this inevitable necessity of verifying enunciated doctrine by conclusions from experience. It differs radically from other branches of law, however, in the inability, thus far, to supply a laboratory for judicial experiment that can be obtained only through the general enforcement of decisions. The present chaos in international affairs is a discouraging confirmation of the view that but little progress has been made to bring international law in line with other branches of jurisprudence.

A Hornbook on any legal subject, and particularly this one on International Law, has, however, a definite place in the student's armory. It crystallizes, in the broadest terms, the so-called accepted principles and familiarizes the uninitiate with the terminology and the approach of those who have labored in the field. While this is only the beginning of the science of international law, it is none-the-less an essential basis for further study and investigation. The present

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¹ *Helvering v. Hallock*, 8 U. S. Law Week 192, 195.