



1974

# Handbook on the Law of Remedies-Damages-Equity-Restitution by Dan B. Dobbs

William O. Bertelsman  
*University of Cincinnati*

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## Recommended Citation

Bertelsman, William O. (1974) "Handbook on the Law of Remedies-Damages-Equity-Restitution by Dan B. Dobbs," *Kentucky Law Journal*: Vol. 62 : Iss. 4 , Article 12.

Available at: <https://uknowledge.uky.edu/klj/vol62/iss4/12>

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## HANDBOOK ON THE LAW OF REMEDIES—DAMAGES—EQUITY—RESTITUTION.

By Dan B. Dobbs. St. Paul, Minnesota: West Publishing Company, 1973.

This recent addition to the classic "Hornbook" series is long overdue and should prove of great benefit and utility to professor, student and practitioner alike. A concise textual treatment in the area of restitution has never been published; furthermore, the standard texts on equity and damages have grown hoary with age and fail to cover many recently evolving problem areas.

In his preface the author disclaims any effort to have included a comprehensive treatment of the substantive law of equity or restitution. It seems that he is too modest in this respect. As one who has had to undertake a good deal of rather frantic digging through the *Index of Legal Periodicals* to find any reasonably adequate modern treatment of many topics that ought to be covered in a course on equity, this reviewer certainly feels that the work covers a great many difficult areas substantively, and does it exceedingly well.

One might turn, for example, to the book's sections on mistake. Sixty-eight pages are devoted to this topic; and, it is submitted, as is true with many other topics treated by the work, a genuine and original contribution to the substantive law is made by the author's efforts to untangle many policy considerations, which are essentially closely related, but have usually been discussed under widely diverse labels.

For instance, if an art dealer sells a collector a picture described as a Rembrandt, sincerely believing it to be so, which is later found to be the work of a lesser artist, principles usually thought of under the label "warranty" are involved, as well as those usually discussed under the heading "mistake". Perhaps this is the book's most valuable contribution—largely successful attempts to reconcile and synthesize the diverse policies, concepts and technical vocabulary that make up so much of the subject matter of equity and restitution.

Space will perhaps permit one more example of the kind of approach we are attempting to describe. In nuisance cases the problem frequently arises whether, for the purpose of assessing damages, the nuisance is temporary or permanent. The cases all too often take a mechanical approach by trying to classify the structure or object causing the nuisance as temporary or permanent without much analysis of the policy considerations involved. Sometimes the classification is attempted to be made on the basis of the cost of removal of the structure or object causing the nuisance; but where the defendant merely has to stop using his property to abate the nuisance,

without having to destroy or remove it, what is the cost of abatement? From one point of view there is none, for it costs the defendant nothing to stop using his property. Or should the loss of the profits he may derive from the property be taken into consideration? Professor Dobbs makes a genuine effort to disentangle the conflicting precedents and suggest an approach to the problem based on the underlying policies involved, rather than on the mechanical classifications usually employed. And, as has been pointed out, this is true in many of the topics he treats, including the entire topic of restitution, where much of the time the Professor is blazing a trail through virgin forest.

The work is too comprehensive—comprising more than 1000 double-columned pages—to permit even a satisfactory summarization of its scope in a review of this length. Therefore, we will conclude merely by reiterating our belief that this book is an extremely valuable contribution to jurisprudence both for the law schools and the practicing attorney. The professor and student will find between two covers organized coverage of a vast amount of material for which there now exists no analytical treatment or which is treated only in scattered law review articles, frequently difficult to find and obtain.

The practitioner, although he will not find in the book the type of exhaustive annotation which he would expect from *ALR*, *American Jurisprudence*, or *Corpus Juris Secundum*, will find something that is frequently of far more value to him than a string of citations. That is, some assistance in getting his basic concepts in order on being confronted with a case in an area in which he may not frequently work. After all, most practicing lawyers would expect to have a case involving the classic problems of mistake, for instance, only once or twice in a career. An attorney, suddenly encountering such a problem, can use this valuable work to develop a main thrust for the theory of his case. Then, the myriad of apparently conflicting precedents, which he may have extracted from the annotations or digests, can be organized in a meaningful manner. The book is also likely to reveal for him policy considerations which may be the key to his case and which may not even be discussed in the other authorities he has consulted. In short, this book can be sincerely recommended as a valuable addition to any law library.

William O. Bertelsman\*

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\* Lecturer on Law, University of Cincinnati College of Law. A.B., Xavier University (1958); J.D., University of Cincinnati (1961). Member Bertelsman & Bertelsman, P.S.C., Newport, Kentucky.