

1982

## Cases and Materials on Remedies

Margaret S. Bearn

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Margaret S. Bearn, *Cases and Materials on Remedies*, 51 Fordham L. Rev. 196 (1982).

Available at: <https://ir.lawnet.fordham.edu/flr/vol51/iss1/6>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

## BOOK REVIEW

**Cases and Materials on Remedies.** By Edward D. Re. Mineola: The Foundation Press. 1982. Pp. xxvi, 1267; Teacher's Manual, pp. 171. \$26.75.

*Ubi jus, ibi remedium*—Where there is a right, there is a remedy—is a venerable legal maxim. The successful application of the maxim, however, depends upon the ingenuity and dedication of legislatures, courts and lawyers. As new legal rights are recognized and social conditions improve, traditional legal remedies occasionally prove to be inadequate. Consequently, those charged with the administration of justice are constantly required to reshape existing remedies and to invent new ones in the effort to vindicate the rights of aggrieved parties.

In recent years, remedial devices have evolved and multiplied rapidly, affording lawyers a wide array of potential legal remedies from which to choose. *Cases and Materials on Remedies*, by Chief Judge Edward D. Re,<sup>1</sup> is a casebook or, to use the author's more accurate description, a "coursebook," designed not only to teach law students all of these potential judicial remedies, but also to assist students in the selection of the appropriate remedy in particular cases.

"Coursebook" is an appropriate term for Chief Judge Re's new volume because *Cases and Materials on Remedies* is far more than a compilation of cases. In addition to many valuable textual notes, this superb book presents a broad spectrum of the pertinent legal literature. Beyond covering the leading and current cases on the subject, the book also includes statutory provisions, Restatement provisions and excerpts from texts and articles. Additionally, interspersed among the leading American cases are cases from the United Kingdom and references to relevant legal literature. By including these materials, Chief Judge Re has enriched a careful selection of cases and provided a teaching tool that will help the student understand and appreciate the principles and policy considerations that underlie the choice of a judicial remedy.

Also contributing to the effectiveness of the book is the quality of its organization. *Cases and Materials on Remedies* covers the entire field of Remedies, making it suitable for a survey course in the modern law school curriculum. Its division into five "Parts," however, gives the coursebook a flexibility needed to accommodate the special curriculum requirements of individual law schools. Whether the law school opts for the more modern course in Remedies, or prefers the tradi-

---

1. Edward D. Re is the Chief Judge of the United States Court of International Trade.

tional course in Equity and Equitable Remedies, and treats Damages in a separate course, *Cases and Materials on Remedies* will serve as an excellent coursebook and will also provide materials that are invaluable to students who seek historical and legal perspective.

The array of cases, some classic and others very recently decided, underscores not only the origins and traditional significance of equitable remedies, but also marks the timeliness and critical importance of these concepts for the contemporary practicing lawyer. The publication of *Cases and Materials on Remedies* may encourage many law schools to review their curricula and to decide to include a course in Remedies, a course of major importance for upper-level law students.

Part I introduces the reader to the subject of Remedies, and highlights the importance of knowing not only whether a substantive right has been violated but also the remedy that may be available for its vindication or enforcement. It contains a sampling of decisions using equitable, legal or restitutional theories in granting or denying the relief requested by a party. This overview of the field of Remedies instills an awareness of the various kinds of remedies, and of the possibility that more than one type of relief may be available to remedy a particular wrong.

Part II of the coursebook is devoted to the study of Equity and Equitable Remedies. Especially noteworthy with respect to these materials is that *Cases and Materials on Remedies* is the successor volume to Re, *Equity and Equitable Remedies* (1975), which in turn succeeded casebooks on equity authored by Professor Zechariah Chafee, Jr. and Dean James Barr Ames. Drawing upon this rich tradition of equity scholarship, Chief Judge Re has included in Part II of his coursebook all necessary sources designed to teach a course in Equity or Equitable Remedies.

In the Teacher's Manual, which accompanies the book, Chief Judge Re states that he regards the law as a "scholarly profession" which requires a knowledge of history and philosophy. He states:

In the process of teaching Remedies, it is still valuable to know the origin of equity, and the beneficial role that it performed in the development of English law. The philosophical basis of doing justice in the particular case ought also to be noted. For this purpose reference is made to the Aristotelian concept of *epikeia* (*epieikeia*), the contribution of the early Chancellors, and the "progressive conversion of merely moral obligations into rules having the sanction of law." . . . The concepts and judicial attitudes learned from these sources ought to benefit the student throughout law school, and become part of the lawyer's professional discipline and training.<sup>2</sup>

Following a short sketch of the history of Equity, which includes a discussion of the right to trial by jury, the coursebook outlines the

---

2. E. Re, *Cases and Materials on Remedies*, Teacher's Manual 4-5 (1982).

powers of courts of equity, the use of preliminary and permanent injunctions, specific performance of contracts and equitable relief against torts. Other chapters in Part II discuss remedies for fraud, concealment, non-disclosure and mistake as well as rescission and reformation of contracts.

Throughout the presentation of the law of Equity, there have been added many new cases that demonstrate the continuing validity of equity concepts and doctrines of ancient origin. Indeed, these doctrines have been most useful in providing modern courts with the flexible and effective remedies needed to resolve novel legal problems.

Part III of the coursebook examines the law of Restitution and its attendant doctrines concerning the prevention of unjust enrichment and the use of the constructive trust as a remedial device. Part IV, covering "Damages," contains chapters on Substitutional Redress, Damages for Breach of Contract, Damages for Tortious Conduct and Punitive Damages. In this part the cases and materials presented are designed to answer the question posed in the Introductory Note: "When the remedy that plaintiff seeks is money only, what are the rules and principles that determine the amount?"<sup>3</sup>

Part V, entitled "Remedies in Context," is a study in applied remedies. In this segment the author has grouped cases according to the interest being protected, rather than the type of remedial device employed. Thus, a student or practitioner, by turning to Part V, can discover quickly what kinds of remedies may be available when, for example, a trade secret has been compromised or a client defamed. Topics treated in this fashion include: injunctions against judicial proceedings; protection of customer lists, ideas, trademarks, trade names, patents and copyrights; injunctions against writing or speaking; protection of personal interests; and protection of rights to education and social or professional interests.

Obvious to this reviewer is that Chief Judge Re has endeavored, throughout his coursebook, to include cases that are interesting as well as informative. In reading the case of *Lumley v. Wagner*,<sup>4</sup> a new generation of law students will be absorbed in the legal battles waged between two men in an effort to obtain exclusively the services of the beautiful opera star, Miss Johanna Wagner. Readers of *Mayberry v. Pennsylvania*<sup>5</sup> will get a memorable taste of the acrimonious dialogue that often precedes a contempt citation. *Galella v. Onassis*,<sup>6</sup> a case discussing Jacqueline Onassis' right of privacy, is followed by *Zacchini v. Scripps-Howard Broadcasting Co.*,<sup>7</sup> a case discussing a human

---

3. E. Re, *Cases and Materials on Remedies* 756 (1982).

4. 1 De G. M. & G. 604, 42 Eng. Rep. 687 (1852).

5. 400 U.S. 455 (1971).

6. 487 F.2d 986 (2d Cir. 1973).

7. 433 U.S. 562 (1977).

cannonball's right of publicity. Fittingly, in *Lugosi v. Universal Pictures*,<sup>8</sup> the issue of whether a right of publicity survives a person's death is presented in a case brought by the heirs of Bela Lugosi, the first actor to bring Count Dracula back from the grave.

Chief Judge Re's many years of law teaching experience have given him a special knowledge of the teacher's crucial role in deriving maximum benefit from the use of any textbook. Consequently, in the Teacher's Manual he is able to offer many helpful suggestions on the use of the coursebook. Also set forth in the Manual are suggested answers to the numerous problem cases that appear throughout the coursebook.

At one point in the Teacher's Manual, Chief Judge Re states:

At the conclusion of a course on Remedies, all students should be fully aware of the arsenal of judicial remedies, substitutional and specific. Indeed, it would be good to ask a student, after a statement of the facts of the case: "What are the options available to the plaintiff from a remedial standpoint?" "What remedies are available to the plaintiff?" "Which remedy would plaintiff prefer?" "If the remedy that plaintiff seeks is not available (for some reason) which remedy is available and appropriate?"<sup>9</sup>

These are questions that lawyers must ask themselves on each occasion when an aggrieved client requests their advice. *Cases and Materials on Remedies* will equip present and future lawyers with the scholarly professional approach that will lead to the appropriate choice of remedy.

Margaret S. Bearn \*

---

8. 25 Cal. 3d 813, 603 P.2d 425, 160 Cal. Rptr. 323 (1979).

9. E. Re, *Cases and Materials on Remedies*, Teacher's Manual 11 (1982).

\* Associate Dean and Associate Professor of Law, New York Law School; B.A. with Honors, Swarthmore College, 1945, LL.B. 1948, Yale University.

# THE WEST SYSTEM

It saves you work  
and time.

It builds your library  
for a more  
profitable practice.



**WEST PUBLISHING COMPANY, INC.**  
170 Old Country Road  
Mineola, NY 11501