

1936

## Handbook of Equity, by Henry L. McClintock

E. Harold Hallows

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## BOOK REVIEWS

*Handbook of Equity*, by Henry L. McClintock, West Publishing Company (Hornbook Series), St. Paul, 1936, pp. xix-421.

Every author attempting to treat the subject of Equity is faced with the ever growing problem of its classification. The traditional practice in editing and in teaching has been to deal with equity as a distinct body of principles administered by a separate court. Modern codes and practice acts in many states have combined law and equity in the administration of justice. Despite the theory back of the codes and the statements of courts that equity doctrine is not affected, it is recognized that a union or fusion of law and equity is in progress. Perhaps the result will be a complete fusion with loss of identity of law and equity. Unless the power of discretion, so characteristic of equity, is retained, such a development would create a situation analogous to that which preceded the establishment of separate courts of equity, and undoubtedly the history of equity would repeat itself.

Apparently some editors have assumed the fusion as complete. Clark approaches equity from the standpoint of remedies in his *Cases on Pleading and Procedure*. Handler's case book on *Vendor and Purchaser* covers land contract cases arising both in law and in equity. Cook treats rescission, reformation and restitution at law and in equity without further classification. Walsh in his short text on *Equity* acknowledges his purpose is to restate the principles of equity from the point of view of the merger of law and equity.

In the law schools there has been a tendency to drop equity as a separate course from the curriculum and divide its content between torts, contracts, real property, and pleading. Some teachers believe such a division eliminates the difficulties of teaching equity. It is doubtful if the present is the appropriate time for such a change from the standpoint of a student. Any classification of a legal system must in the nature of things be arbitrary. It is a necessary device to aid learning and understanding. Whether a classification has a basis in actual practice of the law is not so important as the attainment of the fundamental purpose of teaching. But the fusion of law and equity is far from complete even in code states.

This reviewer believes with Professor McClintock that the study of equity as such is still valuable and advisable. On this assumption, the author has approached the subject in the style characteristic of all Hornbooks. He has, however, within the limitations of such books, succeeded in producing a valuable work for the student. It is brief and workable. The leading law review articles are frequently cited as well as the Restatements, leading texts and treatises. A separate table reference is given for law reviews, articles and texts. The Table of Contents is generally adequate and more in detail than is customary. This is especially helpful for the student. While more recent cases might have been included, the size of the work would have necessarily caused the omission of some historical cases. Sufficient modern cases are given to show the effect of modern codes and procedure on the application and developments of equitable principles.

The book attempts to cover the subject matter usually taught in the classroom in the several courses in equity and is necessarily limited to a brief and in some instances entirely unsatisfactory treatment of a problem. This is especially true in the chapter on the historical development of equity which is so brief as to create an erroneous impression. The text in general, however, is

more carefully edited than is customary in a book of its size. The recent developments of equity doctrine have been stated and modern applications of older principles pointed out. While so short a work may not be very helpful to judges and practicing lawyers, students will find it to their advantage to frequently consult it.

E. HAROLD HALLOWS.

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*A Treatise on the Law of Personal Property*, by Ray Andrews Brown. Callaghan and Company, Chicago, 1936, pp.1xxx-722.

It is with some misgivings that this reviewer attempts to criticize another text. He seems to be making the same comments in every review.<sup>1</sup> And he does have more than a faint suspicion that the text writers cannot all be wrong. In the book at hand Professor Brown has turned out a good piece of work.

The book includes the usual topics presented in a first year course in personal property. The author has followed closely the plan of Bigelow's casebook, emphasizing perhaps more than Bigelow does such topics as carriers, sales and gifts of choses in actions. He makes pertinent criticisms about the accepted categories of bailments, concepts of possession and adjustments among claimants where there has been a mixing of chattels. He has several chapters on liens, pledges, fixtures and some sections on conditional sale agreements, all of which are usually touched on in first year courses, although such topics are all parts of the greater commercial law field for which first year law students are seldom ready. The book is not too long, the footnotes are excellent, and there are many references therein to articles in a selected few of the numerous existing law magazines.

The author has expressed his opinions about many problems. He probably does expect some of them to be criticized. But there is another kind of criticism for this kind of book. It is the opinion of this reviewer that Professor Brown's book will not help beginning law students, although the author confesses that he has had them in mind, nor can it help practicing lawyers for the "brushing-up" process which lawyers frequently require. A first year law student, who has been reading cases for some months, can read a book like this from cover to cover, read it carefully, and have acquired little more than a vague impression of what the judicial process does and what it can do in "property" cases. A practicing lawyer does not have to "brush-up" about the language of the law. What he needs is a topic digest which he can use to find cases in point.

This reviewer does not mean to disparage Professor Brown's work, but he does mean to criticize the traditional technic that encourages the production of legal texts as we have them today. The language of the law must be broken down. The judicial process must be analyzed realistically, by students, and by lawyers and judges, as well. The discretionary powers which legislators, judges and jurors can exercise, the policy choices which they do make, must be recognized and understood. Beginning law students have nothing but a scaffold of illusions unless they begin sometime to understand that words like "title," "custody," "intent," "delivery," even "bailment" and "negligence" describe nothing in particular, but may mean many things depending on what judges or jurors may determine.

The following are typical illustrative propositions taken from the text: "This surrender of power and dominion is \* \* \* the heart of the delivery concept,

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<sup>1</sup> See Book Review (1931) 16 MARQ. L. REV. 73; Book Review (1934) 19 MARQ. L. REV. 55; *Restatement of the Law of Agency* (1936) 20 MARQ. L. REV. 141.