

# Restatement of the Law of Torts, Vol. 3

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from nearly every jurisdiction. Finally, two complete trials in question and answer form, one, involving a promissory note, the other, a divorce case, complete this volume.

When the first edition of this book was published, it met the overwhelming success that it so well-deserved. This revised and enlarged edition is entitled to the same success.

J. WALTER MCKENNA.

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*Restatement of the Law of Torts. Volume 3.* American Law Institute Publishers, St. Paul. 1938. Pp. xxvi, 759.

The third volume of the Torts Restatement deserves an even more cordial welcome from the legal profession than its two predecessors. It deals with seven topics, most of which are given deferred treatment in the usual law school course, and, because of time limitations, often a sketchy treatment. The Restatement likewise has given them a deferred treatment, but a comprehensive one—presenting a greater amount of information on them than is likely to be found elsewhere within a single volume. In fact, the last quarter of Volume 3, devoted to unfair trade practices, gives a fuller discussion of that topic than is to be found in any book not specializing in business torts.

The absence of case citations is, of course, as regrettable in Volume 3 as it was in the earlier volumes. The value of the Restatement would be greatly enhanced were it to include the explanatory notes and authorities which accompany the tentative drafts. Practical reasons presumably have dictated their omission, and it was hardly to be expected that the publishers would depart from the plan originally outlined.

Another cause for regret, foreshadowed in the earlier volumes and increasingly conspicuous in the present one, is the adoption of a classification which achieves little more than divisions and subdivisions of the law of Torts—separate pegs on which to hang sets of rules. This arrangement has the merit of following familiar patterns, and perhaps that is merit enough in view of the cool reception which has been accorded to attempts at a more logical arrangement. Dean Wigmore once organized the subject of Torts in a manner that was logical and as near the ideal as has yet been attained. It was too novel for a conservative profession. The fact that it was presented in a casebook of two volumes rather than one did not help to promote it. But Dean Wigmore's classification was an analysis, not merely an arrangement. It manifested the same genius which has been more effectively immortalized in his treatise on Evidence.

Volume 1 of the Torts Restatement dealt with Intentional Harms, Volume 2 with Negligence. Volume 3 gathers seven groupings of harms for which the law provides redress—all under familiar designations—but by no means excluding the factors of intention and negligence which furnished the distinctive labels for the first two volumes.

The first 54 pages constitute a division entitled "Absolute Liability." Here are considered the situations in which the old rule of "liability without fault" still applies. But even in this division the factor of negligence does not wholly disappear. Under Section 512 the landowner's liability to a known trespasser for injuries inflicted by a wild animal kept by the landowner is made dependent on the latter's exercise of "reasonable care" to warn of the animal's presence.

True, the comment which follows the section points out that the rule is simply an application of the rule set out in Section 335 in the volume professedly dealing with Negligence. But this instance and others indicate that problems of intent and negligence still abound in Volume 3.

Either an intentional or a negligent misrepresentation is required to establish liability for the tort of Deceit, considered in an 81-page division of Volume 3. It might be suggested that this tort is nevertheless distinct from the intentional and negligent harms dealt with in Volumes 1 and 2, since those volumes deal only with torts to the person or to property. But what is deceit in the final reckoning if it is not a tort to property? The harm which it causes is the economic impairment of the victim. His property is depleted as effectively, though not as vividly, as if his house were set afire.

Nearly a third of Volume 3 is devoted to Defamation, and the closely related topic, Disparagement of Property. These two torts are among those of which it is often said that intention is immaterial. Although intent to defame is not necessary to establish liability, there must be an intent to publish, or at least negligence with respect to the publication of the defamatory statement. One may be liable for writing a defamatory letter and leaving it on one's desk where others are likely to find it, but there is no liability if the letter is locked in the desk and shown to no one. Section 577 states the requirement of either an intentional or negligent communication of the defamatory matter.

An 87-page division is given to "Unjustifiable Litigation," including Malicious Prosecution and Abuse of Process. Torts involving interference in the domestic relations are accorded 52 pages. The final division, and certainly not the least valuable one, covering 165 pages, is entitled "Interference with Business Relations." Only Part 1 of this subject is considered, the rest being reserved for Volume 4. Part 1 includes the sub-topics of Trade Marks, Trade Names, and Unfair Competition.

OTTO F. REIS.