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Book Review. Cases on Quasi-Contracts 3rd ed. by Edwin H. Woodruff

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The monotheism of the first two editions of Woodruff’s cases gave little warning of the conflict between law and equity, business practice and legal theory. The availability of both legal and equitable remedies, although well known to practitioners, was never adequately presented to law students until Cook published his third volume of Cases on Equity. Laube’s—the third edition—of Woodruff, disclaiming any purpose other than “to prolong the usefulness of Professor Woodruff’s valuable collection of cases,” does not follow Cook’s lead but professes the same legal ritualism of the earlier editions of Woodruff. But Laube has gone beyond his original purpose by including footnote citations and law review material, and thus has provisioned the careful student with a comparative viewpoint which the earlier editions lacked.

To suggest that additional materials would further illuminate the problems involved in quasi-contracts is to indulge in the interesting but futile game of “what might have been” — a game unusually attractive to book reviewers. Nevertheless attention should be directed to the general paucity of legislative materials in case books and their absence from quasi-contracts in particular. Especially so because as Laube says, quasi-contracts is a field “with which some lawyers are not altogether familiar,” and thus perhaps, innovations may be more readily presented.

The use of statutory material is generally rejected because “the legislature may repeal all our knowledge.” In respect to “private law” legislation, this theory has little or no validity. At least the change is no greater than in “case law.” Indeed this edition under review suggests that not all cases are clothed with immortality. The difficulty arises not with the legislation but with its use. No case is ever excluded from a case book because it is “wrong,” or because it has been overruled. Indeed, many of the most provocative case books abound with cases that state “bad law.” And so, with statutes. Should it matter that they have been repealed by subsequent legislation, modified by judicial decision, or avoided by business practice? For example, in the impossibility of performance cases, where there has been no bargaining for the risk, consider the usefulness of section 1514 of Cal. Civil Code, which seeks to give predicable to the apportioning of the risk.

In the Britton v. Turner situation such statutes are of particular importance. And yet the weakness of this legislation is illustrated by judicial decisions which hold that if the employee is obligated to the

1 P. iii
2 Ibid.
3 Eighty-three cases have been deleted and one hundred and thirteen new cases have been substituted.
4 See, for example, WALDSHURGE, CASES ON AGENCY.
5 (1834) 6 N. H. 481; see also, Note (1932) 43 HARV. L. REV. 647.
employer, performance by the employer is not required by the statute until after the employee has performed. As the employee seldom is able to meet his obligation until he is paid by the employer, the effectiveness of the statute in some industries (particularly mining) is abrogated.

When obligations arising from the intent of the parties are either lacking or ineffectual, the resulting relations are particularly adapted to legislative clarification. Illustrations are legion. Legislation would be particularly useful in the illegal contract situation. Likewise, recent federal legislation involving governmental—industrial relations, would be greatly clarified by the more precise definition of the quasi-contractual obligations which inferentially were created.

The quasi-contractual field is particularly adapted to legislative guidance. But not until law schools train their students in the use of statutes and in the analogistic possibilities in legislative regulation, will the legislative process attain its true usefulness.

Laube’s edition, by an occasional footnote reference, cautiously includes some legislative materials. The case materials dominate—as they should. They are well coordinated and effectively presented. In short, it is a book which no student can ignore, except to his loss.

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9 See Billig, *Employee’s Suit for Code Wages* (1934) 3 *G. W. L. Rev.* 1.