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## American Bar

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## AMERICAN BAR

*Injunction as a Proper Remedy to Prevent Unlicensed Practice of Law\**

(Based on Annotation in 94 A. L. R. 359 (March, 1935).)

It is only recently that there has been any demand for relief by way of injunction against the unlawful practice of law since the matter has not been of great interest to the profession for any considerable length of time and because of the availability of other remedies. Ohio seems to have taken the lead in the use of the injunction. The question first arose there in connection with the unlicensed practice of law by a corporation. In each case a lower court of that state enjoined the particular corporation.

*Dworken v. Apartment House Owners' Association* (1930), 28 Ohio N. P. N. S. 115; affirmed in (1931) 38 Ohio App. 265, 176 N. E. 577; *Goodman v. Western Bank & Trust Co.* (1931), 28 Ohio N. P. N. S. 272; *Goodman v. Motorists' Alliance* (1931), 29 Ohio N. P. N. S. 31; *Dworken v. Cleveland Automobile Club* (1931), 29 Ohio N. P. N. S. 607.

In the *Dworken v. Apartment House Owners'* case, *supra*, it is held that a licensed attorney and those similarly situated as members of the legal profession have an interest in the nature of a property right in the practice of their profession, such as will support their authority to proceed as proper parties to enjoin the practice of law by a corporation, even though there is no showing of a special injury. Ralph T. Catterall, Esq., of the Richmond (Virginia) Bar, says in an article (1933), 19 *American Bar Association Journal* 652, that this case will probably become the leading case in support of the doctrine that a class suit on behalf of all the members of the Bar to enjoin an unauthorized person from trespassing on their franchise will be entertained by a court of equity.

Since the decision in the *Dworken v. Apartment House Owners'* case, similar decisions, both against corporations and individual laymen, have been rendered in a number of other jurisdictions.

*Fitchette v. Taylor* (1934), 191 Minn. 582, 254 N. W. 910, 94 A. L. R. 356; *Under v. Landlords' Management Corporation* (1933), 114 N. J. Eq. 68, 168 Atl. 229; *Childs v. Smeltzer* (1934), Pennsylvania Superior Court, 171 Atl. 883; *State v. Retail Credit Men's Association* (1931), 163 Tenn. 450, 43 S. W. (2d) 918; *Paul v. Stanley* (1932), 168 Wash. 371, 12 P. (2d) 401; and see "Review of Recent Activities to Eliminate Lay Encroachments," by John R. Snively of the Unauthorized Practice Committee of the American Bar Association (January, 1933), 38 *Commercial Law Journal* 15.

In the reported case of *Fitchette v. Taylor*, *supra*, a bill for injunction was brought by the president and secretary of the Hennepin County Bar Association in behalf of themselves and all members of the bar and public. Defendants, doing business as the Minnesota Adjusting Association, solicited personal injury claims and adjusted and settled them, usually charging a contingent fee of thirty-three and one-third per cent. It was held that this was illegal practice of the law.

The court pointed out the power of the court over those who had been admitted to the practice of the law, emphasizing that both the admission to practice and the disbarment of attorneys comes within the judicial prerogative (citing *In re Greathouse*, 189 Minn. 51, 248 N. W. 735). It would be anomalous, the court said, if it had the power to protect the public from licensed attorneys who indulged in the unlawful practice of the law and did not have a similar power to protect the public from the illegal practice of

the law by laymen. This latter has been held to be contempt of court; the power to punish by contempt being considered a necessary corollary of the judicial function to license attorneys.

In re Morse, 98 Vt. 85, 126 Atl. 550, 36 A. L. R. 527; People v. People's Stock Yards State Bank, 344 Ill. 462, 176 N. E. 901, were cited in support.

In the Fitchette case, supra, the court indicates that the subject of the injunction was the practice of law by a layman and so unlawful. It was not merely a single act that was complained of. It was a series of transactions which showed a well defined course of conduct on the layman's part which would continue if the defendant were not enjoined. The court calls attention to the traditional view that the office of the injunction is the protection of property rights and then goes on to say that there has been a noticeable absence of judicial attempt to limit this concept so as to hamper the power of equity to grant injunctive relief where justice demands it. However, the court says, this is not a new or strange field for the application of the injunction. Attorneys, as officers of the court, exercise a privilege peculiar to themselves and not enjoyed by those outside of the profession. Hence, the court concludes, it is a very real sense of franchise and a property right. It should be noted that in this and other decisions the suits are brought for attorneys as a class and not for the individual alone.

The presence of other remedies, such as quo warranto proceedings, or the fact that the activity which is sought to be enjoined is criminal is no bar to a suit for an injunction if it would otherwise be a case for equitable relief.

Only one case is out of line with the list of authorities which allow injunctive relief against the unlicensed practice of the law. In *Wollitzer v. National Title Guaranty Co.* (1933), 148 Misc. 529, 266 N. Y. Supp. 184, injunctive relief against illegal practice of law by a corporation was denied an individual attorney who failed to show that his business was injured by the corporate practice complained of. The Ohio cases were noted but not considered as expressing the law in New York. The court said that an injunction should not issue to prohibit violation of a statute unless special injury was shown, and that had not been done in this case. It is doubtful if this case will be given much weight by courts in the future in view of great number of authorities opposing it.

\*Prepared by the Committee on the Unauthorized Practice of the Law of the American Bar Association. Stanley B. Houck, Chairman.

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### *How the Courts Use the American Law Institute's Restatement*

A new and greatly enlarged edition of "The Restatement in the Courts" has just been published by the American Law Institute. It is sent to all purchasers of the Restatement of Conflict of Laws. About three-fourths of the 354 page book is given over to a series of concise citation paragraphs designed to show just how the Courts have used the several subjects of the Restatement. Of the 819 citations given, the subject of Contracts accounts for the largest fraction, with Conflict of Laws and Agency in second and third place. While Contracts would be expected to lead, having been available in official form since 1932, it is interesting to note that Conflict of Laws, existing only in tentative form until last February, has been cited more frequently than Agency, of which the official draft was issued in 1933. There are 369 Contracts paragraphs, 141 Conflict of Laws, 133 Agency, 92 Torts, 53 Trusts, 7 Property.

The distribution of the citations by states shows that the courts of every state, as well as the Federal and United States Supreme Court, have referred to the Restatement. New York, Pennsylvania, Kansas, Wisconsin, Mississippi and Maryland, in the order named, furnished the greatest number of paragraphs.

In view of the fact that the Subjects of Contracts and Agency are the only parts of the Restatement which have been available in definitive form, until a few months past, this wide-spread representation well attests the Restatement's influence. With the publication of the first two volumes of Torts last fall, and the Restatement of Conflict of Laws, last February, a considerable increase in citations seems likely, especially by the courts which have felt reluctance to cite tentative drafts.

The citation paragraphs have been prepared for the practical use of the lawyer. In a compressed, head-note style they give the pertinent factual circumstances and the holding of the court, together with the sections of the Restatement cited.

For the convenience of those who have used tentative drafts of the subjects of Agency, Conflict of Laws, Contracts and Torts, parallel tables of old and new section numbers, making possible the ready conversion of tentative draft sections into official draft sections, are included in the book.

Another useful feature of the book, which may save a good deal of page thumbing, consists of a glossary of words and phrases used in the Restatement. The glossary covers Agency, Conflict of Laws, Contracts, Property, Trusts and Torts.