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BOOK REVIEW

THE RESTATEMENT OF THE LAW OF TORTS

By the American Law Institute. St. Paul, American Law Institute Publishers, 1934.
2 vols., pp. 1338.

With the publication of the first two volumes of the Restatement of Torts, the American Law Institute has taken another step towards the completion of its gigantic project of restating the common law. Many tort problems remain to be considered in the remaining contemplated volumes, but the first two alone constitute, perhaps, the greatest single contribution to the law of Torts that the legal profession has yet known.

It must be obvious that in attempting a work so vast and comprehensive, numerous difficulties are to be faced. In particular, the desire to make for certainty in the law carries with it an almost irresistible temptation to over-generalize and to simplify by categorically announcing as law, rules which in fact have a limited operation. This difficulty, unless overcome, deters from the value of any such work to the average practitioner who is primarily interested in particular cases and who may be misled by generalizations. Herein lies, perhaps, the chief criticism of prior publications of the American Law Institute.

The Restatement of Torts is distinctive in that the Reporter has striven not so much to announce ultimate "rules" of law, but rather to stress *the factors to be considered* in determining the existence of tort liability. This primary recognition of social and economic factors, rather than an enumeration of the legal "principles" which result from these factors, may, of course, mean a sacrifice of the interest in favor of certainty in the law. On the other hand, this technique comes far closer to explaining all the actual results of the cases and gives the practitioner at least a starting point in the treatment of his particular problems by affording him a basis of analysis upon which he may rely with confidence.

The stress put by the Restatement of Torts upon underlying factors permits a particularization of cases and a consideration of social and economic values in the evolution of the law. In short, it recognizes what many in the profession often overlook; namely, that rules of law as an end in themselves, serve no useful purpose and that law is valuable only in so far as it is a means of promoting justice and of fostering, in the long run, the best social and economic interests of the community. Certainty in the law is desirable, of course, but should be recognized once and for all, as an ideal that never was and never will be, if social and economic values are to be recognized.

It is to be regretted that the Restatement of Torts does not consider at more length than it has, the jurisprudential aspects of the law. Especially is this so since the members of the Law Institute are, in great part, men of long

professional standing as jurists, practitioners and teachers whose many years of activity in the law gives them a rich background for the consideration of questions of jurisprudence. On the other hand, the Restatement of Torts in this particular, is at least on a par with the other Restatements. Moreover, it must be observed, in fairness to the Reporter, that the omission of jurisprudential considerations has been against his personal judgment and has been required of him.

The Restatement of Torts is to be commended for its clarity of expression which, amplified by a wealth of illustrations, leaves little doubt or ambiguity of meaning. Frequent cross-references and a good index make its use easy. Its breadth of vision, its thorough treatment of problems and its practical approach reflect the careful thought and the influence of eminent jurists such as Justice Cardozo (who aided in the work on Negligence). It is a tribute to the efforts of Professor Bohlen, the Reporter, who has devoted his professional career to the considerations of tort problems. When supplemented by the State Annotations, it should prove invaluable to students, practitioners, teachers and jurists alike. It does not purport to consider or answer every conceivable tort problem that may arise, but it makes an honest effort to consider the more common situations and indicates the factors that are likely to determine future controversies. It is no panacea for all tort problems. It may be but another text on tort law but it is at least the best text yet available.

Donald J. Farage.