

THE LAW OF EQUITABLE REMEDIES

By Jeffrey Berryman
Toronto: Irwin Law Inc, 2023, pp. 836.

Reviewed by Hilary Young¹

Jeffrey Berryman has updated his invaluable Irwin Law resource on equitable remedies. The third edition is a comprehensive (more than 700 pages) treatment of the subject. It begins with a discussion of the jurisdiction of equity. Interlocutory injunctions are then introduced, followed by chapters on specific types of interlocutory injunctions (*Anton Piller*, *Mareva*, Anti-Suit). The discussion of permanent (perpetual) injunctions is divided into general principles, injunctions to protect property and reputation, and injunctions to enforce public rights. The next several chapters deal with specific performance: general principles; discretionary defences; sale of land; chattels, shares and payment of money; and contracts for personal service. Next are two chapters on enforcement. The book concludes by discussing equitable damages, equitable compensation and rectification. It also contains a glossary, table of cases and index.

The depth and breadth of coverage are impressive. Certainly, all the major topics of equitable remedies are discussed. Rescission, accounting for profits, tracing and constructive trusts are largely omitted, but Berryman justifies this by noting that these remedies are inextricably linked to particular areas of substantive law.

Few scholars have the expertise to delve into so many subjects of Canadian remedies law, yet Berryman often adds a comparative perspective, looking in particular to the laws of the UK, Australia and New Zealand. Thus, while the book will be of most interest to Canadians, those from other common law jurisdictions will appreciate its comparative dimension.

Not surprisingly for a book in the Essentials of Canadian Law (aka Irwin Law) series, *The Law of Equitable Remedies* describes the law. Descriptions

¹ Professor, University of New Brunswick Faculty of Law. Professor Young discloses that she has signed on to co-author the next edition of Berryman *et al*'s Remedies casebook.

are supported with numerous case law references. The book serves as an introductory text (e.g. on the basics of interlocutory injunctions) but provides details that will be helpful to seasoned practitioners who need support for a proposition or a refresher on a particular type of remedy. Indeed, true beginners may find some of the text difficult to follow, as it assumes an understanding of several causes of action and civil procedure. For example, to understand the specific performance section, it is helpful to know a fair bit about contract law, including “time is of the essence” clauses and tendering practices. However, this is likely a necessary trade-off for a more detailed and comprehensive treatment of equitable remedies.

In addition to its descriptive content, the reader benefits from Berryman’s commentary: what are the consequences of one approach versus another? How has this area of law changed over time? What laws are in need of reform? He provides his opinion on areas of controversy or uncertainty, such as how the three steps of the *RJR MacDonald* test for interlocutory injunctions relate to each other (Berryman would keep them fairly distinct and sequential), and whether the distinction between mandatory and prohibitive interlocutory injunctions is a valuable one (he thinks the Supreme Court’s endorsement of a different accessibility threshold for mandatory and prohibitive injunctions will lead to unnecessary complexity and expense in interlocutory injunction motions). I find these commentaries, informed by Berryman’s broad and deep expertise, invaluable both for better understanding the nature of the controversy and for gaining insight into how the law may develop in the future.

Berryman also often provides a historical context, which helps in understanding rules that may not seem to make sense in modern Canada. The specific performance section, for example, begins with a historical overview. By setting out the historical importance of land ownership, the roles of different courts (chancery versus common law), the historical enforceability of parol contracts, and changes in predominating legal theory, it becomes easier for the reader to understand why damages remedies were sometimes preferred to discretionary equitable ones and vice versa.

Berryman’s commentary also helps animate what might otherwise be dry descriptions of doctrine. Indeed, some passages are quite charming. When discussing the supposed uniqueness of land, often said to justify specific performance, Berryman contrasts the perfect dream home with cookie-cutter suburban homes, evoked in Pete Seeger’s “Little Boxes”.

The book is well-organized, with the table of contents and index making it easy to find guidance on whatever topic the reader is searching

for. Also useful are the ‘further reading’ lists of articles at the end of each chapter. However, I found the glossary less useful. I appreciate that one was included, and I will use some of its definitions in my teaching. But more thought could be given as to which terms are included. “Deponent”, “*ultra vires*” and “in camera” are defined, as is “*Hadley v Baxendale*”, while “rectification”, “contempt” and “fiduciary”—a term frequently used throughout the book—are not. This is a minor point, but perhaps in the next edition more attention could be given to the glossary, no doubt requiring an expansion of its eight pages.

I also noted a number of typos. Some are to be expected in such a long book, but my sense is that publishers are not investing in copy editing like they used to. That said, at its price point of about \$75, the book is very good value.

The Law of Equitable Remedies will be of interest to students of Remedies since it can help explain fundamental concepts. It is invaluable to litigators—whether they are relatively unfamiliar with equitable relief or are seasoned pros. As a legal scholar and teacher, I also found it helpful in filling gaps in my own understanding and in providing cases to help exemplify legal issues.