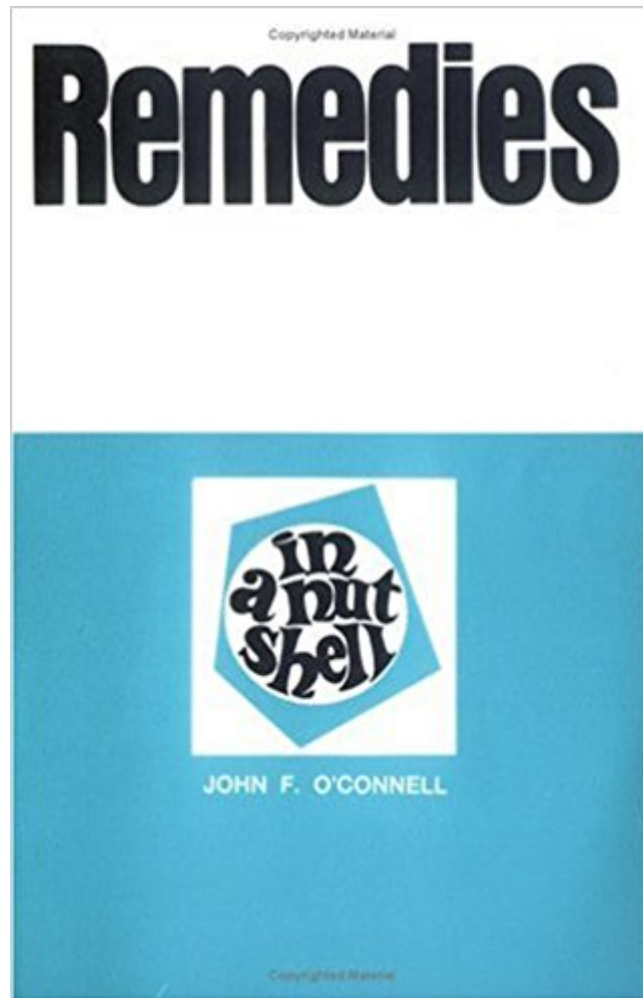




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Remedies In A Nutshell (Nutshell Series)



Synopsis

Remedies: What They Are; History of Remedies; Basic Rules for Legal and Equitable Remedies; Injunctions; Damages; Restitution; Rescission; Reformation; Specific Performance; Remedies: How They are Used; Remedies for Injuries to Realty, Personal Property and Money; Remedies for Injuries to Personal Interests; Remedies for Misrepresentation; Remedies for Mistake; Remedies for Duress, Undue Influence and Related Wrongs; Remedies for Breach of Contract; Restitution for Unenforceable Contracts.

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Customer Reviews

The author writes as if he copied from his notes from an equally muddled headed law professor. For example, in discussing restitution, he says it was ". . .(a)available in the early history of equity and still effective today. . .(i)t was also available at law unless the legal title had passed to the defendant and it made no difference if the passage of the legal title was due to fraud, undue influence, or breach of fiduciary relationship" (p.7). In other words, law courts could not recognize fraud as a defense to a claim to legal title and so there was no other recourse but to go to equity since equity recognized fraud as a defense, along with undue influence and breach of fiduciary relationship. Obviously, the author is referring to pre-Mansfield courts which did not import equitable defenses into the courts. Lord Mansfield was the first to allow equitable defenses, such as fraud, in law courts. For example, fraud could be asserted as a defense to avoid a contract in Lord Mansfield's court. The author doesn't indicate he is referring to a pre-Mansfield court. Furthermore, he fails to point out that

restitution is neither legal nor equitable, but substantive. In other words, restitution deals with rights and duties. The remedy for restitution may be legal or equitable. In courts of law, the remedy is quasi-contract. In equity courts, the remedy is constructive trust. The author is correct to say that declaratory judgments are equitable in origin. Similar to Bankruptcy, which is also equitable, declaratory judgments have been reformulated in statutes. However, the same equitable processes hold. The author shows the variety of uses of the terms in personam and in rem. He says that "(t)he distinction seems to be drawn too finely as an acceptable explanation" (p. 8).

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