

IN TRIBUTE

DAN B. DOBBS—SEER IN THE DESERT

Ellen M. Bublick*

Anyone who writes or practices in the field of tort law knows Dan B. Dobbs. In five decades of writing, teaching and practice, Dan's work has shaped the law of torts and defined the field of remedies. Dan has written not one but three leading treatises. He is the author of *The Law of Torts*¹ and *Law of Remedies*,² and coauthor of *Prosser & Keeton on Torts*.³ In addition to his treatises, Dan has guided many other books to print. As sole author and with coauthors, he has published five editions of his popular casebook, *Torts and Compensation*,⁴ two editions of *Problems in Remedies: Damages—Equity—Restitution*,⁵ and just this year the first edition of his new book, *Advanced Torts: Economic and Dignitary Torts—Business, Commercial and Intangible Harms*.⁶ In addition to this tall stack of tomes, Dan has written more than thirty scholarly articles.⁷ This is to say

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1. DAN B. DOBBS, *THE LAW OF TORTS* (2000).

2. DAN B. DOBBS, *THE LAW OF REMEDIES: DAMAGES—EQUITY—RESTITUTION* (2d ed. 1993).

3. DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, *PROSSER AND KEETON ON TORTS* (5th ed. 1984).

4. The most recent edition is DAN B. DOBBS & PAUL T. HAYDEN, *TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY* (5th ed. 2005). A review of that book is contained in Ellen M. Bublick, *In Praise of the Treatise Writer: Law's Special Knowledge*, 25 SEATTLE U. L. REV. 53 (2001).

5. DAN B. DOBBS & KATHLEEN KAVANAGH, *PROBLEMS IN REMEDIES: DAMAGES—EQUITY—RESTITUTION* (2d ed. 1993).

6. DAN B. DOBBS & ELLEN M. BUBLICK, *ADVANCED TORTS: ECONOMIC AND DIGNITARY TORTS—BUSINESS, COMMERCIAL AND INTANGIBLE HARMS* (2006).

7. From Dan's earliest articles to his most recent, his insights have been pivotal in defining legal rules. See, e.g., *Russell v. Bridgens*, 647 N.W.2d 56, 64 (Neb. 2002) (quoting and adopting ideas from Dan B. Dobbs, *The Validation of Void Judgments: The Bootstrap Principle, Part II—The Scope of Bootstrap*, 53 VA. L. REV. 1241 (1967)); *Mason v. Wal-Mart Stores, Inc.*, 969 S.W.2d 160, 165 (Ark. 1998) (addressing and crediting

nothing of the many works he has written that have influenced scholars and practitioners behind the scenes—the many-hundred-page teachers’ manuals that accompany his books; the yearly teachers’ update letters that comb cases from all fifty states for salient contributions; the frequent pocket parts that add new insights and developments to the practitioner’s storehouse; and Dan’s responses to the constant flow of legal inquiries from fellow academics, students, and so many others who seek out his opinion.

Given Dan’s scholarly record, it is fitting to mark this year, which counts Dan’s fiftieth year in law teaching and practice, with a tribute. While a discussion of Dan’s work necessarily starts with a notation of its sheer volume—he is prolific—it is not the mere quantity of Dan’s work that merits praise; it is first and foremost the quality. Dan stands by every line and every word of every text that he writes. Assiduous and exacting, he starts work by 4:00 a.m. each morning (sometimes 3:00 a.m.), often seven days a week. He personally attends to every aspect of his scholarly work, from planning the overall project to executing the most minute word-processing details. And Dan reads everything—particularly that endless stream of case law that flows from fifty state jurisdictions and the federal court system. It is because he works so hard and knows so much that Dan’s is a voice you can immediately trust. When judges, lawyers, professors and students want to know what the law is—or what it should be—they find Dan.

Sometimes you really need a guide. I have often felt that way here in the desert. When I first moved to Tucson, I feared that my young son might never understand the seasons. According to the textbooks he brought home from school, fall flaunts colored leaves, winter drops soft white snow, and spring spatters rain on little children in yellow slickers and causes green grass to grow. Who’s seen any of that? In the desert, to differentiate between seasons you need a more subtle eye. In fall the temperature turns from broil to bake, in winter the water runs through the bottom of the canyon, and in the spring a bright white blossom blooms atop the saguaro. Dan, who loves the desert, is a perfect match for it—a master of nuance.

The sort of careful craft that treatise writers practice does more than track the development of the common law, though that in itself is a weighty job. It is not that just anyone who went out to observe haystacks at different times of day and set brush to canvas would have painted the same haystacks that Monet did. When a great treatise writer like Dan observes the law, he does not describe it; he creates it. Mike Green, the reporter of several earlier sections of the Restatement (Third) of Torts once said to me, “Dan can write what the law is, because after he writes it, it will be the law.” Dan is the extra judge on the bench in tort cases throughout the country. The thousands of judicial opinions that acknowledge Dan’s work, more than one hundred from the United States Supreme Court alone,⁸ reveal just the first

arguments made in Dan B. Dobbs, *Tortious Interference with Contractual Relationships*, 34 ARK. L. REV. 335 (1980)).

8. See, e.g., *Sereboff v. Mid Atl. Med. Servs., Inc.*, 126 S.Ct. 1869, 1875 (2006); *Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 149 (2003); *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210–215 (2002); *Kansas v. Colorado*, 533 U.S. 1, 22 (2001) (O’Connor, J., dissenting); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1055

part of his influence. His work with the European Group on Tort Law, and the citation to and translation of his articles in Japanese publications, suggest the reach of Dan's influence beyond this country's borders as well.

Dan's scholarship is well-informed and precise, creative, insightful and actually great fun to read. When I edited some of Dan's work I had to restrain myself from cutting his more colorful phrases like "hen's teeth rare" and bleeding the work into dry academic prose. I have traveled down scholarly paths where Dan has been and those where he hasn't, and I am always glad when Dan has been there before me—even if he has only been there for a page—to show me things that I would not have seen without him. He cares that law evolves to reflect principles of fairness. He cares that judges and scholars and practitioners and students get legal doctrines right. He has a passion for teaching the law, and his students and colleagues revere him. As a reflection of that esteem, Dan was named Regents Professor of the University of Arizona—the highest academic distinction that the University can bestow. Dan, in turn, shows profound respect for his students and colleagues by holding all to the highest of standards.

It has been my great good fortune to work with Dan on a daily basis over this past stretch of the way. I look forward to learning much more from him in the years ahead. I hope we all will.

n.19 (1992) (Blackmun, J., dissenting); *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 269 (1990); *Pulliam v. Allen*, 466 U.S. 522, 533 (1984).