

《美国侵权法》

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内容概要

《美国侵权法(第2版)(英文版)》所选取的案例比较系统地反映了英美侵权法（主要是美国）的主要制度。为了便于读者能够在较短的时间内获得英美侵权法最为基础的知识，编者特意在每一章或每一节的开头部分对该章节所涉及的法律原理用中文进行了简要的表述。

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章节摘录

版权页： This is not a new question , for it has been considered , directly or indirectly , so many times by this court that a reference to the earlier authorities is unnecessary. In the leading case upon the subject , the defendant , in order to dig a canal authorized by its charter , necessarily blasted out rocks from its own land with gunpowder , and thus threw fragments against the plaintiff ' s house , which stood upon the adjoining premises. Although there was no proof of negligence , or want of skill , the defendant was held liable for the injury sustained. All the judges concurred in the opinion of GARDINER , J. , who said : "The defendants had the right to dig the canal. The plaintiff the right to the undisturbed possession of his property. If these rights conflict , the former must yield to the latter , as the more important of the two , since , upon grounds of public policy , it is better that one man should surrender a particular use of his land , than that another should be deprived of the beneficial use of his property altogether , which might be the consequence if the privilege of the former should be wholly unrestricted. The case before us illustrates this principle. For if the defendants in excavating their canal , in itself a lawful use of their land , could , in the manner mentioned by the witnesses , demolish the stoop of the plaintiff with impunity , they might , for the same purpose , on the exercise of reasonable care , demolish his house , and thus deprive him of all use of his property. The use of land by the proprietor is not therefore an absolute right , but qualified and limited by the higher right of others to the lawful possession of their property. To this possession the law prohibits all direct injury , without regard to its extent or the motives of the aggressor. He may excavate a canal , but he cannot cast the dirt or stones upon the land of his neighbor , either by human agency or the force of gunpowder. If he cannot construct the work without the adoption of such means , he must abandon that mode of using his property , or be held responsible for all damages resulting therefrom. He will not be permitted to accomplish a legal object in an unlawful manner." (Hay v. Cohoes Co. , 2 N.Y. 159.) This case was followed immediately by Tremain v. Cohoes Co. (2 N.Y. 163) , a similar action against the same defendant , which offered to show upon the trial "that the work was done in the best and most careful manner".

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编辑推荐

《美国侵权法(第2版)(英文版)》在每个英文案例之后附上思考题,使读者可以带着问题阅读案例,加深对案例中阐明的法律原理的理解。笔者希望,读者能够在阅读这些案例的过程中,不仅弄清每一个案例的事实、判决结果和法官的推理过程,而且能透过这些案例了解英美国家的法律制度,以及它们所体现的社会价值观念和公共政策。

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