

A Treatise on the Law of Contracts (Book Review)

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BOOK REVIEWS

A TREATISE ON THE LAW OF CONTRACTS, BY SAMUEL WILLISTON (3d ed.) (Volumes I, II and III). By Walter H. E. Jaeger. Baker, Voorhis and Company, Inc., 1960. \$20.00 per volume.

Doctor Walter H. E. Jaeger deserves the praise of the profession for the scholarship which he has brought to Williston's classic treatise on the law of contracts. He is the distinguished Professor of Law at Georgetown University Law Center who has been a teacher of contracts for over twenty-five years. Added to his laurels are a casebook on international law and one on labor law, in addition to various other monographs and law review articles.

Approaching this basic field of the law with appreciation of the dominance it holds today, Doctor Jaeger immediately arrests one's attention with the readable style and modern form of presentation which he has brought to Williston's basic work. He uses short sentences, terse and pithy statements of the bench, innumerable references to statutes and applicable case materials, and indicates the effect of current legislation on the field of contracts. All of these innovations are intended to assist the practitioner in writing more acceptable contracts and solving the ever increasing complexities of modern contract practice.

The law of contracts, like other areas of American jurisprudence, has progressed as civilization made its advancement across the world scene. In early continental Europe, the Franks and Lombards had a binding contractual ceremony, known as the *fides facta*. Later, in Western Europe we find a mutual grasp of hands as a form of contractual relationship. Subsequently, the Church adopted the *fides facta* and incorporated it into its own system. In Glanvil we find the action of debt, known as *praecipe in capite*, now a form of obsolete pleading. Then *assumpsit* developed from case, and eventually we enter into the modern law of contracts.¹

Although the previous editions authored by Professor Williston covered the field of contracts with thoroughness and expertise, Doctor Jaeger has, nonetheless, brought to the third edition many significant contributions. Some of these are:

(1) The quintessence of over a quarter of a century of case material which has been incorporated into the treatise.

¹2 POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW 187-89 (2d ed. 1899).

(2) Shorter paragraphs and terse sentence construction enhance the readability of the work.

(3) Extensive footnoting, containing short digests, and frequent comment on the cited cases often enables the practitioner to know what to expect from a particular case.

(4) A condensed table of contents has been provided, thus insuring the expeditious discovery of desired topics.

(5) Current statutory modifications have been indicated in the subject matter. Tables are utilized to present the modern statutory or code provisions of almost every American jurisdiction.

(6) The wordy topical descriptions of the previous editions have been concisely rewritten, where appropriate.

Doctor Jaeger has examined legal periodicals, annotations, encyclopedias, treatises, texts, restatements and digests, and fashioned the results of his scholarship and editorship in 221 sections (826 pages) in Volume I of the revision.

Chapter one defines the basic terminology of contract law, giving its scope and modern utilization. Chapter four on the "Duration and Termination of Offers," develops the subject of options extensively in sections 61A, B, C and D. These sections are entirely new, and a realistic and practical approach has been taken by the author. In chapter five, "Acceptance of Offers," Doctor Jaeger has given an enlightening coverage to acceptance by telephone and teletype. Here, the courts in keeping abreast of modern technology have said: "By the technical law of contracts the contract is made in the district where the acceptance is spoken."² Chapter six, dealing with consideration, is covered in 138 sections (229 pages). This is double the size of its predecessor. It contains a fascinating and enlightening section on the technical meaning of benefit and detriment. All students of contract law will remember the case of *Hamer v. Sidway*,³ where a lad was induced to refrain from smoking and drinking until he was twenty-one, and his uncle thereupon refused to comply with his promise, defending himself by saying it was a benefit to the health and morals of his nephew not to smoke or drink. The court found that the promissor had suffered a legal detriment and the contract was upheld.

In section 115C, "Consideration and Tax Statutes," we find that current tax statutes have modified the common-law concept of consideration especially when pertaining to gifts. Under the statutes and the applicable regulations, the *quid pro quo* received by the grantor must be "money or money's worth."⁴

² *United States v. Bushwick Mills*, 165 F.2d 198 (2d Cir. 1947).

³ 124 N.Y. 538, 27 N.E. 256 (1891).

⁴ *Commissioner v. Wemyss*, 324 U.S. 303 (1945).

In the field of probate and estate law, Doctor Jaeger enters into a thorough discussion of the current problems facing the probate practitioner. He points out in section 119B that the crux of the problem in preparing contracts to create a benefit by will often hinges on the question of their enforceability. On this topic he states:

It is generally held that if there is sufficient consideration, or if the instrument is under seal in common law jurisdictions the contract will be binding. Some of the more usual instances involve agreements to leave property in consideration of the care and maintenance of the testator by the legatee or devisee, or for other services rendered, or where the agreement requires the making of mutual and reciprocal wills wherein each party leaves property to the survivor.⁵

The balance of the volume treats in professional fashion a wide spectrum of topics ranging from the problems encountered in the area of promissory estoppel to the formulation of formal contracts.

Volume II commences with an extensive treatment of the contractual capacities of parties to a contract. Here is presented in an authoritative and scholarly manner such subjects as the capacity of infants to contract, their rights and obligations under such contracts, the problem of disaffirmance, and the effect of false representations as to their age. An exhaustive analysis is likewise given to the capacities of married women, persons who are mentally afflicted, drunkards and corporations. Each of these topics is accompanied by extensive footnotes and commentaries. One notable addition by Doctor Jaeger is the inclusion of tables indicating the contractual rights of married women throughout the United States. It is the opinion of this reviewer that by the inclusion of such a research mechanism, hours of the practitioner's valuable time will be saved from scanning his particular code or compilation.

Elsewhere, Doctor Jaeger presents in his usual thorough fashion such timely topics as the nature, scope and rationale of the third party beneficiary doctrine, including a timely discussion of the third party labor beneficiary. Also, the practitioner as well as the student will find chapter thirteen on joint rights and duties of particular interest and importance.

Volume III continues the fine tradition and lofty standards established by its predecessors. By careful organization, astute analysis, and voluminous research, Doctor Jaeger has charted the number and frequency of cases arising in the various fields of contract law, and has made it a point to give them space in accordance with their significance. Thus, the more often a particular subject appears in litigation, the more extensive is its treatment.

⁵ 1 WILLISTON, CONTRACTS § 119B (3d ed. 1957).

The content of Volume III consists of a chapter on the assignment of contracts and five chapters on the statute of frauds, embracing 937 pages.

On the topic of assignments, Doctor Jaeger indicates that much of the difficulty here is due to the interpretation of the word "assignment." Beginning with this fundamental concept, the subject matter is developed thoroughly through 338 pages of text, footnotes, and commentaries.

A significant addition is section 432A, entitled "Securities and Rights Passing with Assignment." Here the author states that an assignee takes subject to defenses which the obligor has against the claim, but that he is likewise subrogated to any equities to which his assignor was entitled. The section consists of assignments of claims of materialmen, wages, severance pay and other choses in action.

A timely discussion of legislation providing for non-notification financing appears in section 435A. Here the author presents the problems and solutions attendant upon the assignment of accounts receivable as a means of amassing business capital. This section is of prime importance to the contract practitioner, when one considers that this method of financing involves an aggregate figure of ten billion dollars annually.⁶

The original statute of frauds was promulgated during the reign of Charles II, and for nearly four centuries has proved to be a most vexatious and frustrating combatant for the practitioner to conquer. The revision spends 588 pages on this enigmatic field of the law which has been developed and expanded by the modern business world into a veritable paper monster.

In Chapter sixteen, "Promises to Answer for the Debt of Another and Contracts in Consideration of Marriage," the author has appended his new sections 454 and 481A.

In section 454A, the authorities apparently are not in accord. If a person under a legal disability enters into an agreement which is void, a promise to answer for such a debt is not within the statute. However, in the case of a committee answering for the debt of an association which is incapable of contracting, the courts have concluded otherwise, and the agreement is declared to be within the purview of the statute.⁷

In section 489A, the author includes a tabular presentation which will be of great assistance to the practitioner and student alike. It lists, in an accurate and comprehensive style, those states which have enacted statutes requiring the authority of an agent for the sale of real property to be in writing.

⁶ See Note, *The Legislature Revisits the Ohio Assignment of Accounts Receivable*, 9 W. RES. L. REV. 65 (1957).

⁷ See the discussion of this current topic outlined by Jaeger in § 454A of the present revision.

In section 506, Doctor Jaeger has presented the status of the statute of frauds complete with its modifications in those states which have adopted the Uniform Commercial Code. In the succeeding section, 506B, another table indicating current modifications to the statute of frauds may be found. The author has provided by these useful tables material which would have taken pages to expound, and thus creates a ready reference for the busy practitioner in ascertaining the requirements of his statute, either under the Uniform Sales Act or the Uniform Commercial Code.

In retrospect, the first three volumes of Doctor Jaeger's revision of Williston's treatise are highly recommended for their comprehension and completeness of treatment, the keen degree of analysis of subject matter, and concise arrangement and scholarship. Doctor Jaeger's extensive and erudite cultivation of the various fields of contract law has yielded a bountiful and rewarding harvest. For this, the Bench and the Bar will be eternally grateful.

DONALD H. DALTON.*



CASES AND MATERIALS ON CRIMINAL LAW PROCEDURES. By J. Walter McKenna. New York: Alpert Press, 1960. Pp. 501. \$10.00.

In writing this volume, Professor McKenna has drawn upon his long experience as a teacher and practitioner in the field of criminal law and has produced an excellent book. While ostensibly designed as a casebook and text for law students, it should prove valuable to any lawyer who is not well grounded in criminal procedures.

The cases and materials are arranged in such a sequence that the reader can easily follow, step by step, the procedures and events that flow from an arrest in a criminal proceeding. Commencing with the arrest, the author focuses attention upon and illuminates the myriad problems that may or will be encountered as an accused's case progresses toward trial. The multitude of procedural matters to be considered before, during, and after trial are thoroughly explored.

While it was manifestly impossible for the author to develop and treat all the manifold incidents and questions encountered in

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