

Outline of the Law of Contracts (2nd Ed.) (Book Review)

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Recommended Citation

Tapley, William (1934) "Outline of the Law of Contracts (2nd Ed.) (Book Review)," *St. John's Law Review*: Vol. 9 : No. 1 , Article 52.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/52>

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OUTLINE OF THE LAW OF CONTRACTS. Second edition. By Frederick A. Whitney. Brooklyn: St. John's University School of Law, 1934, pp. xii, 326.

The book is a concise, plain statement of what the law is, or what the author believes the law should be, on the main fundamental principles of contract. Although it is intended primarily for the law student, any lawyer seeking a brief review on the subject would find this volume interesting and deserving of his thoughtful study.

The author presents the subject in two parts; the first treating of the formation of the contract and the second the discharge of contract obligation. In Section 37 there is developed in a most original manner the instances when a rejection operates to terminate an offer. By the use of symbols, as "R.S." for rejection sent, "R.R." for rejection received, "A.S." for acceptance sent and "A.R." for acceptance received, the author clearly illustrates all the various possible contingencies that may arise. The subject of consideration is taken up under the chapter entitled, The Binding Force. Here the recent decisions on promissory estoppel are discussed in detail in the footnotes and carefully explained in the text. The author, never confusing the scope and purpose of his work, merely attributes the rise of the doctrine to "social and ethical exigencies." It may be a matter of regret that he did not set forth his own views on the value of promissory estoppel and consideration of trust as substitutes for consideration.

The objective and subjective tests so frequently used in determining contractual rights and duties have proved most obscure to the beginning law student. The author clarifies these. The early chapters acquaint the student with the objective tests necessary for a manifestation of mutual assent. In his chapter on Subjective Defects Rendering the Contract Void or Voidable, the effect of fraud, force, duress and mistake on the contract is considered. In these instances it is the mental intention that is all-controlling and not the overt acts which manifest such intention. Presenting these topics from this angle is new and should prove a great help to the student.

In the concluding chapter of Part One, Professor Whitney has grouped all the instances where persons other than the parties acquire rights and interests in the contract. These include beneficiaries, assignees, parties to a novation, joint, several, and joint and several, promisors and promisees. The entire subject of beneficiary contracts is treated under the one section, Beneficiaries. It is submitted that if this had been developed under important subdivisions it would stand out clearer in the mind of the student. Professor Whitney does so divide the subject when considering assignment and joint and several promises.

The last four chapters on discharge follow closely the author's presentation of this subject in his former edition. The entire work is the product of years of experience in teaching the law of contracts and throughout reflects care and study in its preparation. This is evidenced by the many notes, references and citations. Of particular interest are the references to the Restatement of the Law of Contracts. These are included, as the author states in his Preface, "to call attention to the position taken by the American Law Institute on important points and to familiarize the student with the technical expressions and termi-

nology employed by this most important contribution to the science of Jurisprudence." It is, indeed, a pleasure these days to read an outline on any legal subject that is not the product of hasty preparation. In this volume, it is apparent that Professor Whitney has been collecting material for the past decade and has assembled it in a logical, clear manner.

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A TREATISE ON THE LAW OF TORTS. By Fowler Vincent Harper. Indianapolis: The Bobbs-Merrill Co., 1933, pp. cxi, 714.

This volume is the most recent textual contribution on the law of torts. The approach is original. So is the treatment of the theme. The subject of torts is extensively discussed, despite the modest statement of the author in the Preface.

The principles of the Restatement of the Law of Torts are frequently referred to, and favorably. This is not to be wondered at when it is remembered that the author, himself a professor of law in Indiana University, is a loyal disciple of Professor Bohlen, reporter to the Institute which prepared the Restatement. The Restatement has not any sanction, of course, except the legal learning of the eminent jurists who framed it, which is considerable. The rules of the Restatement were formulated after an exhaustive and complete examination and analysis of tort cases in the various jurisdictions. The Restatement states the law as it should be, in the opinion of its framers. Some of it is already the law of New York; much of it perhaps is not. Very slowly, but surely, the courts of this state are adopting the principles of the Restatement, and thus making them authoritative by adding them to the body of our common law. Doubtless our Legislature may, from time to time, enact some of the principles of the Restatement into statutes in those cases where the common law rule has been contrary for such a long period of time that our courts would refuse to change it by decision, and disturb thereby the doctrine of *stare decisis* which lies at the foundation of the application of the rules of our common law system of jurisprudence. The students in our law schools should be taught, of course, the law as it is; but law school instruction should not stop here. The law as it should be or will be should also be discussed, if the ability to reason along juristic lines is to be developed fully. The Restatement is of inestimable service in this type of instruction. Your reviewer is a great admirer of Professor Bohlen, and of the Restatement; but your reviewer, in common with us all, should not swallow the Restatement "hook, line and sinker" (so to speak) simply because it is the Restatement. As a professor of the law of torts, your reviewer has often been in a quandary as to just how extensively he should use the Restatement in the classroom, lest he confuse his students. If the case system of law instruction possesses the virtues which it admittedly has, instruction in the classroom must continue to be based very largely upon