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Clark on Contracts (Book Review)

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CLARK ON CONTRACTS. By Archibald H. Throckmorton and Alvin C. Brightman. St. Paul: West Publishing Company, 1931, pp. 858.

Few students of the law are unfamiliar with the Hornbook Series of texts and casebooks principally designed to place in the hands of all, in limited space, the general phases of each of the major divisions in the study of jurisprudence. Mr. Clark, author of the first edition of the book which now bears his name, is known for his exhaustive research work in the field of contracts, corporations and criminal law. Professors Throckmorton and Brightman of Western Reserve University undertook the completion of the fourth and present edition. The purpose of this work chiefly was to bring the book up to date. In the sixteen years that have elapsed since the third edition appeared in print much new matter has presented itself. The adoption of the Uniform Sales Act by many of the states and the interpretations of the respective sections in it has created a fertile field for commentary by judicial decision and legal periodical writers. Decisions of courts upon questions growing out of the World War made necessary the revision of sections in the book and the additions of such judicial utterances as *Porter v. Freudenberg*¹ having to do with the validity of contracts determined by the place of business and not by the nationality of the individual, and *Continental Tyre and Rubber Co. v. Daimler Co.*² which held that a corporation chartered in one country and having its principal place of business there was not an alien enemy even though its directors and substantially all of its stockholders were residents of a hostile country.

The order of presentation followed is much the same as that of other standard treatises. A notable addition to the volume is the numerous references to classical commentary on special phases by judicious periodical contributors of our leading universities. The recognition of such literature by the courts of this age has stimulated the demand for such references in treatises.

The matter of consideration in a contract is set forth lucidly and decisively in Chapter 5. It is regrettable, however, that no extended discussion was attempted with regard to the law affecting charitable or voluntary subscriptions. The ingenuity of the New York courts in creating a consideration where none exists in fact³ has created a feeling of dissatisfaction among students and practitioners who are interested in the administration of justice without unpardonable excuses now deemed *logic*. One senses that the weight of the common-law theory of consideration is undergoing a reducing process which eventually will not bear down on the judiciary when it is called upon to

¹ *Porter v. Freudenberg*, 1 K. B. 857, 5 Brit. Rul. Cas. 548 (1915).

² *Continental Tyre & Rubber Co. v. Daimler Co.*, 1 K. B. 893, 5 Brit. Rul. Cas. 304 (1915), *rev'd* (on other grounds) 2 A. C. 307 (1916).

³ *Allegheny Col. v. National Chautauqua Co. Bank*, 246 N. Y. 369, 159 N. E. 173 (1927). In *Presb. Church of Albany v. Cooper et al.*, 112 N. Y. 517, 20 N. E. 352 (1889) the Court stated that a promise on the part of one subscriber made upon reliance of similar subscriptions by other promisors did not constitute consideration necessary to effect a valid binding contract. But in *Keuka College v. Ray*, 167 N. Y. 96, 60 N. E. 325 (1901) under similar circumstances the Court permitted recovery on such a promise after extraneous evidence as to what the college did in reliance upon the promisor's subscription, such as procuring other subscribers.

determine whether or not it will enforce a solemn promise to subscribe to a charity without the necessity of implying a counter promise on the part of the beneficiary when in fact no such promise exists.⁴

Interrelated phases of the law such as the rules relating to evidence, unlawful combinations and the criminal law are also treated in this volume. The subject-matter closes with a consideration of discharge of contracts, the measure of damages for a breach, and quasi-contracts.

The practitioner will not rely on this book for an exhaustive treatment of a problem, though it might well be used as a reference book. Certainly it will be an aid to students desiring to familiarize themselves with the rules of contracts in all states and states in particular.

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BOOK NOTES

BENDER'S FEDERAL FORMS (2 vols). Edited by Charles L. Sylvester. Albany: Matthew Bender and Co. (1929).

Business, interstate in character, has increased to such a large extent that the volume of litigation in Federal Courts has of necessity increased. This increase of litigation and the adoption of the new United States Code necessitated a new work on Federal forms, which burden the author undertook. He has produced a work which is of inestimable worth to the practitioner in the Federal Courts.

The entire field of Federal Court forms, both of pleading and of practice, has been covered. As the practice differs in the various districts of the Federal Courts the author has had to limit himself to forms which are used in a State Court but which can be adapted for use in the Federal Courts and forms which pertain to causes of action peculiar to the Federal Courts.

The work is keyed to the new United States code and the former United States Revised Statutes making it a welcome addition to the necessary tools of the Federal Court lawyer.

CASES ON PLEADING AND PROCEDURE. By Charles E. Clark. St. Paul, Minn.: West Publishing Co., 1930, pp. 674.

In treating this subject the tendency of casebook writers has been to emphasize history apart from the modern law of procedure. In this volume modern law administration is stressed throughout, and, while history appears, it is presented only to explain general principles of present-day utility.

⁴ Allegheny Col. v. National Chautauqua Co. Bank, *supra* note 3. Also First Methodist Church v. Estate of George Howard, 133 Misc. 723, 233 N. Y. Supp. 451 (1929). For a criticism of these cases see (1929) 4 ST. JOHN'S L. REV. 125.