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## 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 4 and 5). By Walter H. E. Jaeger. Baker, Voorhis and Company, Inc., 1961. \$20.00 per volume.

It is gratifying, indeed, to be able to assert without reservation that Doctor Walter H. E. Jaeger continues to maintain that high degree of scholarship, facility of communication, precision of language and mastery of style which has become synonymous with "Jaeger's Williston." The author-editor of the third edition of *Williston on Contracts* has not disappointed students of the law, who acknowledge his leadership in the field of contracts—volumes 4 and 5 measure up to the mark.

These two most recently published volumes contain eight chapters. Among these is the chapter which deals with perhaps the most important phase of contract law from the point of view of the practicing attorney: Chapter 22, "Interpretation and Construction of Contracts; The Parol Evidence Rule." It is axiomatic that a fine draftsman not only seeks to incorporate within the four corners of a contract provisions anticipating and applicable to all eventualities, insofar as the parties thereto are concerned, but also attempts to envision—one eye focused on the theoretical and the other on the practical—any litigation which may arise between the contracting parties and thus bring into the picture a third person, *viz.*, a court. It is characteristic of such an attorney to insist on clarifications, details and phrasing to a degree perhaps onerous and picayune to the unenlightened.

What is it that impresses a hallmark on such an attorney? It is a feel for, an understanding and comprehension of, the approach of the courts to the interpretation of contracts and clauses in their endeavor to ascertain intent and to administer justice. Chapter 22 could well stand by itself as a textbook in this area. Doctor Jaeger recognizes the importance of this phase of contract law and accords it the treatment it deserves; he has increased from 145 to 891 the number of pages in Chapter 22, and has added ten new sections.<sup>1</sup> The new section 602A deals with the two doctrines of construction and interpretation—the "strict"

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<sup>1</sup> Sections 600, 600A, 602A, 607A, 609A, 609B, 610A, 610B, 615A, 632A.

and the "liberal." Sections 609A ("Variable Meaning of Words") and 609B ("Variable Meaning of Words: Specific Examples") are important additions and, as is characteristic of the Jaeger edition, the language of the courts is effectively employed. The new section 632A ("The Parol Evidence Rule: Illustrative Cases") provides a cross section of the applications of the parol evidence rule by the courts. Again and again, Doctor Jaeger fortifies this authoritative treatise with the law as expressed in judicial opinions.

It is this recourse to the language of the courts, sifted and analyzed by Doctor Jaeger and his predecessors, that has prompted such accolades as the learned Judge Alexander Holtzoff's characterization of *Williston on Contracts* as "one of the few treatises which are authoritative in themselves instead of being merely reference books and sources from which authorities may be derived."<sup>2</sup>

Though at times it may appear that the language of the courts is used too extensively in the text itself (its use in the footnotes cannot be extolled too much), careful analysis normally discloses sufficient justification for the quoting. Often, delicate shading is given to the meaning of a principle or to an application thereof which can be set forth in no other way. One does not get the impression, however, that Doctor Jaeger is overwhelmed by the aura of judicial robes. It is the forthright authoritativeness of *Williston* that continues to assure it pre-eminence in its field.

Not to be overlooked in an appraisal of these newest volumes are the many other modifications, additions and improvements. For example, there is added a section 567B ("Table of Statutes Governing Memorandum in Writing"). In a similar vein is the new section 768 ("Statutes Granting Judgment Creditor Direct Action Against Insurer"). Too, throughout these pages appropriate references are made to the Uniform Commercial Code. (There has been effected a sensible reduction of the references to the Restatement which characterized the second edition.)

The third edition continues to provide an abundance of examples illustrative of basic principles. It is reassuring to one seeking authoritative assistance to come across such introductory phrases as: "A notable example is," "Illustrative of this is a case," "In a somewhat unusual case," "A further example." One knows that *Williston* is the law of contracts.

It would not be correct to imply that all that is good in *Williston on Contracts* is attributable to Doctor Jaeger. Rather, it redounds to his credit that he has discriminately retained all

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<sup>2</sup>Blanken v. Bechtel Properties, Inc., 194 F. Supp. 638, 640 (D.D.C. 1961).

the fine features and substance of the prior editions, and has proceeded to even higher levels of scholarship; he has updated and clarified, amplified and revived the cornerstone of contract law. Not only has Doctor Jaeger provided the bench and the bar with the ultimate authority in the field of contracts, but he also has provided an example of dedication and scholarship for his confreres who desire to share their knowledge and love of the law.

JOHN G. MCGOLDRICK \*



LAW FINDING THROUGH EXPERIENCE AND REASON. By Roscoe Pound. Athens, Georgia: University of Georgia Press, 1960. Pp. 65. \$2.50.

As Dean J. Alton Hosch says in his Foreword, the School of Law at the University of Georgia was chartered in 1859, and a prospectus of the opening session on October first was issued in June of that year. To inaugurate the Centennial Celebration, Dean Emeritus Roscoe Pound of Harvard Law School was invited to give the lectures now published in this book. Neither Dean Hosch nor Dean Pound mentions the unhappy occurrence in 1861 of the firing on Fort Sumter, which, with its historic aftermath, undoubtedly affected the early days of this effort to advance legal education from office apprenticeship training into regular university studies. Dean Hosch does mention, however, another happier anniversary, Dean Pound's ninetieth birthday, which occurred in 1960. Were this little book not remarkable for its content it would still have a unique significance of its own.

As a matter of fact, those familiar with Dean Pound's long list of distinguished publications in the field of jurisprudence will find several new and welcome ideas expressed here. The author does refer to some of his better known views, but he himself tends to speak of them in the past tense, and hails more recent developments as being of current significance. For example, he mentions his former use of the word "social" in speaking of social engineering or social interests, but notes that "social" has now become an unpopular word. His earlier habit of speaking of "received ideals" now yields to a new concern with "principles." He shows the shift in emphasis from property to person, from

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