Michigan Law Review

Volume 31 | Issue 5

1933

THE CONTRACTS RESTATEMENT

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BOOK REVIEWS

THE CONTRACTS RESTATEMENT

RESTATEMENT OF THE LAW OF CONTRACTS. By the American Law Institute. St. Paul: American Law Institute. 1932. Vol I, pp. xli, 582; Vol. II, pp. xxxi, 583-1206. $12.

The publication of these two volumes marks a milestone in that which is perhaps the most ambitious project ever undertaken by American lawyers — the statement in the form of definitive generalizations of all the rules and principles of our law through the coöperative efforts of experts in the several fields, tested and verified by the criticism of representative members of the bench and bar. Other volumes will no doubt follow in due course, as those engaged in the statement of the principles of other branches of the law complete their labors.

The Contracts Restatement is primarily the work of Professor Samuel Williston. His acknowledged preëminence as an authority in this field, as well as his undoubted ability to state legal principles accurately and lucidly, assure us a work that is both dependable and as comprehensible as any work could possibly be that had to be formulated in accordance with the restricted mode of statement adopted by the American Law Institute.

The topics covered are, in general, the same as those that are dealt with in Professor Williston's treatise on the subject. The text takes the form of definitive statements of rules and principles in brief paragraphs, which are printed in heavy type. Each paragraph usually contains the statement of a single rule or principle of law; each is usually followed by a section printed in lighter type, entitled "Comment," in which a restricted explanation is made of the rule or principle stated. This in turn is followed by the statement of one or more hypothetical cases illustrative of the rule or principle announced and designed to show its proper application. No cases or other authorities are cited in support of the text. Neither are the reasons set forth which justify the rule or principle adopted, or which condition its application in particular cases. The general impression which one derives from the work is similar to that which one might expect to get from the work of a draughtsman who had been instructed to prepare a code to be submitted for adoption to a not too inquisitive legislature.

That all will agree with the conclusions set forth is scarcely to be expected. It would not be difficult to find cogent reasons for quarreling with particular generalizations or with the conclusions reached in some of the hypothetical cases that have been used. To do this would, however, be a futile undertaking. The value of the work does not depend so much upon whether all that is set forth can be accepted, as it does upon whether what has been set forth is presented in such a way as to be really helpful to those who are expected to use it. It is here that one is left with the greatest feeling of doubt.

Apparently the aim is, where there are decided cases dealing with a particular matter, to set forth accurately and tersely that rule or principle which most nearly accords with the results reached in the majority of those cases; and, where there

are no decided cases, to set forth what the reporter and his advisers thought to be the best rule. Often these aims have required a choice between conflicting views and policies. No doubt the choice made has been motivated by what seemed to be sufficient reasons. Unfortunately those reasons are not given. We are asked to accept the *ipse dixit* of those who made the choice that the rule set forth is the most satisfactory, and to apply it as best we can. This is expecting a great deal of a profession whose members, from the time when they begin their professional study, are taught to view all generalizations with a critical eye and to test them in the light of reason and experience. Moreover, if these results were to be accepted on faith it would be most unfortunate; it would tend to put an end to that questioning, testing, and modifying of legal principles which have always been the strength of the common law as contrasted with statutory law. It is only through this process that the law can hope to keep pace with new developments and to take account of new experiences. What a pity that the American Law Institute did not see fit to record for us the processes by which the conclusions stated were reached. If an epitomized record had been made of the researches and debates which resulted in the work before us, a really great contribution would have been made.

The Restatement in its present form may serve as a useful index or outline to which state annotations can be appended for the convenience of the practitioner. It may also furnish a convenient makeweight for the judge who has decided a case. However, when the lawyer or the judge is confronted with something more than a routine problem in the law of contracts, he will still be strongly tempted to turn, as he has in the past, to a book such as Professor Williston's text on the subject, where he will find not merely a skeleton of dry bones but a body of flesh and blood. It is here that he will still look for the reasons behind the rule, which justify its existence and condition its application. Here also he will find that lucidity has not been sacrificed to brevity.

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