

October 1971

## Book Review

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### Recommended Citation

William D. Bradshaw, *Book Review*, 48 Chi.-Kent L. Rev. 304 (1971).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol48/iss2/15>

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## BOOK REVIEW

WILLISTON ON CONTRACTS, Volume 12, Third Edition. Edited by Dr. Walter H. E. Jaeger. Rochester, N.Y.: Baker Voorhis & Co., Inc. and Lawyers Cooperative Publishing Co., 1970. Pp. v, 771.

Volume 12 of the revised third edition of the treatise, *Williston on Contracts*, edited and rewritten by Dr. Walter H. E. Jaeger, evidences the breadth and depth of the treatment he has accorded the subject matter. Volume 12 contains only two chapters: Chapter 44 on Rescission and Restitution and Chapter 45 on Fraud and Misrepresentation.

The chapter on Rescission and Restitution, containing 311 pages, is divided into thirty-eight sections. The first section is entitled "Scope of the Remedy." The last section is entitled Contract Price and Quasi-Contractual Recovery. Since Professor Williston in his second edition allotted much less space to these subjects, some judges, lawyers or legal writers may believe that Dr. Jaeger and Professor Robert J. O'Connell of Chicago-Kent College of Law (whose assistance in preparing Chapter 44 Dr. Jaeger gratefully acknowledges) have over-extended themselves.

This reviewer has observed that with each succeeding year since World War II the groan of library shelves bulging with law reports, law reviews and law journals grows louder, coinciding with the wails of librarians that they are running out of space for books. At the same time the microfilm and computer manufacturers view this scene without alarm. A more than cursory examination of this chapter, together with due recognition of the fact that neither Dr. Jaeger nor Professor O'Connell is responsible for the mass of reported cases flowing from the fifty states and eleven federal circuits, will reveal that the collaborators were merely trying to cover the subject adequately.

The subject matter has been amply covered in both chapters. Literally hundreds of cases from all jurisdictions are cited. A great many citations are accompanied by quotations, indicating adherence to the view that "there is no substitute for the language of the court." An effort has been made by the collaborators to include the most recent significant cases. A similar observation can be made with regard to the numerous citations to law review notes, comments and articles which review the significant cases. Such works are rapidly achieving status with the courts and, where pertinent and well-reasoned, they are of great assistance to practitioners. These case notes, comments and articles are not limited to two or three publications of the law schools in any one section of the country: references have been selected on the basis of their intrinsic value and usefulness.

To aid practitioners in dealing with proliferation of decisions in recent years concerning breach of warranty and to update the case law since the adoption of the Uniform Commercial Code, two new sections have been added

to Chapter 44. Moreover, Chapter 45 on Fraud and Misrepresentation has been greatly expanded by the addition of new sections. Two of these sections deal extensively and incisively with the application of the Uniform Commercial Code to fraud and misrepresentation. The third new section deals with the question of whether an implied warranty applies when new houses are sold. Thus, the chapter traces the development of a warranty of habitability from the common law rule that no warranties exist other than those stated in the deed, to the enlightened view of the Supreme Court of New Jersey in *Shipper v. Levitt & Sons, Inc.*<sup>1</sup> In *Shipper*, the court, basing its decision on section 926A of Volume 7 of *Williston on Contracts*, Third Edition, specifically rejected the doctrine of caveat emptor in the sale of mass-produced houses. The chapter also reviews a decision of the Circuit Court of Appeals for the District of Columbia,<sup>2</sup> which held, citing section 926A of *Williston*, Third Edition, that a warranty of habitability, gauged by the standard set forth in the District of Columbia Housing Regulations, is implied in all leases, whether oral or written, and for all types of tenancies of urban dwelling units covered by those regulations.

Inasmuch as the New Jersey Supreme Court based its decision on the Third Edition, and the Circuit Court of Appeals for the District of Columbia cited nine sections of Volume 12 and also an article<sup>3</sup> by Dr. Jaeger, a question attracts this reviewer's attention: Has Dr. Jaeger brought about a new form of action, *breach of constructive warranty*? Certainly, Dr. Jaeger's legal scholarship over the years has placed him in an especially unique position to oversee the development of the law and thereby enable him to indicate and evaluate trends. In regards to breach of constructive warranty, he displays his insight:

What is actually happening is that a new form of action, *breach of constructive warranty*, has emerged [citations omitted]. It has the advantage of being free of the strictures of privity, insofar as the breach of contract remedy is concerned, and does not require an affirmative showing of negligence on the one hand, nor is it subject to being defeated by the doctrine of assumption of risk, or contributory negligence [citations omitted].<sup>4</sup>

Another area fully considered in Volume 12 is securities regulations. The reader is probably aware of the plethora of litigation in recent years arising from federal regulation of dealings in securities. In a display of legal scholarship, Dr. Jaeger has, in new sections 1516 and 1533, constructed for the legal profession, corporate house counsel, administrators and agents, the securities industry and those wittingly or unwittingly engaged in or contemplating "white collar crime," the only work definitively containing the whole of the law and discussing the leading cases in this area.

The amount of case law and commentary in the two sections dealing spe-

<sup>1</sup> 44 N.J. 70, 207 A.2d 314 (1965).

<sup>2</sup> *Javins v. First National Corporation*, 428 F.2d 1071 (D.C. Cir. 1970).

<sup>3</sup> Jaeger, *Warranties of Merchantability and Fitness for Use*, 16 Rut. L. Rev. 493 (1962).

<sup>4</sup> 12 *Williston on Contracts* § 1505 at 427-28 (3d ed. Jaeger 1970).

cifically with the contractual aspects of securities transactions is amazing. The pleas of those running afoul of federal securities regulations after publication of this volume will fall upon deaf judicial ears and be received with scorn by lawyers, corporate administrators and securities dealers who have Volume 12, *Williston on Contracts*, as their *vade mecum*. All the leading cases are cited in these sections with a clear indication of their significance and implications in the light of various securities regulations, particularly Rules 10-b and 10b-5. The landmark cases of *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*,<sup>5</sup> involving "insider" information, and *Globus v. Law Research Service*,<sup>6</sup> are thoroughly discussed. These cases and *Ruckle v. Roto American Corporation*<sup>7</sup> give an overview of the phenomenon that has been developing in the outpouring of Rule 10b-5 cases, which judges and commentators alike have begun to refer to as "federal corporate law."

Corporation executives and lawyers will also profit from the material contained in section 1533C where situations involving compensation to executives in the form of stock options are considered and the "business judgment" rule is reappraised. Regarding the dilemma confronting the courts as to whether they should substitute their business judgment for that of management and shareholders, and considering the impasse corporate executives find themselves in since one appellate court has strongly implied that the judiciary should substitute its business judgment for that of corporate management, Dr. Jaeger asks this question: "Beset by all the confusion, the great uncertainty, and the possibility of judicial paring of incentive pay, would not prime executive talent, more akin to the rugged individual than to the public servant, forsake the corporate field to find fields freer and less shackled?"<sup>8</sup>

The last section (1534B of Chapter 45) considers Bulk Sales under the Uniform Commercial Code (now adopted in all but one of our jurisdictions). It presents and illuminates the leading cases, both state and federal, including references to significant law review articles treating that subject.

Here then for the members of the legal profession in 771 pages is a valuable tool ready to work for them in the fields of rescission, restitution, fraud, and misrepresentation. Present-day legal devices, and legal as well as illegal transactions, are so sophisticated (as compared with the problems that faced Lord Mansfield or even those the late Professor Williston so ably discussed) that attorneys and law firms not having this volume in their libraries will find themselves at a disadvantage, and so will their clients. The publishers (Baker Voorhis & Co., Inc. and the Lawyers Cooperative Publishing Co.) have again demonstrated their competence in the art of printing by presenting a well-bound book that fits the hand as it fills the need.

<sup>5</sup> 401 F.2d 833 (2d Cir. 1968).

<sup>6</sup> 287 F. Supp. 188 (S.D.N.Y. 1968).

<sup>7</sup> 339 F.2d 24 (2d Cir. 1964).

<sup>8</sup> 12 *Williston on Contracts* § 1533C at 738-39 (3d ed. Jaeger 1970).

As regards errors, if it were in fact free of error, and if this reviewer so stated, he would not be believed. Some familiarity, however, with ALR leads me to suggest that the ALR citation in note one on page 727 is incomplete or inaccurate.

Last, and certainly not least, in this volume, Dr. Jaeger continues to demonstrate superior competence in his use and command of English and of the language of the law.

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