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Book Review

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BOOK REVIEW

A TREATISE ON THE LAW OF CONTRACTS By Samuel Williston, Third Edition by Walter H. E. Jaeger, Vol. 15, Rochester, N.Y., The Lawyers Cooperative Publishing Co., 1972, pp. xvi, 888.

BY JAMES B. MOORE*

With the publication of Volume 15 of the third edition of *Williston on Contracts*, Dr. Walter Jaeger has all but completed the monumental task of revising and updating this encyclopedic reference work. Where he had once thought to expand the text and reference notes of the second edition from six volumes to perhaps ten, over a period of at most ten years, Dr. Jaeger has found that ultimately he will have published sixteen volumes, to which he will have dedicated some twenty years of his life.

Volume 15, published last year, covers about half of the topics of the second-edition volume 6, expanding their textual content from 482 to 888 pages. Not only has the older work been revised, edited and made current, but totally new sections had been added, taking into account such developments as the Uniform Commercial Code and constitutional trends established by the United States Supreme Court. The following major topics are covered:

- Chapter 51 Agreements Tending To Corruption or Immorality
- Chapter 52 Miscellaneous Illegal Agreements
- Chapter 53 Methods of Discharge; Application of Payments; Tender
- Chapter 54 Release; Rescission; Accord; Account Stated
- Chapter 55 Novation and Merger
- Chapter 56 Cancellation; Surrender; Alteration

Starting with the organization of the contents, Dr. Jaeger has shown his practical approach. While the older subsections have been almost entirely retained, in order to provide continuity, many of the titles have been changed for clearer text identification and for ease in topic location. In several cases, short sections have been consolidated and new sections added.

"Bargains Inimical to Christianity," Section 1746, which formerly consisted of one paragraph of old English law, has become "When Are Religious

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Agreements Considered Inimical?" and has been expanded to eight pages, primarily dealing with First Amendment decisions.

"Bargains and Sales Prohibited by Statute," Section 1763, has been expanded from three to twenty pages. In addition, Dr. Jaeger has included a new section, 1763A, "Unconscionable Agreements Under the Code," itself 23 pages in length, to take into account the latest trends in a field completely non-existent at the publication of the previous edition.

Totally new sections have been added on "Application of Payments: Rights of a Guarantor," "Need for Payment or Tender" and "Cancellation or Termination of Insurance Policies." This last recognizes the great role which insurance has come to play in today's society. The second edition devoted only two paragraphs to insurance cancellation; Dr. Jaeger devotes 13 pages. Similarly, the general section of "Material Alterations" has been expanded and a new subsection dealing specifically with Material Alterations in Negotiable Instruments has been added.

Unfortunately, in the overall move to improve organizational clarity, the publisher dropped the title to the last section of the chapter on Novation and Merger and omitted it from the index. Thus, "Discharge by Union of Right and Duty" appears in the text as a continuation of "Note Given in Payment of an Unenforceable Claim," with which it seems to have little connection. The information, however, is all there in the text, and one who knows where to look will be well rewarded for his efforts. Similarly, Section 1758, "Effect of Illegal Performance Becoming Legal" was replaced in the table of contents and chapter heading by a duplicate entry for Section 1761. This error is apparent enough, and should cause no confusion whatsoever.

As a general comment, one might desire that the text and notes were more evenly spaced over the pages. Some pages consist almost completely of textual matter, while others contain only two or three lines of such material, the balance being made up of footnotes. In a reference work of this type, however, this is of minor import, being a matter of form and not substance.

In summary, one can only recognize that we are greatly indebted to Dr. Jaeger for having undertaken this massive revision and for the excellent and thorough way in which he, the acknowledged expert in the field, has carried out his work. We can hardly wait until the final volume also appears.

It is highly recommended that all practitioners add this latest volume to their library. One need only consider the chagrin of the defense attorney in a not-so-remote landmark case in the then nascent field of Warranty of Habitability who relied on the law as expressed in the second edition of

Williston, when his opponent, arguing from Dr. Jaeger's newly revised text, won the decision.¹

In the words of Mr. Justice Jacobs, voicing the unanimous opinion of the Supreme Court of New Jersey:

It is worthy to note that although the 1936 edition of *Williston, Contracts*, upon which Levitt places reliance, stated flatly that there are no implied warranties in the sale of real estate, the 1963 edition took quite a different approach. In this edition, Professor Jaeger pointed out that although the doctrine of *caveat emptor* is still broadly applied in the realty field, some courts have inclined towards making 'an exception in the sale of new housing where the vendor is also the developer or contractor,' since in such situation the purchaser 'relies on the implied representation that the contractor possesses a reasonable amount of skill necessary for the erection of a house; and that the house will be fit for human dwelling.'^[2] In concluding his discussion of the subject, the author remarked that 'it would be much better if this enlightened approach were generally adopted with respect to the sale of new houses for it would tend to discourage much of the sloppy work and jerry-building that has become perceptible over the years.'^[3]

As the attorney learned, the law is ever changing, and Dr. Jaeger has proved his ability to keep current with the changes, in all respects.

1. *Schipper v. Levitt & Sons, Inc.*, 44 N.J. 70, 94, 95, 207 A.2d 314, 327, 328 (1965).

2. Citing "7 *Williston, Contracts* §§ 926, 926A (3d [Jaeger] ed. 1963)." Specifically § 926A, at 810.

3. Citing and quoting 7 *WILLISTON ON CONTRACTS* (Third (Jaeger) ed.) § 926A. See also, JAEGER, *The Warranty of Habitability*, 47 *CHI.-KENT. L. REV.* 123 (1970), Parts I and II.

