

STUDIES IN CONTRACT LAW

by Barry J. Reiter & John Swan (Ed.)

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Studies In Contract Law is the eighth member of Butterworths' familiar *Canadian Legal Studies Series* and consists of a collection of twelve "Studies" covering such diverse topics as enforcement of contracts, assessment of damages, remedial measures available, relationships between contract and tort, and peculiar contractual problems in the area of employer-employee relations. A quick glance at the Table of Contents reveals the names of many noted authors of Canadian legal text books and treatises. The textual material is supplemented by an extensive Table of Cases and a somewhat sparse, yet adequate, Index. In addition, each Study is preceded by a table of headings within that particular study as well as a brief italicized editorial synopsis and comment on the text which follows.

Study 1 is entitled "Contracts and The Protection of Reasonable Expectations" and is co-written by Barry J. Reiter and John Swan, co-editors of the work and both Professors of Law at the University of Toronto. The paper provides a general introduction to the whole series of articles which follow. It is contended therein that contracts pervade our everyday lives to a substantial degree. It is for this reason that the series takes an "intensely practical" approach to contract law so that *functional* rules can be developed which will benefit laymen, lawyers and Judges in a number of ways, improved predictability of results being merely one of these ways. The other major stated purposes of the series are the following: (a) the examination of the suitability of contracts in many of the relationships they now govern, and (b) the investigation of the proper institutions for changes in the law of contract. In this regard I am quick to note that the series is particularly strong in examining the suitability of contracts in many situations and it was the articles devoted to this purpose that I personally found to be most stimulating.

Among the most ambitious and intriguing articles in this collection is co-editor Barry J. Reiter's Study 8: "Contracts, Torts, Relations, and Reliance". Reiter starts with the notion that increased interdependence in modern society necessitates a merging of traditional contract and tort law into a general "law of obligations" in order to allow for justice to be dispensed more effectively when one party is disappointed with the results of a particular relationship. In other words, such a system would protect the "justifiable reliance" of the aggrieved party in such a situation. Reiter then outlines the traditional cornerstones of contract law (eg. privity, consideration, intention) and the traditional constraints of tort law (eg. duties, exclusion of contract principles, interests to be protected) and argues strenuously that modern society demands that all of these barriers to recovery be removed. He further agrees that classification as "tort" or "contract" ought NOT to affect such matters as quantum, limitations periods, third party liability, and so on. In his view, the defendant ought to be liable when he knows the plaintiff will rely on him (the defendant) to his own (i.e. the plaintiff's) detriment, and, when he *ought* to appreciate the plaintiff's ex-

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pectations, he ought to be liable for failure to meet those expectations. He contends that protection of reasonable reliance increases overall market efficiency, especially resource use and allocation, and he considers it fair that losses be imposed on the parties best able to avoid them (eg. home builders, rather than remote purchasers, ought to pay for faulty foundations).

The most important part of the paper concerns the implications of his proposal of merging contract and tort law. Reiter argues, with considerable merit, that concurrent liability in both contract and tort ought to be available and that it ought to be flexible enough to meet the just requirements of particular cases. He strongly advocates the use of the contract to determine the aspects of the plaintiff-defendant relationship which are left silent and, therefore, reasonably subject to tort law. Further, he soundly rejects the notion that the existence of a contract automatically nullifies tort relief.

Reiter lauds the blurring of the contract-tort distinction in many relational settings (eg. employer-employee) and advocates a merging of contract law and tort law, in this context, into a "law of relational obligations". In his opinion this move would free the Courts of traditional constraints and allow them to achieve socially desirable results through the exercise of a little judicial creativity.

This dynamic approach (which I'm sure some would term "radical") is also taken in several of the other studies, notably the following:

- Study 2 — "Consideration & The Reasons For Enforcing Contracts" by John Swan
- Study 6 — "Restitution For The Part Performer" by Stephen M. Waddens
- Study 10 — "Contract Law & The Employment Relationship: The Proper Forum for Reform" by Katherine Swinton
- Study 12 — "The Resolution of Common Law Contract Doctrinal Problems Through Legislative & Administrative Intervention" by Edward P. Belobaba

With one notable exception (Study 9), the articles are lucid and well-written. Study 9 — "Labour Is Not A Commodity" by David M. Beatty — presents a number of interesting ideas, but the presentation is belaboured and overly verbose. A more streamlined presentation in this instance would have been considerably more effective.

By way of conclusion, *Studies In Contract Law* covers a wide range of topics in the field of contract law and brims fully with many fresh ideas and novel approaches to long-standing contractual problems. There is a heavy emphasis on the need to throw off the shackles of inappropriate 19th century commercial law and to allow the common law to achieve the dynamic self-renovation of which it is capable. The call for legislative reform in many areas is also unmistakable. Although several of the Studies are of academic interest only, the practical implications of several others are immense. This collection is *not* for everybody; persons with a limited exposure to, or comprehension of, contract law would find it mind-boggling. For practitioners of law (particularly the judiciary) and for advanced academics of contract law, however, *Studies In Contract Law* is a worthwhile acquisition which will reap the reader many valuable returns.