

*CONTRACTS
CASES, NOTES AND MATERIALS*

By J. Swan and B. J. Reiter

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In their Preface, the authors state that they have been influenced by ideas and techniques found in American casebooks. This influence is strong indeed. While approximately 80% of the cases included are English or Canadian, the extracts from articles (and there are many) are, almost without exception, American and given great prominence. This is a refreshing approach to contract law for Canadian students or teachers. It is lively, thought-provoking and, finally, rather sophisticated.

The method is to present the old familiar Anglo-Canadian cases in the light of jurisprudential questioning about the purposes of contract law in modern society and its ability to deal with certain problems. Remedies are dealt with at the beginning of the book. This arrangement means that the reader is presented with an overview; the forest is shown to us before we plunge into the trees. The authors revert to the forest concept while among the trees by asking, repeatedly, in questions after cases, "What interest is being protected here?", or "What does the court see as its proper function?" or "How well do you think the problem has been solved?" Most of the chapters begin with an extract or reading which is meant to serve as a framework for the subsequent materials, again an attempt to present an overview at the outset.

As for the trees, the authors admit, in their Introduction, that they do not intend to present a compendium of contract law, but rather to deal with a wide range of problems in the area of contracts and to present possible solutions. By this selective approach, certain areas of contract law are ignored or dealt with only in passing.

In the chapter, "Making the Contract," the concepts of counter-offer and lapse of the offer because of the passage of time, are ignored. Infants (or Minors) rate only a few sentences scattered through the materials. The authors state that the reduction in the age of majority has "substantially reduced the incidence of cases in this area,"¹ intimating that the considerable body of law built up around infants' contracts is not important anymore. Be that as it may, the authors then proceed to confuse what little is revealed about this

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1. J. Swan and B. J. Reiter, *Contracts, Cases, Notes and Materials* (1978) 2-44.

topic. At one point there is the statement, "At common law the contract [of a minor] was voidable,"² whereas later we are told, "The contracts of an infant are, at common law, void."³

The Statute of Frauds rates its own chapter, but at only 11 pages it is by far the shortest in the book. Actually, the entire chapter is merely a note. There is one quotation from a recent English case, *Steadman v. Steadman*,⁴ but no cases are included in themselves. No other chapter is like this. Even cursory research into contract law reveals that this piece of legislation has been hugely productive of decided cases and gives every indication of continuing to be so. Why has this part of contract law been given such brief treatment? The authors do not explain. Since the book, even with these omissions, is so large already, it is puzzling that the authors did not go just that extra distance, and make the work exhaustive of the topics.

In the Introduction, Swan and Reiter say that the arrangement of the materials reflects their personal approach. Their approach, in the main, works well. The topics "Intention" and "Certainty" are not awarded chapters as is often the case in more traditional works, but are found as pockets of interest in the chapters on consideration and formation of the contract, respectively. Consideration is dealt with before the classical jumping-off place, Offer and Acceptance. Covenants in restraint of trade are included as part of "Unconscionability," itself a sub-topic in the chapter "Control of Contract Power." One would have expected to find them instead in the part of the book dealing with "Illegality." Generally, these surprises present no difficulty. The authors show that the arrangement of contract areas can easily be flexible.

Chapter 4, however, is not a success. It is entitled "Misunderstandings, Misrepresentation, and Mistakes," and includes areas as diverse as the parol evidence rule and frustration. The chapter is choppy and the aim of the authors is not apparent. This hodge-podge of topics might better have been sorted out and presented in smaller doses. In contrast, Chapter 5, "The Effect of Non-Performance by the Plaintiff" is tightly controlled and the subject matter easily grasped. Even the mammoth Chapter 6, "The Control of Contract Power" is clear and thematic.

A number of cases that might have been expected in a book concerned with Canadian or Anglo-Canadian contract law are missing; many American cases have been chosen instead. The mixture of cases and their editing are good as are the questions and the relatively few

2. *Ibid.*

3. *Id.*, at 2-72.

4. [1976] A.C. 536; [1974] 3 W.L.R. 56; [1974] 2 All E.R. 977 (H.L.).

problems included in each section. The relevant legislation is presented. Ontario statutes are mentioned or quoted; sometimes the authors say whether similar legislation exists in the other provinces although no citations are given. There are very few references to materials not included in the book. The thinking would appear to be that if something is worth knowing about, it is worth putting into the book. Substantial portions of the selected materials are used; there are no little snippets. The authors' helpful notes do make some reference to outside sources but, otherwise, the volume all by itself is a handy, if heavy, portable library. The publishers might well consider producing further editions in two volumes.

The book is nicely ended by a section called, the "Postscript and Prelude." It is a reprise of the forest theme, a reminder not to lose sight of the purpose of studying contract law. In the eyes of these authors it is to regard the body of contract law not as a set of 'black letter' rules but, rather, as a living, changing response to particular problems, some responses being better than others.

I do not think the authors intended their work to be a 'do-it-yourself' tool. Although this set of materials could well be used by other teachers of contract law, because of the selective and idiosyncratic approach of the authors, it needs supplement. For the same reasons, and because of its level of sophistication, a beginning student of contract law would not be able to forge through this book unaided.

In the end, this is a thoughtful, careful work. Its deficiencies are minor. It is to be praised and recommended.