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Cases and Materials on Contracts, Exchange Transactions and Relationships. By Ian R. Macneil.

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BOOK REVIEWS

CASES AND MATERIALS ON CONTRACTS, EXCHANGE TRANSACTIONS AND RELATIONSHIPS. By IAN R. MACNEIL.* Mineola, New York: The Foundation Press, Inc. 1971. xlii + 1344 pages + Supplement (331 pages). \$21.50.

CHARLES EDWARD DONEGAN**

In the preface Professor Macneil states that the economic foundations of a modern capitalistic state are exchange transactions and relationships.¹ Therefore, he believes a general introduction to exchange and its legal aspects will make a considerable contribution to the education of prospective lawyers.

His pedagogical views are presented in detail and cogently argued in a paper presented to the panel on Contracts at the Association of American Law Schools meeting, December 29, 1967.² In that presentation he stated that there is no Law of Contracts in the Willistonian sense. However, he said that there are five common elements in contractual behavior: 1) some cooperation among the parties; 2) economic exchange; 3) mutual planning for the future; 4) potential external sanctions; and 5) social control and manipulation.

Professor Macneil's Contracts casebook is organized largely on the basis of functional patterns instead of on traditional doctrines such as offer and acceptance, conditions, and consideration. He considers the notion of exchange itself so fundamental that the entire book is structured on this concept. In the aforementioned report, Professor Macneil distinguished exchange from bargain, saying the former describes motivations in a transaction and the latter describes processes satisfying motivations, particularly the process of reaching agreement.³

The book also stresses the importance of the concept of continuing relationships; enterprise coordination and planning; social control; utilization of exchange relationships and contracts

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1. P. xiii.

2. Macneil, *Whither Contracts?*, 21 J. LEGAL ED. 403 (1969).

3. *Id.* at 404.

as economic wealth. His stated functioning pattern includes placing litigational materials in a broad context of socio-economic function (Part I) and against a planning background (Part II). However, he does not believe that policy, justice and practice can really be separated in this way.

One of the most significant features of this book is that it contains most aspects of the influence of contract law on the legal system. There is virtually something for everybody.

The book consists of twelve chapters which are divided into two parts. Part I, entitled Introduction to the Nature of Contract, contains chapters on economic exchange and contract; contract and continuing relationships; social control of contractual relationships (method of preventing the stronger party from taking advantage of a weaker one); societal utilization of "private" contract to achieve collateral goals (for example, requiring good faith bargaining under the NLRB and preventing racial discrimination); the nature of contract as defined by common law doctrine: consideration, gifts and economic exchange relationships and contracts as legally protectible and transferable wealth. Part II, called Planning Contractual Relationships, includes chapters on planning for performance and planning for risks in contractual relationships. These deal with indemnification, suretyship and insurance; litigation content and outcome; self-help remedies; processes for conflict resolution, and the legal consequences of incomplete and ineffective risk planning.

The appendix contains sections dealing with statutory writing requirements; the anatomy of a simple real estate transaction; and interest.

The casebook is supplemented by a statutory and administrative law supplement consisting of 331 pages dealing with a large variety of United States federal and state commercial, consumer, civil rights and labor laws. In addition there are examples of English and Tanzanian contract law.

These examples, plus material on contract planning in socialist countries, help provide freshman students with a bit of exposure to comparative law. This is particularly desirable since modern methods of transportation and communication have resulted in an ever increasing amount of business and social interaction between citizens of different countries.

The writer was particularly pleased to find such topical and useful materials on housing and employment discrimination included in a basic contracts book. Perhaps, this approbation is due in some measure to his own professional experience as a civil rights lawyer and teacher of law school seminars on urban problems. However, it would appear that housing and employment discrimination are such persistent and pervasive problems in our society that their contractual aspects merit study by all law students. Both the housing and employment relationships arise out of contract. It is important that students are aware of this and consider the contractual and statutory remedies available to eliminate discrimination.

Good labor relations between management and unions is vital to our country's economy and national security. The rights and duties of labor and management are embodied in a specialized type of contract called the collective bargaining agreement. The inclusion of cases and materials on labor relations in the casebook is not only appropriate but is most instructive in showing how contracts order human relations in areas outside of the traditional commercial fields.

The 180 appellate cases used include a number of old friends found in traditional contracts casebooks such as, *Hadley v. Baxendale* (foreseeability),⁴ *Allegheny College v. National Chautauqua Co. Bank* (promissory estoppel),⁵ *Wood v. Lucy, Lady Duff-Gordon* (implied promise as consideration),⁶ and *Raffles v. Wichelhaus* (latent ambiguity)⁷ (perhaps more commonly known to us as the *Peerless* case). In addition, however, there are a number of recently decided cases dealing with significant contemporary topics such as consumer problems (*Williams v. Walker-Thomas*;⁸ *Frostifresh Corp. v. Reynoso*);⁹ employment discrimination (*Griggs v. Duke Power*;¹⁰ *State Commission for Human Rights*

4. 9 Ex. 341, 156 Eng. Rep. 145 (Ex. 1854).

5. 246 N.Y. 369, 159 N.E. 173 (1927).

6. 222 N.Y. 88, 118 N.E. 214 (1917).

7. 2 Hurl. & C. 906, 159 Eng. Rep. 375 (Ex. 1864).

8. 350 F.2d 445 (D.C. Cir. 1965).

9. 54 Misc. 2d 119, 281 N.Y.S.2d 964 (App. T. 1967).

10. 420 F.2d 1225 (4th Cir. 1970), *rev'd in part*, 401 U.S. 424 (1971).

v. Farrell);¹¹ and housing (*Gautreaux v. Chicago Housing Authority*).¹²

The chief significance of the housing and employment cases is that they demonstrate how contracts involve mutual social contacts as well as economic relationships. Furthermore, they show how racial discrimination can inhere in contractual relationships.

The author has enhanced the book's appeal by his liberal use of recent cases. Professor Macneil explains,

in selecting cases a strong bias has been exercised in favor of relatively recent litigation, 60% of the cases in the book having been decided since 1960, and another 20% between 1950 and 1960. One reason for this bias lies in the wealth of vicarious non-legal experiences students enjoy from reading cases, experiences which are one of the major arguments in favor of appellate case study. These vicarious experiences in a contracts course seem to be most useful when they reflect what is going on in the world now, rather than what occurred in the economic or social world of 25, 50 or 100 years ago.¹³

The writer heartily concurs with the above reasons given for the inclusion of a large number of recent cases and feels that they enhance the value, interest and relevancy of the book for students, and at least in his opinion—for the professor.

Excerpts from law reviews, periodicals and hornbooks provide the selected cases with necessary and essential social, economic, business and financial perspective.

Professor Macneil also provides considerable material concerning planning the contract. Proper planning of contracts is extremely important because it can help to insure the smooth and efficient operation of contracts and thereby eliminate or lessen vexatious disputes which frequently result in protracted litigation, emotional strain, social disorder and economic loss. Planning is important to the lawyer irrespective of the transaction he is dealing with. For example, he must assist the parties to have a good working relationship in the future, anticipate problems, avoid illegality, and consider tax consequences.

11. 52 Misc. 2d 936, 277 N.Y.S.2d 287, *aff'd*, 27 App. Div. 2d 327, 278 N.Y.S.2d 982 (1st Dep't 1967).

12. 304 F. Supp. 736 (N.D. Ill. 1969).

13. P. xviii.

BOOK REVIEWS

The extensive supplement to the casebook contains statutes and administrative regulations which relate significantly to matters dealt with in the casebook.

If there is any valid basis for a bit of criticism it may be that Professor Macneil attempted to achieve too much and might have better limited his cases and materials to fewer topics. Contracts is considered by some to be one of the most difficult and perhaps the most fundamental course in the law school curriculum. Consequently, it may be better for students to be exposed to less material than contained in this casebook but to examine it in greater depth. The 1344 page book and 331 page supplement could hardly be covered thoroughly in a one semester three or four hour course. A professor could probably not go into much detail on all of the cases and materials in a two semester course consisting of a total of six hours. However, if one views the book and supplement as a sumptuous feast where the law professor can select morsels to satisfy his own particular legal gastronomical taste and meet student needs, what might at first appear to be somewhat of a problem may quickly develop into a blessing. The breadth of material included in the book does not appear to have resulted in thinning out the coverage in traditional areas in such a way that teachers may find it inadequate.

Professor Macneil deserves very high marks for putting together such a thoughtful, constructive and useful book which combines the indispensable values of traditional contracts books with significant recent cases and materials concerning contemporary problems.

The gap existing in many older casebooks, caused by authors frequently providing cases and materials required for teaching essential and fundamental contracts concepts but paying scant attention to contemporary relevancy and practicality, is most ably and meaningfully bridged in this fine new contracts casebook.

