

2-1937

Restatement of the Law of Property

Leon H. Wallace

Member, Terre Haute Bar

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Wallace, Leon H. (1937) "Restatement of the Law of Property," *Indiana Law Journal*: Vol. 12 : Iss. 3 , Article 11.

Available at: <https://www.repository.law.indiana.edu/ilj/vol12/iss3/11>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

BOOK REVIEW

RESTATEMENT OF THE LAW OF PROPERTY, American Law Institute Publishers, St. Paul, Minn.

These two volumes represent the initial effort toward the publication in book form of the Restatement of the Law of Property by the American Law Institute. From the Introduction-Division I—one learns that three more volumes are to be published in this Restatement.

Volume I, entitled "Introduction and Freehold Estates," covers definitions of general terms and terms relating to estates in chapters 1 and 2, and the creation of and general characteristics of estates in chapters 3, 4, 5 and 6.

Volume II, entitled "Future Interests—Parts 1 and 2," covers the definitions, creation and characteristics of Future Interests, this work to be completed in the future in Volume III.

These two volumes follow the usual style of the Restatements heretofore published by the Institute. The principle of law or the text is in bold type and under each statement of text is accompanying comment, followed by examples.

The stark precision of the language of the text does not make easy reading, but leaves little room for ambiguity as a more liquid prose might do; however, without any critical petulance, it might be wished that the text could have been edited by a Holmes or a Cardozo. While the criticism to follow is pertinent to all Restatements of the Institute, this writer sincerely believes it is regrettable that there is so little explanation of the reasoning and of the authority on which the presumably restated text is based.

⁹ See note (7), supra.

¹⁰ Northup v. Scott (1914), 148 N. Y. S. 846, 85 Misc. Rep. 515: "Where the time for performance of a contract is not fixed * * * it is presumed the parties intended a reasonable time * * * In such case it would be incumbent on either party desirous of preserving any legal remedy or availing himself of a defense at law for a breach of the contract, to put the other party in default by tendering performance on his part and demanding performance by the other party within a reasonable time specified."

We are told in the general introduction that the object of the Institute is "to present an orderly statement of the general common law of the United States * * *" that "the ever-increasing volume of the decisions of the courts, establishing new rules or precedents, and the numerous instances in which the decisions are irreconcilable, * * * will force the abandonment of our common law system * * * and the adoption in its place of rigid legislative codes, unless a new factor promoting certainty and clarity can be found." On this statement of fact and purpose, we may properly inquire upon what reasoning was the orderly statement of the common law selected and what was the state of authority on the point on which the selection was made.

The only suggested solution for this problem presented by these volumes is found in the "Special Notes," "Caveats," and "Monographs." Volume I has thirty-eight special notes; Volume II has twenty-two. The great majority of these cite legislative enactments on the point set out in the text. Volume I has eight caveats and Volume II has nineteen most of which state that "the Institute takes no position * * *."

In the Appendix to Volume I are two monographs applying "to Sections in which the rule of law stated is contrary to an impression believed to be widely entertained by the profession," and entitled "Dower and curtesy as derivative estates" and "Implication of cross remainders in deeds." Volume II has three such monographs, entitled "The Severability of a Power of Termination," "Ineffectiveness of an Ultimate Executory Interest," and "Aspects of the Law of Acceleration and Sequestration." Surely these are not the only rules of law set out in the Restatement upon which the profession and the courts hold contrary views. The writer acknowledges that state annotations to the Restatement will correct this paucity of rationale and authority to some extent. But when the state annotations do not agree with the restated principles, then the need for a more comprehensive reporting of the general state of the authorities and of the reasons of the Institute is increased.

We believe that these are weaknesses in the Restatement, and will detract from its value as authority. However, these volumes constitute an excellent text and summary for student review.

We fully realize the tremendous amount of material and research behind these volumes, but it is not available to the practicing lawyer who presents the statement of the law to the courts nor to the courts who make the common law and who must justify their decisions by some reasoning, and annotate them with some case authority, presented to them, whether the decision is right or wrong.

LEON H. WALLACE.*

Terre Haute, Indiana.

* Of the Terre Haute Bar.