Elements of a Contract, by Victor Morawetz

Paul L. Sayre
Indianapolis Bar Association

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj
Part of the Contracts Commons, and the Legal Writing and Research Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ilj/vol2/iss4/9
common law courts has developed for the most part since 1900 and is now of the first importance. These cases are of interest not only to the admiralty lawyer in his actual practice but to the constitutional lawyer and to the student of the development of the system of the common law (Knickerbocker Ice Co. v. Stewart, 253 U. S. 149; Southern Pacific Co. v. Jensen, 244 U. S. 205).

This case book is divided into twelve chapters dealing with Jurisdiction, Maritime Means, Right of Maritime Workers, Carriage of Goods, Charter Parties, Salvage, General Average, Marine Insurance, Pilotage, Towage, Collision, Limitation and Liability. One of the most significant parts of the volume is the appendix which covers nearly 100 pages and which contains a number of charts, maritime and comparative tables of great practical and pedagogical value. It is roughly estimated that a good deal more than half of these cases have been decided since 1901, and the date of Dean Ames' case book. The foot-notes with references to current discussions in legal periodicals are extensive. Comment upon the plan of the book and the value of the cases selected will have to be deferred to a review at a later time.


This is an excellent monograph dealing with the formation of contracts. It is divided into six chapters as follows: (1) Fundamental Conceptions, (2) The Formation of Contracts, (3) Specifications of Terms of a Promise or an Offer or an Agreement, (4) Intent and Understanding and Expression of the Intent as Elements of a Contract, (5) Effects of Erroneous Belief or Ignorance of Facts or of Impossibility or Illegality of Performance, and (6) Consideration for a Promise. The more fundamental division of the book is into 110 different sections which deal with the more clearly defined legal concepts. The following titles among these sections are representative: Duration of an Offer, Who can Accept an Offer, Ignorance of Facts Affecting Basis of Contracts. The first ten sections which comprise chapter one have a different significance from the rest of the book inasmuch as they cover in parallel form the same ground as the tentative restatement of the law of contracts which has been drafted by Professor Williston and his advisors on behalf of the American Law Institute. In handling these first ten sections the author refers to the passage in the Restatement of the Law as submitted by the American Law Institute and then indicates his preference in stating the same principle, giving his reason for preferring his version over that of the American Law Institute. In connection with this difference, perhaps it may be said in general that Mr. Morawetz prefers to state the law of contracts in the language of procedure rather than in the language of substantive rights and he prefers to retain the principle of consideration as now generally enunciated by the courts. He considers quite carefully the cases which the American Law Institute gives as involving legally enforceable contracts where no consideration was required and he concludes from the facts of these cases either that they involved valuable consideration or that the courts upheld the contracts in the belief that they involved consideration.

The balance of this admirable essay deals with brief and clear state-
ments of the law on the different phases of the formation of contracts. The author announces that he has tried to make his statements in non-technical terms and in as clear language as possible. The reviewer feels that he has succeeded remarkably well. The author does not claim that his statements are as full as those contained in a treatise on contracts and he does not undertake to cite authorities in support of his statements of law. Surely the practitioner will here find a brief and clear statement of many difficult points; the student will find the book stimulating in legal analysis; and the American Law Institute no doubt will be glad to have this point of view and this analysis in convenient form for reference. The book will be valued not only by those who agree with the author, but also by those who, like the reviewer, are in hearty accord with the efforts of the American Law Institute in attempting to state the Law of Contracts in terms of the substantive law and who fear that the suggestions of the author would lead to a jurisprudence of conceptions.

Paul L. Sayre.

Indiana University School of Law.