BOOK REVIEWS

RESTATEMENT OF THE LAW OF CONTRACTS. By American Law Institute.[1] St. Paul: American Law Institute Publishers. 1932. 2 Vols. pp. xli, 582; xxi, 624.

The publication in final form of the first of the American Law Institute's undertaking, the restatement of the common law, gives to the bar the first public fruit of that body's nine years of careful labor. The task which the Institute has assumed was made necessary, in the opinion of its distinguished organizers, by the uncertainty in the law produced by the "volume of decisions and the numerous instances in which the decisions are irreconcilable."[2] The very statement of the difficulty postulates a problem in the utility of the product—not a problem of magnitude, nor one in any sense limiting the high value of the work. The question is inescapable, however, to what extent the Restatement of the common law may influence a reversal of position by courts already concluded by decision to a position inconsistent with the view of the Restatement, or how far it will be limited to guidance in questions of first impression for their respective jurisdictions.

It is worthy of note that this project is distinctly different in spirit from the sponsoring of uniform legislation. Entirely apart from theoretical discussion of judicial law-making, the admitted fact remains that the primary source of common law authority is, and will remain, adjudicated cases. The work wisely does not pretend even to be a compilation of authorities; although it is purposed to prepare local editions with specific reference to adjudications in the several states. Essentially, however, the work of the Committee is and purports to be a theoretical, rather than controversial, exposition of the law. In the words of the Introduction, "The accuracy of the statements of law made rests on the authority of the Institute."[3] That this authority is eminent, that it will be a potent factor in influencing decision, cannot be seriously doubted; that it will achieve its expressed purpose, "to clarify and simplify the law and to render it more certain"[4] is not self-evident.

The inherent value of the publication to the bench, the bar and the law schools, representing as it does the definitive product of the recognized leaders of legal learning in the country, is outstandingly apparent. To multiply

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[1] Committee on Contracts
Samuel Williston, *Harvard University,* Reporter
Arthur L. Corbin, *Yale University,* Special Adviser, and Reporter for Chapter on Remedies
Merton L. Ferson, *University of Cincinnati*
Dudley O. McGovney, *University of California*
William H. Page, *University of Wisconsin*
George J. Thompson, *Cornell University*
William E. McCurdy, *Harvard University,* Legal Assistant
Zachariah Chafee, Jr., *Harvard University,* Adviser for sections relating to Specific Performance
Edgar N. Durfee, *University of Michigan,* Adviser for sections relating to Specific Performance.

[2] Vol. 1, p. viii.

[3] Vol. 1, p. xi.

[4] Vol. 1, p. viii.

laudatory adjectives is hardly the function of a reviewer; yet a wholly accurate and unpartisan statement of the work could well consist of nothing but encomiums. Our law is fundamentally a matter of words—or of ideas which must, to have utility, be translated into words; if there be one characteristic of the Restatement most notable, it is precision in the selection of words. A careful reading of the statement of the principles of terminology[5] is in itself illuminating. It is perhaps unfortunate that scrupulous accuracy in the avoidance of possible ambiguities makes necessary an occasional choice of a word or phrase not too commonplace. Illustrative is the expression "manifestation," recurring throughout the subject. The classification of third-party beneficiaries[6] makes distinctions of terminology not too generally recognized.

The zeal for precision sometimes leads to rather cumbersome expression. The standard of integration applicable to unintegrated agreements,[7] for example, leaves the casual reader feeling rather helpless. Even less fortunate is the tendency to explicit and complete cross-limitation, as exemplified in Sec. 225.[8] The awkward necessity for frequent cross-reference tends to detract from the emphasis of the direct statement. It would appear practicable in more instances to use devices such as the special note,[9] the comment as reference,[10] and the pleasantly surprising caveat.[11] There are, however, several delightful gems of terse, unequivocal expression.[12]

It is somewhat disconcerting, though entirely understandable, to observe the reckless abandon with which benefit and detriment are wholly ignored as tests for consideration.[13] The treatment of priorities between successive assignees,[14] while definitely condensed, is completely satisfying. The Chapter on Conditions[15] is an especially illuminating development in a difficult field. The inherent limitations of the subject matter, as exemplified in the rules for determining materiality of a failure to perform[16] leave a necessary uncertainty, which, while escaping the aspired goal, represents the innate spirit of the common law. The distinctions between void[17] and voidable[18] contracts, where fraud or duress is involved, and the consequences of mistake[19] in preventing, formation of a contract or making a contract voidable, are clearly maintained. To be regarded as distinct contributions to legal clarity are Sec. 193 (3) and Sec. 470 (2). Helpful also is the treatment of the effect of an accord.[20] Valu-

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[5] Vol. 1, p. xii.
[6] Sec. 133
[7] Sec. 233
[8] Sec. 225. Where a writing is required by law for the enforcement of a promise to perform an antecedent duty within the rules stated in Secs. 86-87, the writing must comply with the requirements stated in Secs. 207-208, 210, 213. The statements in Secs. 215-216 also are applicable to such a writing.
[9] Sec. 13, Sec. 330, Sec. 526.
[10] Sec. 169, e. g.
[11] Sec. 592.
[12] Sec. 314; Sec. 58, and esp. Sec. 342.
[13] Sec. 75, 81.
[14] Sec. 173
[15] Vol. 1, pp. 357-461.
[16] Sec. 275.
[17] Secs. 475, 494.
[18] Secs. 477, 495.
[19] Secs. 501, 502.
[20] Sec. 417.

able also is the brief notation of the consequence of a judgment by way of merger of a contractual obligation[21] and by way of *res adjudicata*.

The interweaving of various fields of law presents difficulties in selection which the Committee has met in diffuse fashion. The subject-matter of the Law of Damages relevant to contracts is fully treated;[23] and no attempt is made to evade the subject of specific performance.[24] Worthy of particular comment is the disposition in this field of part performance with relation to the Statute of Frauds,[25] which seems rather broad, and enforcement of negative duties.[26] Mutuality of remedy is gracefully but thoroughly demolished.[27] Yet the subjects of Negotiable Instruments and Suretyship are studiously avoided, even to the extent of a complete section disclaiming the latter.[28]

The publication is definitely workable. Not only is the table of contents set out in full in each volume, but each chapter starts with a similar table. In addition the substance, as before noted, gives frequent cross-reference. Such a section as 385 is imposing enough to constitute a complete summary of the bulk of the second volume. Of value hardly second to the Restatement itself are the Comments and Illustrations annexed to almost every section. The index seems almost surplusage.

It is safe to predict that the work will receive from the profession the enthusiastic welcome which it so richly deserves, and that it will make a very definite imprint on the course of development of the common law in the United States. It seems hardly necessary to add, for the law student, that while the Restatement epitomizes the law of contracts, it cannot be used as a substitute for intelligent study of the subject.

ARTHUR R. LEWIS.

NEWARK, N. J.

RICHARDS ON THE LAW OF INSURANCE (Fourth Edition). By Rowland H. Long. New York: Baker, Voorhis & Co. 1932, pp. vi, 1346.

The third edition[1] of Richards was until very recently considered by many the best short text on the subject. It was concise yet accurate, comprehensive yet practical. But, as Mr. Long says[2] in the preface to this new edition, "Twenty-three years have passed since the last edition of this work was published. During this time, underwriters have extended the practice of insurance to embrace every known kind of risk; the underwritings have increased fourfold; judicial decisions and legislative enactments regulating the business twofold." The book was getting old, hence less useful. Richards up to date was needed by the bar, so Mr. Long undertook this fourth edition.

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[21] Sec. 444.
[22] Sec. 449.
[23] Secs. 327-346.
[24] Secs. 358-380.
[25] Sec. 197.
[26] Sec. 380.
[27] Sec. 372.
[28] Sec. 453.

[1] 1909. The first and second editions were issued in 1892.
[2] Pg. v.