

BOOK REVIEWS

NEW JERSEY ANNOTATIONS TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF CONTRACTS. Prepared by Leo Yanoff, Esq., under the auspices of the New Jersey State Bar Association. Published by the American Law Institute Publishers, 1936, Vols. 1, 11, pp. 354.

As a part of the program of annotating the various "Restatements" with the local law of the forty-eight states, the New Jersey Annotations of the *Restatement of Contracts* are now completed. The New Jersey Annotations undertake to embrace the entire Restatement of six hundred and nine sections, consisting of eighteen chapters. Because of its general and introductory character, Chapter I containing fourteen sections dealing with the meanings of terms, is not specifically annotated. A few miscellaneous sections—four in number,¹ it was found unnecessary to annotate for special reasons, thus bringing the unannotated number of sections up to eighteen. For the remaining five hundred and ninety-one sections, New Jersey authority either *pro* or *con* was sought, where available and applicable either in case or statutory form. How thorough, exhaustive and painstaking are the annotations, is amply evidenced by the fact that of the five hundred and ninety-one sections, only one hundred and nine went unannotated with specific New Jersey authority either in accord or contrary to the section being reported on. And of this latter number, on forty-five of these sections, although "no cases found" is reported, yet are found citations which, though not strictly in point, are pertinent to a degree. On only sixty-four sections of the entire Restatement, therefore, was the investigation fruitless of any authority—a truly notable result when one ponders the scope of the entire *Restatement of Contracts*. Of the four hundred and eighty-two sections on which positive authority is reported, a casual check indicates that on four hundred and seventy-three sections thereof, New Jersey law is reported to be either in accord with or tending to support (in whole or in part) this large portion of the entire *Restatement*. On only nine² sections is New Jersey law reported as contrary to the *Restatement*.³ It would seem, therefore, that to a very large degree the *Restatement* restates New Jersey law, or, stated differently, to a very degree there is New Jersey authority for the law of the *Restatement*. And only to a negligible degree, are the principles of the *Restatement* repugnant to existing New Jersey authority. Expressed in terms of per-

1. Sections 255, 453, 541 and 545.

2. The North Carolina Annotations, by way of comparison, embracing only one hundred and seventy-seven sections of the total number of six hundred and nine sections, reports eighteen sections as squarely opposed to the law of that jurisdiction. See, 13 NORTH CAROLINA LAW REVIEW 304.

3. And even as to these nine sections, doubts are expressed by the annotator as to the repugnancy of at least three sections (215, 319 and 508), being somewhat tentatively stated as opposed.

centage, the remarkably low figure of 1.5 represents the per cent of the total number of *entire* sections which are repugnant to New Jersey law. Adding to this an immeasurable further degree of repugnancy where only a part of a section, or sub-section, or an illustration, is opposed to the legal law, the total figure, whatever it may be, still represents only a slight degree of variation between the *Restatement* and the existing law of New Jersey.⁴ This would seem to augur well for the acceptability of the principles as a safe and ready guide for both the bench and bar of New Jersey.

In general, the annotations are characterized by a wealth of case and statutory authority.⁵ Citations are made both to the official state reports and to the National Reporter System, are accurate and singularly free from typographical error.⁶ The summaries are succinct to a noticeable degree without apparent sacrifice of accurate and correct statement of law, and with a clarity of conclusion where it can honestly be made.⁷ Particularly successful is the annotation in correlating and integrating New Jersey statutes with the appropriate sections of the *Restatement*. Notable among the many instances of this intergration are: the Limitation Act under sections 86, 87, 89 and 94; statutes relating to sealed contracts under sections 95, 96 and 110; the Obligations and Joint Debtors Act under sections 117, 118, 125 and 126; the Practice Act under sections 134 and 147; statutes relating to assignments under sections 151, 156 and 158; the New Jersey Statute of Frauds under sections 178 and 207; similarly, the Uniform Sales Act under sections 178, 253, 273, 275, 299, 317, 329, 346, 349, 361, 395, 400, 412 and 457; the Uniform Negotiable Instruments Act under sections 116, 188, 432, 434, 435 and 439. In chapter 18 on Illegality, various criminal statutes are fully annotated, including the Gaming Act under sections 520-524; the Usury Act under sections 526 and 534; the Sunday Act under

4. Sections involving only partial repugnancy are: section 76, Illustration 8; 86, sub-section 3; 96, 101, 112, 110, 144, 195, 304, 515, Illustration 18; 542, sub-section 1a; and 574, Illustration 1. In certain other sections, while not strictly opposed to the local law, a somewhat modified result is indicated by reason of special rules. See, sections 87, 94, 96, 146, 550 and 551.

5. Outstanding in this respect are many sections, among them being, sections 110, 197, 207, 236, 317, 347, 480, 493, 526 and 538, indicating intensive research and painstaking analysis.

So tempting are the annotations in their exhaustiveness, that one unconsciously yearns for a table of cases to sort out old friends and see how they have fared under the impact of restatement of the law.

6. It may seem ungracious to mention the only palpable error that has been noted—a citation under section 577 wherein *Feldman v. Gamble*, 26 N.J.Eq. 494 is cited as a case in the Supreme Court rather than the Court of Chancery.

7. To this statement, or to the last part thereof, perhaps one summary under 304 seems a bit vague and lacking in clarity of conclusion so prevalent elsewhere in the annotations.

section 538; the Arbitration Act under sections 326 and 350.

The annotation as a whole does not content itself with precise authority either *pro* or *con*. Its approach is evaluative. A complete picture of contract law of New Jersey is attempted, and in this respect results achieved are admirable. Deep wells are tapped both in law and equity. In those situations where the law is confused, the annotation is not merely reportorial; annotation here is highly constructive in its attempts to rationalize and untangle.⁸ Where the cases indicate possibly a trend in opposition the *Restatement*, the approach is critical, and quite properly so it would seem within reasonable bounds, since conformity rather than repugnancy ought to be the objective unless the latter is inescapable.⁹ Doubtless the careful brief-maker will check the conclusions of the annotations. But he cannot safely afford to be without them.

Here and there supplementary cases might possibly be noted. Under section 18, citing the leading case of *La Rose v. Nichols*,¹⁰ on the contractual liability of an infant who appears to be and represents himself to be of age, a later decision somewhat limiting this liability is found in *Sonntag v. Heller*,¹¹ to contracts under which the infant has received benefits. Under section 25, distinguishing offers from overtures, *Edge v. Boardwalk Securities Corporation*,¹² is noteworthy; similarly under section 48, *Teplitz Thrown Silk Co. v. Rich*,¹³ although a decision of the Circuit Court, is interesting authority on the effect of the uncommunicated death of the offeror of a guaranty, as to which apparently no other decision is reported; under section 56, *Illustration 1*, on the duty of the offeree to give notice of an acceptance when the offeror is not likely to know thereof with reasonable promptness, two New Jersey decisions,¹⁴ although far from dispositive of the question might be noted; under section 70, *Head v. Theis*,¹⁵ dealing with the signing of an application form of a school catalogue, is noteworthy; under section 70 also, *Christie v. Laylor*,¹⁶ is noteworthy; several cases too recent for inclusion in the annotation are, *Levine v. Blumenthal*,¹⁷ under section 76, (and section 84), *Schaefer v. Brunswick Laundry Co.*,¹⁸ under

8. Notable in this respect are the annotations of sections 158, 173, 186, 197, 276, 324, 380, 564, 575 and 580.

9. See sections 479, 492, 497 and 525. Cf. section 563.

10. 92 N.J.L. 375, 105 Atl. 201 (E.&A. 1918).

11. 97 N.J.L. 462, 117 Atl. 638 (E.&A. 1922).

12. 115 N.J.L. 286, 179 Atl. 270 (E.&A. 1935). (A case doubtless too recent to appear in the annotation.)

13. 13 N.J.Misc. 494, 179 Atl. 305 (Cir. Ct. 1935).

14. *Newcomb v. Kloeblien*, 77 N.J.L. 791, 74 Atl. 513 (E.&A. 1909), and *Fid. U. Tr. Co. v. Galm*, 109 N.J.L. 111, 160 Atl. 645 (E.&A. 1932).

15. 106 N.J.L. 281, 150 Atl. 191 (Sup. Ct. 1930).

16. 116 N.J.L. 23, 181 Atl. 312 (Sup. Ct. 1935), cited under section 475.

17. 117 N.J.L. 23, 186 Atl. 457 (Sup. Ct. 1936). Too recent for inclusion.

18. 116 N.J.L. 268, 183 Atl. 175 (E.&A. 1936). Too recent for inclusion.

section 84, *McClellan v. F. A. North Co.*,¹⁹ under section 99 (and 96), dealing with the adoption of a seal; under section 100, *Coral Gables, Inc., v. Kretschmer*,²⁰ dealing with a seal; under section 103, *Real Estate Land Co. v. Stout*,²¹ dealing with a delivery in escrow; under section 129, *Ehrlich v. Mulligan*²² and *Oppenheimer v. Schultz*,²³ dealing with survivorship of joint rights are interesting for purposes of comparison; under section 143, an equity case, *Fisk v. Wuensch*,²⁴ in line with the analogy developed from the mortgage cases under other sections, might well be noted with reference to the effect of a release by the promisee to the promisor on the right of a beneficiary; and similarly, *Reeves v. Cordes*,²⁵ and *Prudential Ins. Co. v. Rosenthal*,²⁶ offer interesting analogies under section 146 where no cases in point are reported; under section 158, at page 76, although the Uniform Stock Transfer Act is briefly referred to, the effect of section 9 of that statute on earlier New Jersey cases, such as *Matthews v. Hoogland*,²⁷ seems not to have been considered; under section 216 dealing with a lost memorandum under the statute of frauds, an equity case, *Frank v. Pillsbury*,²⁸ would seem pertinent. Also under section 222, *Kessler v. Fuchs*,²⁹ and under section 548, *Beach v. Voegtlin*,³⁰ and under section 558, *Quick v. Corties*,³¹ might be worthy of annotation; under section 518 and 574, two cases too recent for inclusion in the annotation, are respectively, *Lodi Tp. v. Little Ferry Nat. Bank*,³² (citing the *Restatement*) and *Globe Home Imp. Co. v. Perth Amboy etc. Bureau*.³³ Under section 580, where annotation is exceptionally complete, further supplementary cases possibly might be well noted, *vis.*, *Commercial Credit Corp. v. Boyko*,³⁴ dealing with the qualification of a foreign corporation after institution of suit on a contract; *Kenney v. Paterson Milk & Cream Co.*,³⁵ dealing with the right of an unlicensed realty broker to recover

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19. 14 N.J.Misc. 760, 187 Atl. 337 (Sup. Ct. 1936). Too recent for inclusion.
 20. 116 N.J.L. 580, 184 Atl. 825 (E.&A. 1936). Too recent for inclusion.
 21. 117 N.J.Eq. 37, 175 Atl. 128 (E.&A. 1934).
 22. 104 N.J.L. 375, 140 Atl. 463 (E.&A. 1928).
 23. 107 N.J.Eq. 192, 152 Atl. 323 (Ch. 1930).
 24. 115 N.J.Eq. 391, 171 Atl. 174 (Ch. 1934). See section 406.
 25. 108 N.J.Eq. 469, 155 Atl. 547 (Ch. 1931).
 26. 109 N.J.Eq. 386, 157 Atl. 668 (Ch. 1931).
 27. 48 N.J.Eq. 455, 21 Atl. 1054 (Ch. 1891). See, 20 ILLINOIS LAW REVIEW 29.
 28. 104 N.J.Eq. 383, 145 Atl. 725 (Ch. 1929), and cases cited.
 29. 95 N.J.L. 443, 113 Atl. 141 (E.&A. 1921).
 30. 68 N.J.L. 472, 53 Atl. 695 (Sup. Ct. 1902). And see, *Kaufman v. Smathers*, 10 N.J.Misc. 671, 160 Atl. 500 (Sup. Ct. 1932).
 31. 39 N.J.L. 11 (Sup. Ct. 1876).
 32. 121 N.J.Eq. 213, 189 Atl. 58 (Ch. 1937).
 33. 116 N.J.L. 168, 182 Atl. 641 (E.&A. 1936).
 34. 103 N.J.L. 620, 137 Atl. 534 (E.&A. 1927).
 35. 110 N.J.L. 141, 164 Atl. 274 (E.&A. 1933). Cf. *Ruckman v. Bergholz*, 37

for services; *Arotziky v. Kropnitsky*,³⁶ dealing with the effect of failure to comply with the Automobile Sales Act.

Doubtless many of the annotations take cases at their face value in the interest of conciseness. But some cases are disposed of concisely only with difficulty: for instance, *Pangborn v. Phelps*,³⁷ cited under section 21, apparently as an implied-in-fact contract, seems rather to be one implied-in-law. *Sypherd v. Meyers*,³⁸ cited under section 37, dealing with the rejection of an offer, is a case dealing with the abandonment of an option-offer rather than an offer in its usual sense. *Osborne v. O'Reilly*,³⁹ cited under section 76, as perhaps contrary to *Illustration 8*, being dealt with as a case of unexpected difficulty, seems factually to be an equity case on innocent misrepresentation and pertinent to section 476. Under section 86, the statement of *De Raismes v. De Raismes*,⁴⁰ seems to be inadequate; it is better stated under section 225. Following tradition, *Jostin v. N. J. Car Spring Co.*,⁴¹ is put down under section 136 as a third party beneficiary case, as it professes to be, in spite of well-founded suspicions that it may be, after all, a case of a novation. Under section 222 the cases cited seem to support the first part of the section, but since there is some authority for the proposition that contracts for the sale of land pass an equitable interest in land (which is within the statute) the same cases seem to be somewhat contrary to the last part of the section and *Illustration 3*.⁴² Under section 548, cases are cited for the legality of a compromise of a supposed crime which has not in fact been committed: the cases seem, however, to limit the doctrine to instances where there are no pending criminal proceedings.⁴³

But the job is splendidly done. It reflects great credit on its editor, Mr. Yanoff, and its sponsor, the New Jersey State Bar Association. A discriminating approach has converted what otherwise might have been hack-work into a real piece of research and a definite contribution to the legal literature of the

N.J.L. 437 (E.&A. 1874).

36. 98 N.J.L. 344, 120 Atl. 921 (Sup. Ct. 1923).

37. 63 N.J.L. 346, 43 Atl. 977 (E.&A. 1899).

38. 80 N.J.L. 321, 79 Atl. 340 (E.&A. 1911). See section 24 and *McCormick v. Stephany*, 61 N.J.Eq. 208, 48 Atl. 25 (Ch. 1900); also section 54 and cases cited.

39. 42 N.J.Eq. 467, 9 Atl. 209, *revid* other grounds, 43 N.J.Eq. 647, 12 Atl. 377 (E.&A. 1887).

40. 70 N.J.L. 15, 56 Atl. 170, *affirmed* on new trial, 71 N.J.L. 680, 60 Atl. 1133 (E.&A. 1905).

41. 36 N.J.L. 141 (Sup. Ct. 1873).

42. *Marion v. Wolcott*, 68 N.J.Eq. 20, 59 Atl. 242 (Ch. 1904); see also, *Peer v. Peer*, 11 N.J.Eq. 432 (Ch. 1857); *Costigan's Cases on Contracts*, (3d) p. 695n. *Ganz v. Elfenbein*, 94 N.J.L. 445, 111 Atl. 6 (E.&A. 1920) leaves the question open.

43. *Manning v. Columbia Lodge*, 57 N.J.Eq. 338, 38 Atl. 444, 45 Atl. 1042 (E.&A. 1985).

State of New Jersey. Presented in convenient pocket supplement form, the studious lawyer will continue to annotate his own edition without awaiting the official revisions that doubtless will from time to time be offered. Already there are at least a dozen cases wherein the courts of New Jersey have cited the *Restatement of Contracts*. But its influence in shaping decision is not to be taken as limited to the cases wherein it is cited: in many other cases no doubt, although not cited, the *Restatement* has and will increasingly continue to affect decisions. As a means of quick access to New Jersey law and the elimination of tedious examination of much second-rate authority, the *Restatement* is of incalculable value to New Jersey lawyers and judges. Certainly no New Jersey law office can well afford to be without it.

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A STUDENTS TEXTBOOK OF THE LAW OF EVIDENCE. By John H. Wigmore. Chicago. The Foundation Press, 1935. pp. xxxv, 610.

The purpose of this work is best expressed by Professor Wigmore in his preface (p. ix): "The book is written, not for the seasoned practitioner, but for the beginning student of Evidence. The student who is going to be a lawyer and therefore must know about Evidence, but is as yet a layman knowing nothing about the Jury-Trial Rules of Evidence,—that is the person whose supposed need has been kept in mind in the composition of this book." Professor Wigmore is unduly modest. Perhaps this is his sole purpose but his "Students' Textbook" is more thorough than the average text intended for the practitioner. Even the fly-leaf exhibits this modesty, informing the reader that the author is simply John H. Wigmore, "Lecturer in Northwestern University School of Law."

It is important in the law of evidence, as well as in other branches, that the student know the reason as well as the rule itself. "The letter of the law is the body of the law, but the sense and reason of it is its soul." It is in the clear and concise exposition of the theory of the law of evidence that this book excels. Truly, Professor Wigmore unfolds the very soul of evidence to the student in such a way as to make an understanding and retention of its principles quite simple.

The first chapter gives the student a brief, yet adequate, history of the modern jury system. The student learns of the various judicial systems, the advantages of each, the necessity for rules of evidence and the application of these rules in the various sorts of judicial proceedings.

Professor Wigmore covers in the comparatively short space of 552 pages the entire subject of the law of evidence. His method of exposition is excellent for the student. Each chapter consists first of a brief outline of the subject. This is followed by text written in his simple, convincing style. The text

includes both the rule and the reason therefor and is followed by brief example cases illustrating the working of the rules involved. Each chapter is footnoted with the leading cases which are of great value.

Although the book discusses all of the usual rules of evidence such as the rules of inclusion and exclusion, hearsay, real evidence, opinion evidence and all the rest, the table of contents is, to say the least, startling. Instead of real evidence we find "autoptic proference." We find that the rules of admissibility are divided into rules of probative policy including exclusionary, preferential, analytic, prophylactic and quantitative rules. We find that evidence may be prospectant, concomitant or retrospectant. But under these high-sounding phrases we find the ordinary and familiar rules of evidence expounded more clearly than ever before. The hearsay rule, for example, is a rule of probative policy. The mere mention of this classification helps to explain the reason and purpose of the hearsay rule and its exceptions. If the reason for this probative policy ceases we find an exception to the hearsay rule. Then too, there are rules of extrinsic policy, based not upon reasons of probative value but upon reasons of extrinsic policy. Here we find the various privileged communications, testimony which, though having probative weight are excluded for reasons of policy. Thus, though departing from the usual simple set-up of a treatise on evidence and adopting what seems to be a very complex approach, Professor Wigmore paradoxically attains a book that is beautiful in its simplicity.

The rules of evidence are the systematic instruments for judicial ascertainment of truth. The importance of the reason behind each rule cannot be stressed too much. For the student to acquire why the rule is, rather than what the rule is, will help him to acquire the so-called legal mind. Thus we see that in grand jury hearings where the only purpose is to ascertain if there is probable cause for an accusation, not to find a verdict of guilty, the rules of evidence should not, and do not, apply. So, too, the rules are changed in proceedings before other types of tribunals where the reason for the rule ceases. What is the result in admiralty, in arbitration proceedings, before tax boards or before administrative tribunals? If the student knows the basis of the law he will know when and where to apply it. If Professor Wigmore's book served no other purpose it would be worthy of study. Its additional features make it invaluable.

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WILLS AND ADMINISTRATION IN NEW JERSEY. By Alfred C. Clapp, of the New Jersey Bar. Union City: Associated Lawyers' Publishing Company, August, 1937. Pp. 775. \$12.50.

The announcement of the publication of *Wills and Administration In New Jersey* begins a new page in the annals of scholarly research in this State. Lawyers in New Jersey have long sensed an inadequacy in the means which have been provided for finding the law. Digests and indices there are—but these can

hardly approach in efficiency the use of a carefully prepared text. They require too broad a search of the decisions to locate those particularly applicable to a specific point, and, further, the logical sequence of pertinent principles may be widely scattered under a dozen different headings.

In the field of practice and procedure, of course, where the need for easy access to the law will not permit denial, textbooks have been offered; but this has not been the case with the various fields of substantive law. The publication of Mr. Clapp's treatise marks a long awaited step toward the creation of a New Jersey five-foot shelf of texts. And Mr. Clapp's effort is worthy of this distinction. The volume has been carefully written, and embraces nearly every point upon which a practitioner might conceivably seek enlightenment.

It is well-nigh impossible, as well as undesirable, to review all of the chapters in the book. A cursory examination, however, discloses that a wise choice has been made in the allotment of space to the various topics which the subject comprises. Sufficient detail has been supplied on the subjects of formal requisites, execution, revocation, revival, republication and capacity, but not quite so much as seems to be customary (for no apparent reason) to those aspects of the field. Two chapters are ample for any purpose.

On the other hand, lawyers will be pleased to learn that large portions of the book are devoted to such useful topics as construction of wills. Mr. Clapp has not contented himself with the restatement of a handful of well-known rules of construction, but has collected and organized an exhaustive supply of decisions construing particular phrases commonly encountered in wills. Chapter Three, for example, deals with the construction of at least one hundred and twenty separate expressions which have been considered by our courts, and many more are to be found in the footnotes. Each of these phrases and expressions is made readily available by its individual inclusion in the index, besides being classified according to subject matter.

Nor has the inestimable value of thorough footnote references and comments been overlooked. The page is rare where less than half the lines are devoted to footnotes; cases are not merely cited or referred to—they are explained and compared with conciseness and accuracy.

In all, the book fills a long-felt need for accurate and exhaustive materials on matters testamentary, and it is assured of the unanimous approval of New Jersey practitioners who have, in the past, been compelled to flounder through generalized indices, and yet fail to find decisions which may have been within arm's reach. But a mere description cannot do justice to the work: *liber ipse loquitur*.

