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## Review of “A Treatment of the Fundamental Principles of the Law of Contracts; with Digest of Cases Contained in the Second Edition of Keener's and Williston's Casebook, and Leading Cases in Other Casebooks on Contracts,” By Carl Helm

Tyrrell Williams  
*Washington University School of Law*

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preventing the stoppage, on a week day, of mills which employed many hands, *McGrath v. Merwin*, 112 Mass., 467, 17 Am. Rep., 119; constructing a building, *Lane v. State*, 68 Tex. Crim. R., 4, 150 S. W. 637; sending a telegram regarding business that can be transacted as well on any other day, *Western U. Tel. Co. v. Yopst*, 118 Ind., 248, 20 N. E., 222, 3 L. R. A., 224, *Western U. Tel. Co. v. Henley*, 23 Ind. App., 14, 54 N. E., 775, *Western U. Tel. Co. v. Hutcheson*, 91 Ga., 252, 18 S. E., 297, *Willingham v. Western U. Tel. Co.*, 91 Ga., 449, 18 S. E., 298, *Rogers v. Western U. Tel. Co.*, 78 Ind., 169, 41 Am. Rep., 558; services of attorney in rearranging partnership business, *Jones v. Brantley*, 121 Miss., 721, 83 So., 802; publishing a newspaper, *Hardy v. St. Paul Globe Pub. Co.*, 41 Minn., 188, 42 N. W., 872, 16 Am. St. Rep., 695, 4 L. R. A., 466, *Smith v. Wilcox*, 24 N. Y., 353; printing advertisements in newspaper, *Sentinel Co. v. Meiselbach Co.*, 144 Wis., 224, 128 N. W., 861, 32 L. R. A., (N. S.) 436, 140 Am. St., Rep., 1007, (cf. *Pulitzer Pub. Co. v. McNichols*, (Mo.) 181 S. W., 1 L. R. A. 1916C 1148); selling newspapers, *Com. v. Matthews*, 152 Pa., 166, 25 Atl., 548, 18 L. R. A., 761; operating a picture show, *State v. Kennedy*, (Mo. App. 1925), 277 S. W., 943, *State v. Smith*, (Okla. 1921) 198 P. 879; same, to break monotony of army life at great army camp, *Rosenbaum v. State*, 131 Ark., 251, 199 S. W., 388, L. R. A., 1918B 1109, *Capitol Theatre Co. v. Com.*, 178 Ky., 780, 199 S. W., 1076; same, where proceeds are given to charity, *Rosenberg v. Arrowsmith*, 82 N. J. Eq., 570, 89 Atl., 524; and assessing property for taxation, and checking up the week's work, *Stellhorn v. Bd. of Commrs.*, 60 Ind. App., 14, 110 N. E., 89.

In comparing the construction of the Sunday laws it must be remembered that the alleged and actual violations above enumerated have occurred under statutes and ordinances varying in their wording, and in different states, and at different times in the history of our country. It is also important to know that in some states the question whether a certain act or labor is a work of necessity or charity is one of fact to be determined by the jury from the circumstances of each case, whereas in a few states the question is purely a question of law for the court. The rule in Missouri (*State v. Schatt*, 128 Mo. App. 622, 107 S. W. 10) and some other states is that where reasonable minds differ, it is a question for the jury, but where the nature of the work is such that no reasonable minds would differ, the court may treat the question as one of law. See exhaustive note in 29 A. L. R., 1298. C. S. N. '27.

## Book Reviews

A TREATMENT OF THE FUNDAMENTAL PRINCIPLES OF THE LAW OF CONTRACTS; WITH DIGEST OF CASES CONTAINED IN THE SECOND EDITION OF KEENER'S AND WILLISTON'S CASEBOOK, AND LEADING CASES IN OTHER CASEBOOKS ON CONTRACTS. By *Carl Helm*, LL.B., Member of the New York Bar, pp. xxiv and 580. New York City: Central Book Company, 1926.

This is a well manufactured book of 580 pages of thin paper in limp leather cover. In his preface the author states that the purpose of the book is to assist teachers and "as an aid to students in their study" of contracts "by the case system." The author says also that the book will "afford a thorough, concise review for graduates and practitioners." It is not likely that practicing lawyers will find much of value in the book. To practicing lawyers law is a reality, something which actually exists in human experience whereby human disputes are settled,—most of them out of court. In the language of the Supreme Court of the United States: "Law is a statement of the circumstances in

which the public force will be brought to bear upon men through the courts." To a practicing lawyer the important question is: "What will the courts decide in a particular jurisdiction?" and not: "What would the courts decide if bound only by logic and unhampered by the welfare of society or the doctrine of *stare decisis*?"

The author of this book is far more interested in criticizing the law of contracts than he is in stating it or justifying it. It is now generally held that an ordinary offer to contract sent by mail can be accepted by mail even if the second letter is not delivered. This is a rule of convenience, or a principle of pragmatism,—to use the language of philosophy. The author does not like the rule. And so he uses up most of fifty pages in attempting to prove that the doctrine is unsound. He says: "What is to be borne in mind is, that though the weight of authorities, in both number of decisions, and number of jurisdictions, is with *Adams v. Lindsell*, there is not a possible bit of logic or reasoning which can be brought to support that decision." (Page 61.) Of the 700 cases cited in the book, those cited most frequently are those which the author regards as unsound.

From the viewpoint of students in law schools, the book is valuable. One of the chief purposes of a modern law school, perhaps the chief purpose, is to enable students to analyze and criticize judicial decisions and judicial opinions. This important trick can be acquired when studying leading cases which have made the law, like *Marbury v. Madison*, and then afterwards the student can use the trick when confronted in his practice with modern mooted questions and conflicting authority. Has a common law court jurisdiction over a breach of promise to marry? Of course it has. And yet it is a splendid exercise for students to attempt to prove that the common law courts were wrong when they first assumed such jurisdiction.

This book, as the title page indicates, consists chiefly of digests of cases used as the basis of instruction for the law of contracts in modern law schools. The digests are succinct and accurate. The arrangement is according to logic and not according to historical development or jurisdictions. Indeed the author pays more attention to logic and less attention to human experience than practicing lawyers do. For many students the book would be more valuable if the author had made freer use of the most recent casebooks on Contracts, namely those of Corbin and Costigan. An excellent feature of the book is the insertion of a large number of hypothetical cases, after the style of examination questions, and a careful consideration of those cases in the light of principle and authority.

TYRRELL WILLIAMS.

School of Law,  
Washington University.

PRESENT STATUS OF THE PHILOSOPHY OF LAW AND OF RIGHTS. By *William Ernest Hocking*, Alford Professor of Natural Religion, Moral Philosophy, and Civil Polity in Harvard University. pp. viii and 97. New Haven: Yale University Press, 1926.

The point of view of this brilliant outline is truly indicated by its dedication to Dean Roscoe Pound. Professor Hocking is concerned with the essential task of the sociological jurists, the problem of getting at the relative importance of the various social interests which are recognized by legal action. Specifically, he proposes a scale of values among rights for the guidance of law-makers, while leaving to those learned in the law the technical work of construction.

The first half of the book is given to an analysis of the contributions of Stammler and Kohler to the present problem. He boils down the issue between them to the answers they would give to this question: what is to be done when the claims of *Kultur* and Right conflict? (Professor Hocking translates *Kul-*