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Review of “Brief Making and the Use of Law Books,” Edited by Roger W. Cooley

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formation of contracts, specification of terms of a promise, intent and understanding and an expression of such as elements of a contract, effect of error, ignorance, impossibility or illegality, and consideration. These are dealt with admirably.

The most interesting part of this work, however, is the discussion of the fundamental conceptions, in which Mr. Morawetz turns his guns in full fire against Mr. Williston, over the troublesome question of just what is a contract. Mr. Williston, who prefaced the restatement for the Institute, defines a contract as "a promise or set of promises to which the law attaches legal obligation." Mr. Morawetz says that it is very difficult to make a definition in words which are inclusive of the whole meaning of the word, as it embodies a number of different conceptions, but makes his attempt in these words, "the sense in which the word 'contract' is commonly used, in law as well as in popular usage, is that of an agreement formed by act of the parties whereby some legal obligation to be performed thereafter, commonly called a promise, is assumed by one or more of them." "Agreement" is here used as a pact or treaty, as distinguished from a meeting of minds or consensus of intent. Mr. Morawetz says a contract is not a promise as Mr. Williston thinks, for a promise does not necessarily create an obligation. He says that "contract" and "agreement" are often used interchangeably in the same sense; but that "contract" is also used in a special technical sense to describe an agreement which creates a legal obligation.

There is also some dissention as to the meaning of the word "agreement" which is responsible to a large extent for the difference in the definitions. Mr. Morawetz says it is a pact or treaty, while Mr. Williston thinks it is a mutual assent by two or more persons, and is a wider term than "contract" as it covers sales, gifts, and promises to which the law attaches no legal obligation.

This book, on the whole, is a very good one, even though there be a variation from some of the prevailing doctrines. Mr. Morawetz, himself a lawyer, gives the lawyer's viewpoint in his book. His is a scheme which tries to avoid litigation as much as possible. He might not have the reasoning and theory found in the opinions, but he has the very praiseworthy practical philosophy of the practitioner.

Perhaps it might be well in conclusion to say a few words about the American Law Institute and its work. It was founded by Act of Congress and endowed by the Carnegie Foundation, including in its membership members of State Bar Associations, Supreme Courts, and all the Class A Law Schools. Its work is to restate the Common Law in a clear, simple and comprehensive manner, so that much of the conflict in our legal system now prevalent will be removed. It is expected that the work will take about one generation, or thirty-three years to complete. Certain eminent scholars and authorities are given the positions as Reporters, who collect the law for the restatement, along with their assistants. At general meetings these proposed restatements are discussed by the members, the Council having the final vote of adoption. It is truly hoped that this organization will do well in its attempt to classify our law.

C. H. LUECKING, '28.

BRIEF MAKING AND THE USE OF LAW BOOKS. Edited by *Roger W. Cooley*, Professor of Law, University of North Dakota. With specimen pages compiled by *Lafayette S. Mercer*. pp. xxvi and 1092. St. Paul: West Publishing Co., Fifth Edition, 1926.

Legal students admit, however reluctantly, that much of the procedure of the profession is anachronistic. Nowhere has this been more true than in certain phases of legal training, particularly in teaching the student the use of the instruments of his profession. Too often has the student been left to secure this essential knowledge by the costly method of trial and error, with casual aid

from instructors and fellow-students. The world would stand aghast at the spectacle of a scientific student turned loose in a laboratory and told to learn the use of the apparatus for himself. In recent years many law schools have attempted to remedy this situation by a systematic course in the use of law books, but their chief difficulty has been the lack of a suitable text book.

This lack, Mr. Cooley's book, now in its fifth edition, has admirably met. It falls naturally into three main divisions; where to find the law, how to find the law, and having found it, how to apply it. In addition the specimen pages from all leading law books make it a splendid laboratory manual for practical use. The legal novice is bewildered by the towering stacks of a law library, the first part of Mr. Cooley's books introduces him to these apparently numberless volumes and explains them to him and grades them for him. He may know, now, the difference between primary and secondary, direct and persuasive authority, but he must learn where the particular point of law he needs is to be found in their serried ranks. This the second section teaches him. Having learned where and how to find his law he must now apply it. On finishing his course and seeking a position the first question asked him is not, does he know the law (a presumption operates there in his favor), but can he draw a brief? The third part of the book enables him to do this. The specimen pages are of especial value in such work, for they enable every student to trace the same point of law simultaneously, and, incidentally, save much wear and tear on the library.

The Fifth Edition differs from the Fourth only in its mechanical make-up. By the use of thinner paper it has been possible to include all the work in one volume, which makes it decidedly more convenient and brings it within a range which makes possible its use as a regular text book. The new edition also includes specimen pages from California Jurisprudence, a new idea in encyclopoedic law, containing all the law of a single jurisdiction.

WARREN TURNER, '27.

QUESTIONS AND ANSWERS FOR BAR EXAMINATION REVIEW. By *Charles S. Haight* and *Arthur M. Marsh*. Second Edition. New York: Baker, Voorhis and Company. 1909. pp. lii and 585.

This book contains twenty-three subjects treated in the form of brief hypothetical questions and their answers. The book was not intended to be nor can it be relied upon as a source of original information. Its chief purpose is to recall in systematic form the propositions of law with which the student is already acquainted. These propositions are, in most instances, deduced from adjudicated cases and the condensed and simplified form in which they are stated is commendable. Following the statements of legal principles are numerous citations of cases which make convenient a more extensive review. Where the decisions are in conflict there is not only an alignment of the authorities but a discussion of the important principles and theories involved. This is particularly true of the doctrine in Suretyship as to notice of acceptance of the guaranty and of default by the principal; pp. 402-404. In a few instances topics are summarized in chart form. These are found in classifications of the powers of an agent p. 3; estates in real property p. 299, and torts with regard to the rights which they infringe p. 428.

The quantity of treatment of the various subjects is perhaps open to some criticism. Only 5 pages are allotted to Personal Property while 47 pages are devoted to Real Property. The fact that only 8 pages are given to Equity may be explained by the allotment to its kindred subjects of 14 pages to Quasi-Contracts; 15 pages to Trusts; and 27 pages to Suretyship.

The section on Pleading and Practice under the New York Code is of special value to those students who intend to take their bar examinations in the States which have adopted the Code. The subject is treated principally in the