BOOK REVIEWS

The Law of Contract, by Hugh Collins (Weidenfield & Nicholson, London 1985) pp. 1-236. ISBN O 297 7875 3.

This work is the latest of the 'Law in Context' series, the aim of which is stated on the back cover as being 'to broaden the study of law, using material from other social sciences, from business studies and from any other discipline that helps to explain the operation in practice of the subject under discussion'.

Mr. Collin's book, whatever may be its defects, admirably succeeds in broadening the reader's horizons in his or her understanding of the law of contract. The author pulls no punches. In his preface he boldly states that all modern contract texts are outdated, being based on 19th Century notions of contract as 'the creation of a facility for individuals to pursue their voluntary choices.'

This, argues the author, is no longer a valid model for the law of contract. Contract law is, he says, the channelling and regulation of market transactions according to ideals of social justice. The danger of most current contract texts is that they ignore this reality and consequently mislead and misinform the newly initiated student of law.

In his opening chapters the author develops a theme that the law of contract regulates market transactions determining the order of wealth and power in society. Classical 19th Century *laissez faire* contractual theory dictates that those best able to exploit the factors of production efficiently will be advantaged at the expense of less powerful parties. By contrast the modern welfare state questions the legitimacy of power established by uninhibited exploitation of the factors of production. It looks more closely at the comparative wealth and knowledge of the parties before judging the legitimacy of the relationship of power established between them.

The rest of the book is essentially an exposition of this view. The author observes that whereas classical theory regards consideration as the dominant theory of enforceability, modern law regards reliance as an equal basis of enforceability. The result of this movement is, argues the author, that individual autonomy must give way to limited claims for altruism and the private realm diminishes with the result that formerly unenforceable domestic relationships become enforceable.

This style of analysis sets a tone for the rest of the book. The author is vigilant in the identification and destruction of what he perceives as heresies in classical theory when applied in society today. He rejects as inappropriate the well-entrenched principle of offer and acceptance as a threshold test for contractual responsibility. The parol evidence rule is argued to be inoperative as a general principle and old theories of privity to have been broken down.

Throughout this analysis the author cites judicial authority from the United Kingdom and the United States to support his sometimes sweeping statements. However, although he seemingly argues convincingly, one cannot help but feel that sometimes the author is skating on thin ice, relying, as he often does, on a selective number of authorities to support his generalisations. However, such a criticism is perhaps unfair in the context of a book, the aim of which is to provoke and encourage a deeper understanding of the law of contract; in effect trying to delve to its philosophical roots. Perhaps the author's next challenge will be to write a text book reflecting his conception of the true philosophical basis of modern contract law.

In the later chapters of the book, the author more directly addresses these fundamental issues. Modern contract law, he argues, is underpinned by the concepts of paternalism, trust, fairness and co-operation.

Contract law is paternalistic in that it counters the potential for domination by imposing additional duties on the stronger party, breaches of which can lead to termination of the contract or liability for damages. The author cites examples of torts, family law and implied terms as imposing these extra duties.

By imposing these extra duties, the author argues, modern contract law forces the dominant party to confide in the dependent party and thus engenders a relationship of trust. By contrast classical theory pitted each person against each other intent on maximising his or her self interest at the expense of others.

The author further argues that modern judicial reasoning reflects an awareness that a free market is not always fair. It meets this challenge by subtly redefining the market framework to ensure distributive justice. It does not tackle the problem by outright opposition to this framework.

Finally, the author argues that modern contract law imposes duties on the parties to co-operate together during the performance of the contract. This is illustrated by reference to such concepts as business efficacy for the performance of a contract and frustration in the termination of a contract.

The author's analysis and explanation is a scholarly well argued case. His aim throughout is to argue that the law of contract has been transformed. In his final chapter he develops this view further, submitting that contract law is undergoing yet another metamorphosis — the move to corporatism. Collins submits that in time the distinction between public and private law must surely blur. That this is happening is evidenced by regulation of contracts by way of measures imposing codes of conduct such as consumer credit laws, conventions for the carriage of goods by sea and industrial relations legislation. To this list may be added the expansion of administrative law remedies.

This is fertile ground for the author to plough in subsequent works which, if as thought provoking as 'The Law of Contract' , will surely be of benefit to all students of contract law.

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