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Essentials of Insurance Law

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BOOK REVIEW

ESSENTIALS OF INSURANCE LAW. By Edwin W. Patterson. McGraw-Hill Publishing Co., New York: 2d ed. 1957. Pp. 558.

Professor Patterson's book on the essentials of insurance law is at least as good, and I think superior within its own limits to any other legal text on insurance with which I am familiar. The preface however is quite misleading and so is the book jacket. Presumably the publishers feel that the prospect of marketing this volume among the multitudes slaving in the salt or gold mines of the insurance industry is more substantial than sales to the legal profession. Hence the book is described as intended primarily for those not engaged in the profession of law. For this reason the jacket promises a "minimum of legal language" and the author promises a "readable summary . . . using but little technical language." Apparently this will attract laymen but it might equally repel lawyers, and this is my objection. This *is* a book for lawyers on the bench, in the office and in the classroom. A minor irritation as a result of this emphasis on lay use is the absence of a table of cases which would be a considerable convenience to the professional reader, particularly the law student using Professor Patterson's excellent casebook. The casebook arrangement and selection are closely paralleled in the textbook.

The author struggles manfully in his opening chapters to explain legal terms to the layman but my impression was that as he warmed to his subject he gave it up as a bad job. After forty years of studying, teaching and writing insurance law one could hardly expect the Cardozo Professor of Jurisprudence at Columbia University School of Law to write anything but a "law book." He has not disappointed. Simplicity of language is a virtue enjoyed not only by laymen but judges and lawyers. Once the profession fails to communicate in judicial decision or law writing it fails to be efficacious. Technical terms must be used, but the process of reasoning must not be obfuscated in law-educator language as distinguished from law-teacher, lawyer and judge language. An example of law-educator language is that given by Professor Mechem in his address as retiring president to the 1957 Convention of the Association of American Law Schools in San Francisco. He stated that a young law-educator colleague was overheard at a liquor emporium ordering a "quintile" of Scotch. Presumably if he had ordered a "fifth," he would have saved time, purchased the same amount for the same price and received the same effect.

Lawyers instinctively abhor law books for laymen; they are about as helpful to lawyers as druggists used to be to laymen in the drafting of wills. This is not such a book. The absence of string citations in the footnotes is in no sense a disadvantage. The case cited is responsive to the text and is thoroughly understood by the author. This procedure is refreshing and in the long run will save and not waste the time of the practitioner. Another merit of this book which distinguishes it from others in the field is that the author has a point of view. He will not only indicate what the law is but why it is or why it should not be. Thus in his discussion of innocent misrepresentation of fact[1] Professor Patterson presents the arguments for both the insured and the insurer and then indicates the trend of distinction between questions of fact and opinion. (This distinction is one which he has not emphasized in his prior writing but the present treatment is full and detailed.)

Since the book is limited to essentials one cannot expect a complete discussion of all the problems in insurance law. One regrets however that Professor Patterson did not enlarge upon his rather abrupt treatment of the law of binding receipts in life policies. The

1. Pp. 388-402.

law is presently a quagmire and the author's extended comments would be welcome. But the book does cover admirably the questions of government control, the making of the contract, insurable interest in property and in life, termination; the insured event and excepted causes; warranties and conditions; representations; concealment; waiver, estoppel and election. These subjects comprise its eleven chapters.

There are areas in insurance law which are unsettled and where one might wish to qualify the text. For example, while American courts do favor the view that a stockholder of a corporation has an insurable interest in the corporation's property, I think it would have been helpful to indicate that the cases are not numerous and the doctrine must have inherent limitations. The comparative size of the stockholder's interest and the existence of corporate insurance upon the property destroyed may well negative the existence of any substantial economic interest. The doctrine should be limited to cases involving the insurance of uninsured corporate property of substantial value by a major stockholder. This is not only a question of the difficulty of ascertaining loss but even a question of the existence of the interest. That factual expectation of loss constitutes an insurable interest in New York is not as clear to me as it is to the author. Case law has never gone this far in this state. The *National Filtering Oil Co.* case[2] did not simply involve the accident of loss through physical or factual propinquity. There was a contract involved, the value of which depended upon the continued existence of the property insured. The problem is open in this state and may depend upon whether the word "lawful" in the statute[3] means legally protectable or licit, as distinct from illegal.

If a fire destroys a building insured by both lessor and lessee and the lessor restores pursuant to a contractual obligation, may the lessee recover on his policy? The New York Court of Appeals said "yes" in *Alexandra Restaurant v. New Hampshire Ins. Co.*[4] Wisconsin said "no" on facts which were identical in principle.[5] The author's opinion is that the Wisconsin view is more likely to be followed. The New York decision is unfortunate and relies on precedents which are distinguishable.

One of the most provocative topics in insurance law is the effect of general statutory revisions ameliorating the harsh common-law doctrine of warranties. Whether they will ever or should ever have the intended effect is questionable. Not all clauses in policies, *e.g.*, "while located at and not elsewhere," conveniently fit within the statutory definitions; or if they do, the effect of their breach does not seem to be reasonably solved by application of the new statutes. Professor Patterson's treatment of this interesting facet of law is admirable and is certainly better than anything published in this field. It is in his treatment of topics like this that one feels that his work is primarily for the legal profession. One could hardly expect the layman to understand the implications of insurance law which depend upon a basic understanding of contract, quasi-contract, agency, tort, and personal and real property law. The book should alert the lay readers in the insurance industry to the importance of their own legal departments where several copies of this book should by all means be available for counsel.

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2. National Filtering Oil Co. v. Citizens Ins. Co., 106 N.Y. 535, 13 N.E. 337 (1887).
3. N.Y. Ins. Law § 148.
4. 297 N.Y. 858, 79 N.E.2d 268 (1948).
5. Ramsdell v. Insurance Co. of North America, 197 Wis. 136, 221 N.W. 654 (1928).

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