

---

Volume 51  
Issue 2 *Dickinson Law Review - Volume 51,*  
*1946-1947*

---

1-1-1947

## Book Review

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

---

### Recommended Citation

*Book Review*, 51 DICK. L. REV. 143 (1947).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol51/iss2/8>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact [lja10@psu.edu](mailto:lja10@psu.edu).

## THE LAW OF CONTRACTS

BY G. C. CHESIRE AND C. H. S. FILFOOT

Butterworth and Company, London, 1946. XLVIII, 435, 11.

This book may be read with great interest and profit by every student of the law of contracts. Although it is designed to set forth the "English law of contracts", and the cases and statutes examined are almost exclusively English, the problems discussed and the conclusions reached by the authors are of interest to students of the "American law of contracts."

The authors have attempted to examine the principles underlying the law of contracts, to indicate the difficulties which surround their application, to illustrate them, and to justify their vagaries by a reference to their history. Their attempt has been successful, and the result is a book which is in focus with present needs, and which neither disdains authorities merely because they are old nor new authorities merely because they are novelties.

The book is critical as well as expository. The authors have not hesitated to express disagreement with judges and other writers and to set forth and justify their own views on controversial matters, even though this involved the heresy of disagreement with Ames or Williston, Anson or Pollock, or other semi-divinized authorities.

The book contains many illustrations of the application and operation of the principles and many very apt and pungent quotations. The authors have used a sprightly style and a stimulating vocabulary. Thus they say the phrase "offer and acceptance", "though it has been hallowed by a century and a half of judicial usage, is not to be applied as a talisman, revealing, by a species of estoteric art, the presence of a contract. It would be ludicrous to suppose that business men couch their communications in the form of a catechism or reduce their negotiations to such a species of interrogatory as was formulated in the Roman *Stipulatii*."

"Consideration" is stigmatized as "an insular and unique phenomenon which cannot be regarded as a logical necessity and which is explicable only as reference to its history."

The authors are of the opinion that the draftsman of the Statute of Frauds failed to understand the words he had used and had but an imperfect appreciation of his own intentions, and that the statute has supplied an "unhappy pattern" for later legislation, and that upon the "foundation thus darkly laid, a vast structure of case has been erected through which it is difficult to trace any guiding principle although they suggest some clues to underlying, and, sometimes unconscious, aspirations of the judges."

The common law doctrine of privity of contract is declared to be inadequate for modern business needs and the efforts of Parliament and equity to avoid it are said to be only spasmodic and occasional and uncertain.

The chapter upon Remedies for Breach of Contract is inadequate. Six pages are devoted to the remedy of specific performance and two paragraphs are devoted to the doctrine of mutuality.

The purpose of the authors to justify or excuse the vagaries of the law of contracts by a reference to their history is admirably executed. The book contains a reasonably adequate history of the law of contracts from the time when the royal judges "could not be troubled with private agreements" to the latest writing of Winfield, Williston, and Goodhart.

WALTER H. HITCHLER