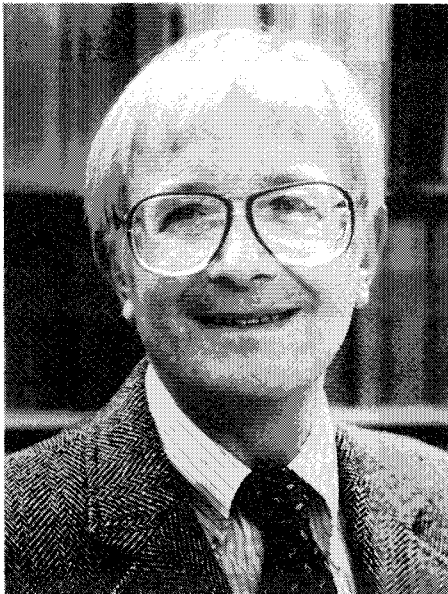


Contracts in Context: The Cheerful Realism of Stewart Macaulay

by Paul Reidinger



Professor Stewart Macaulay

For Stewart Macaulay, Malcolm Pitman Sharp Professor at the University of Wisconsin Law School, teaching the law of contracts is not simply a matter of exposing students to a certain body of legal doctrine. Instead, it is primarily a means to make the point to first-year students that law, whether contract or any other kind, is a creature of the society that created it and cannot properly be understood without reference to that society.

"We try to put contract problems in their full context," says Macaulay. By "we" he means he and seven of his colleagues—the so-called "Gang of Eight"—whose teaching and research examine the

complex links between law and society. Their efforts have won wide notice and have set off some debate among legal educators. "We want people to see all that's involved."

The emphasis on context is what distinguishes Macaulay's Wisconsin Contracts Materials from more conventional contracts casebooks. Those materials, in use in one form or another at the Law School since the late 1970's, grew out of a supplement Macaulay had prepared for

contract disputes are regularly settled by appellate courts. Also, when a student reads an appellate decision, there is a danger he will think that a court could reach one right decision just by following the rules. That isn't so. Courts often know where they want to end up and will use the facts and law—helpful facts and law—to get there. Our point is that to understand why a decision comes out the way it does, you have got to know what else is going on. You have got to see the context."

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use with a standard casebook he was assigning his classes in the early 1970's.

"Students came to me and said, 'You know, the supplement is swallowing up the casebook,' " he recalls. "And they were right."

The materials comprise cases, of course—many of them quite recent—but also a variety of items not found in other casebooks: relevant newspaper and magazine articles, scientific explanations and diagrams, lawyers' briefs, transcripts of conversations with litigants. They are there not to entertain—though often they do that—but to give students a better idea of what is going on in a case, what the real issues are.

"It's important to remember that most contract disputes never come to trial," the professor notes, "and that even those that do seldom end up on appeal. So, right off, students can get the mistaken notion that

But context, for Macaulay, means more than simply knowing what the lawyers said in their briefs, or what embarrassing details the New York Times discovered about a litigant's quality control. Context means looking at the law as a whole: of trying to see what it is and can do; and, more important, of what it isn't and can't do. In Macaulay's view, many new students bring to law school unrealistic ideas of the law and the legal system.

"They have a false picture of the legal process," he says. "Many of them come here in search of an illusion. They think they'll get a law degree and then go out and bring justice and right to the world. Unfortunately it isn't that simple. I'm not saying you shouldn't try to reach your ideals, and maybe you'll have some success in doing so. But it's just naive to think that one person with a law degree has the same chance as a huge corporation with

two hundred attorneys and the resources to finance major litigation. It isn't enough to know a few rules.

"The point I try to make—and it isn't easy because it doesn't allow for much student romanticism—is that the law is really a set of tools. An imperfect set, certainly, but the only one we have. You can change things with those tools, but only slowly, and never as much as you want. Lawyers nibble away trying to make things better. It doesn't happen through revolution, and I don't think it will—not in my lifetime, anyway. But you can work within the system and bring about some reform, provided you know how the system works. In fact, such an understanding is itself likely to spur reform. That's why I think you have to know the doctrine of consideration even though I think it's a joke."

This is pretty blunt talk. But Macaulay thinks it's crucial to disabuse beginning students of their romantic notions of law, even at the risk of being called cynical.

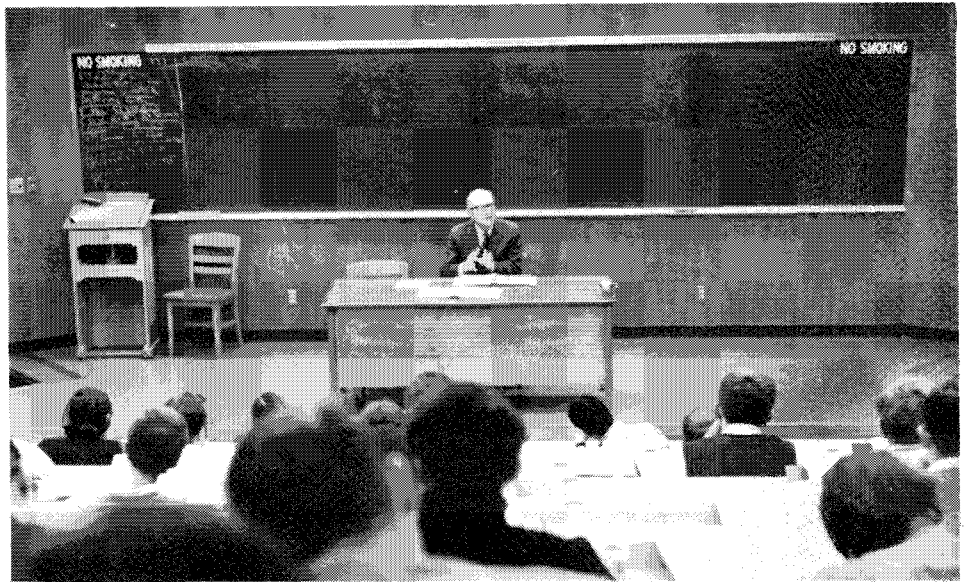
"I'm not cynical," he says. "I'm realistic. There's a difference. It's true that I think the system is in many ways misleading: everyone talks about rights and ends up cutting deals. I think that's true; that's the way our system works, and it's just being realistic to say so. But I'm also optimistic because I believe lawyers can—and do—change things for the better. We'll never make things perfect, of course, but there can be improvement. I think that's a worthy goal—more desirable than, say talking about smashing the system up and then having to replace it with something else."

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Macaulay is realistic, too, about the role played by law schools in training new lawyers; he cautions that there are sharp differences between law school and law practice.

"Law school teaches people to think like law professors," he says. "There is some correlation between law school and law practice, of course, but we've got to be careful not to overstate it. The doctrinal games have a certain usefulness, but I don't want to teach people things they'll have to throw out after a half an hour of practice."

Macaulay's students may laugh at his pointed jokes, and squirm a bit as he repeatedly turns upside down their preconceptions about the law, but it's doubtful that once they reach the world of law practice they'll throw out much of any thing he taught them.



Notes on Alumns

News of **Webster Woodmansee** ('37) surfaced in a "notable and quotable" feature in *The Milwaukee Journal*. Webster is editor, publisher and owner of the Daily Reporter, one of the nation's 80—and Wisconsin's only—exclusively public notice newspaper. Webster has "an extensive history of civil rights and civil liberties activism," and believes his paper is an "important extension of people's right to know." His commitment to free speech has further prompted him to sponsor civil liberties journalism awards in conjunction with the Center for Public Representation, where Louise Trubek is Co-Executive Director.

Irving Gaines ('47), principal shareholder in the Milwaukee law firm of Irving D. Gaines, S.C., has been named Vice Chairman of the Video Equipment Committee of the American Bar Association Section of Economics of Law Practice.

After 37 years with the University of Michigan Law School as an assistant in research and a research associate in Law, **Elizabeth Gaspar Brown** ('52) last Spring announced her retirement. At Michigan, Elizabeth initially worked to research Michigan legal histories for professors at the University; she later produced three of her own volumes on American legal history, federal taxation and air law. She has also distinguished herself as somewhat of an authority on the history of Waukesha County.

Roy Mersky ('52/'53), a Professor of Law and Director of Research at the University of Texas School of Law, reports that he was appointed Chairman of the Library Committee of the American Bar Association Section of Economics of Law Practice.

Lawrence Coles, Jr. ('57), Co-Chairman of the Management Committee and the Chairman of the Business Law Department of McBride, Baker and Coles of Chicago, has been elected to the Board of Managers of the Chicago Bar Association.

Robert Owen ('64), a Minnesota-based attorney specializing in preventative and containment product liability, has joined the Milwaukee firm of Rheinhardt, Boerner, Van Deuren, Norris and Rieselbach, S.C., where he will serve as a partner in charge of the firm's newly established upper-Midwest division.

Steven Feurer ('74) has been promoted to the position of Senior Manager in the Milwaukee firm of Peat, Marwick, an international public accounting firm.

Clare Cherasky ('83) is Director of Operations at Proyecto Libertad—Project Liberty—a non-profit corporation founded in 1981 to "provide legal services to Central American aliens who have been detained by U.S. immigration authorities for entering the country illegally." The Project is based in Harlingen, Texas.