

12-15-2009

A Restatement of Contracts

Cree-L Kofford

Follow this and additional works at: http://digitalcommons.law.byu.edu/life_law_vol2



Part of the [Legal Profession Commons](#)

Recommended Citation

Kofford, Cree-L, "A Restatement of Contracts" (2009). *Vol. 2: Service & Integrity*. Paper 6.
http://digitalcommons.law.byu.edu/life_law_vol2/6

This Be Ethical is brought to you for free and open access by the Life in the Law at BYU Law Digital Commons. It has been accepted for inclusion in Vol. 2: Service & Integrity by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

A Restatement of Contracts

Cree-L Kofford

Recently, I was visited by a young lawyer who wanted to discuss his decision to leave the law. He reviewed his reasons including the endless nights and weekends at the office, the pressure of balancing the demands of several matters at the same time, the frustration of satisfying the requirements of multiple clients, and the difficulty of pleasing his employer. He ended with this statement: “I’m tired of the rat race, and I want nothing more to do with the jealous mistress.” When he finished we talked for a while. I hoped that my encouragement to rethink his decision would be of value. Among other things, I told him that I know of no other profession or occupation so grand and glorious as the law. It is as broad as the horizons of the world, and its depth is nearly endless. Within its majesty, there is a place for almost every kind of person—each with different interests, abilities, and desires. Where else can be found a profession or occupation that equally honors someone who thrives in a probate practice, hard-driving business litigation, or the nuances of the tax code, works as a general counsel, or fills the role of rainmaker? The list of differences could be compounded almost endlessly.

In addition, consider the variety of choices that the law affords in which to conduct a practice. From the biggest of the big to the smallest of the small, all are welcome and respected—from private law firm to government employment, with dozens of options along the way. Like the gospel, the law is unlimited in recognizing individual abilities and desires. Where else can be found a profession or occupation that affords the multiplicity of individual choices found in the law? Even as life changes, and needs and interests change with it, law provides the opportunity to change how one practices. From the courtroom to the boardroom or from the schoolroom to the office are only a few of the available choices. I told him that I believed he was wrong in blaming the law for his “rat race.”

The law is an assortment of rules and regulations by which civilized societies govern their conduct. It is neither a jealous mistress nor a permissive one. Indeed, it is genderless. The difficulty is not with the law—it is with the way in which it is practiced. Practice may be a jealous mistress or a jealous master, and it indeed may be a rat race, but it is the individual practitioners who are responsible for those circumstances, not the law. Practitioners choose their way of conducting a legal practice, and they have the power to change it. That change is possible only when they fully understand the difference between the law and the practice of the law. How attorneys choose to engage in the magnificent profession of the law is fully within their control, crafting a practice of any dimension, any type, and any demand. Thus, it becomes axiomatic that with complaints about the demands of the law the subject is really a serious misunderstanding of where the difficulty resides. That misunderstanding may keep lawyers from ever resolving the issues unless they focus on the cause of those issues. That focus leads them to look at their practice—and as I have earlier said, only the individual practitioners can change that practice to meet their needs, abilities, desires, and circumstances.

The law, like the Lord, knows we are individuals unique among all individuals, and the law can provide for those individual differences. For some, the well-publicized route of law school, law review, court clerk, and corner office in the “best and biggest” firm, in the best and biggest city, may be exactly right. For others, an Atticus Finch–like practice in a rural community may be right. For some, more is better; for others, it comes down to what Sabrina said to Linus in the movie *Sabrina*: “More isn’t always better. Sometimes it’s just more.”¹

All of these opportunities are provided by the law. The law does not offer a “one size fits all” opportunity. Rather, it seeks to meet our abilities, our interests, our desires, and our circumstances, for only then are we able to contribute to its continued vibrancy. At one point in your life, under circumstances existing at that moment, you may find that a heavy commitment of time, attention, and energy is consistent with your desires. But add a husband or wife, and a child (especially one that is physically or emotionally challenged), and you may determine that a different commitment is needed. The law stands ready to accommodate all of these situations and embraces each with equal acceptance. Some would have you believe that the “best and brightest” all follow a particular course. That is simply not accurate. For some of the best and brightest, any one of the many alternative options is the best course. All choices are more a function of (1) what you are, (2) what your circumstances are, and, therefore, (3) what your desires are than of your (a) grade point average, (b) class standing, or (c) what someone else thinks you can or ought to do.

The simple fact is that you have the ability to design your own practice. All that is needed if you are to be successful is that your design

is true to who and what you are and, as we will discuss next, what your circumstances require.

As lawyers who are members of The Church of Jesus Christ of Latter-day Saints, you have certain factors that you must consider before you design your practice. You, more than any other lawyers on earth, know what the purpose of this life is. You are well aware of the threshold doctrine announced in the Pearl of Great Price where we learn: “For behold, this is my work and my glory—to bring to pass the immortality and eternal life of man.”² You also know that the New Testament establishes that to obtain eternal life you must know God and Jesus Christ, whom God has sent,³ and that knowledge requires that you obey the commandments.⁴ The Prophet Joseph Smith put all of this into perspective when he taught:

Here, then, is eternal life—to know the only wise and true God; and you have got to learn how to be Gods yourselves, and to be kings and priests to God, the same as all Gods have done before you, namely, by going from one small degree to another, and from a small capacity to a great one; from grace to grace, from exaltation to exaltation, until you attain to the resurrection of the dead, and are able to dwell in everlasting burnings, and to sit in glory, as do those who sit enthroned in everlasting power.⁵

If you are to succeed, all of this doctrine together with all other doctrine that it encompasses becomes part of that which you must consider as you design your practice.

You will want to keep in mind that you have already entered into contracts that will affect other contracts you make and that you may contract away. You are familiar with each of these contracts although you are more accustomed to referring to them by names such as “oath and covenant,” “commandments,” “obedience,” or similar names. But, in reality, they are all based on the very simple principles of contract law that we call “offer and acceptance.”

You will remember when you entered into that holy house and in a solemn moment raised your arm to the square and agreed to live the law of consecration. You consecrated for a sacred purpose your time, your talent, and all with which you had been blessed or with which you will be blessed. In that moment, you promised your God all that He might require. Included in that promise was the covenant that you would live in such a way as to magnify your priesthood or your womanhood so as to be worthy and able to render such an offering to the Lord as He might require if and until that time when He requires all. Since that moment, you have received the benefits of your contract. You have received blessings, and because of it you will continue to receive such blessings.

As you now prepare to offer your time, talent, and energy to the practice of law you are designing, if you are to succeed you must recognize the full consequence of that to which you have already committed.

As with all other things with the Lord, certain aspects of the contract are unique to you. As a result, the full extent of its terms can only be known through the power of the Spirit received through the process of prayer.

Sometime later, most of you entered into another contract. Those of you who have not yet will, in the Lord's own time, have that opportunity. In a special place in His holy house, you knelt at an altar and under the guidance of one holding the holy sealing power, which he received under the authority of a prophet of God, you participated in the sacred sealing ordinance.

If you are a man, you took your sweetheart, kneeling across the altar, as your wife. You promised to love her, cherish her, protect her, and care for her. You also promised to provide righteous priesthood leadership and to accept her as a full and equal voting partner in your marriage partnership.

If you are a woman, you gave yourself to your husband and you promised to love him and to sustain and support him. You also promised to be a full partner in the marriage with all of its rights and responsibilities.

Together you promised the Lord that you would multiply and replenish the earth, that you would, in so far as your physical or mental abilities were not impaired, love and raise children unto the Lord. Incorporated by reference into your contract were all of the provisions relating to parents and children including, but not limited to, those set forth in the 68th section of the Doctrine and Covenants, which among other things requires:

And again, inasmuch as parents have children in Zion, or in any of her stakes which are organized, that teach them not to understand the doctrine of repentance, faith in Christ the Son of the living God, and of baptism and the gift of the Holy Ghost by the laying on of the hands, when eight years old, the sin be upon the heads of the parents.⁶

As you determine the nature of the practice you will conduct, you will, of course, want to consider the time, energy, and attention requirements that you have already contracted to give.

Jointly, the two of you also agreed and promised that you would work together with mutual effort to gain eternal life. Unfortunately, the depth of this doctrine is not well understood by many members of the Church. Expressed in its simplest terms in section 131 of the Doctrine and Covenants we learn:

In the celestial glory there are three heavens or degrees;
And in order to obtain the highest, a man must enter into this order of the priesthood [meaning the new and everlasting covenant of marriage].⁷

That doctrinal pronouncement was followed a short time later by D&C section 132, which is the crowning revelation of a long list of revealed

truths received by the Prophet Joseph Smith. Inherent in the doctrine is the simple fact that gaining eternal life requires a faithful and spiritually mature husband and wife. Thus, as mutual partners, a husband and wife each has the responsibility of doing everything within their power to ensure that the other partner qualifies for this great reward.

The impact of this doctrine on lawyers is enormous, for as a husband and wife design his or her law practice, they will want to do so with the responsibilities each has to help the other develop so as to enable both to enter into the celestial kingdom. The impact on an unmarried man or woman is no less profound and in one sense has at least one added dimension. Thus, the unmarried lawyer must design his or her practice to allow for the finding of an eternal companion, and then nurturing and working with that companion to ensure that as a couple they qualify for eternal life.

Now, add the one additional thought that you are, by contract, in a full 50-50 partnership where the approval of both partners is required for any decision that might in any way impact the partnership. Among other things, that means that a husband or wife in the process of defining what his or her practice will be must work to see that the companion is made aware of the plan and considers what will be required in time, energy, and emotion. This contractual provision is all too often overlooked in those marriages where the husband “takes care of earning the living” and the wife “takes care of raising the children.” While there is some doctrinal validity to this arrangement, carried to its ultimate conclusion, it throws the partnership out of balance and runs the risk of depriving both of achieving the benefits of Christ’s work and glory. As a parting thought on this subject, let me remind you of the legal doctrine of informed consent. How can either the husband or the wife give approval to the designed practice if they do not know about it and understand it?

One additional time I remind you that all of these issues present decisions unique to you that must be determined by the partnership in mutual prayer and mutual listening for the answer. I believe this second element to be a much more difficult one than the first. Asking is fairly easy. Listening is hard. As President Boyd K. Packer said over 20 years ago, “The Spirit does not get our attention by shouting or shaking us with a heavy hand. Rather it whispers. It caresses so gently that if we are preoccupied we may not feel it at all.”⁸

Let me now raise a question that I believe is running through the minds of many of you. After contemplating all of this, how am I possibly going to be able to compete against others equally bright and capable but who are not subject to the same contract provisions to which I am a party? I believe you are correct in raising the question. All of your professional life you will be facing other attorneys who are just as bright as or brighter than you are. Given all that I have asked you to do, there is not any way, logically, you can serve your God, His church, your wife (or husband),

and your family and still compete unless you have help. That help in the form of the Holy Spirit is exactly what you can have if you live and practice worthily.

We could spend hours on this subject, but the truth is, it is all summarized in one, magnificent scripture. That scripture holds the key of professional success, among other things. It is found in section 88 of the Doctrine and Covenants. As you read it, I urge you to pay particular attention to the qualifier that is so clearly set forth:

And if your eye be single to my glory, your whole bodies shall be filled with light, [in spiritual matters the word “light” is frequently used in connection with intelligence] and there shall be no darkness in you; and that body which is filled with light *comprehendeth* all things.⁹

Because I have already traveled the road most of you are just beginning, let me assure you that you can have the blessings of comprehending all things in your practice. I witness to you that time and time again I have experienced success where my own efforts alone would have brought failure. That success came because in an instant of revelation I was able to “comprehendeth all things.” May that be your blessing as you continue the long line of those who bring credit to an incomparable profession.

This address was given at the J. Reuben Clark Law Society Conference at Georgetown University in Washington, D.C., on February 17, 2006.

Cree-L Kofford received his JD from the University of Southern California in 1961. He served as a member of the Second Quorum of Seventy 1991–94 and First Quorum of the Seventy 1994–2003. He is currently an emeritus General Authority.

Notes

1. From the movie script for *Sabrina*, 1995, <http://www.imdb.com/title/tt0114319/quotes>.
2. Moses 1:39.
3. See John 17:3.
4. See 1 John 2:4.
5. Joseph Fielding Smith, comp., *Teachings of the Prophet Joseph Smith*, Salt Lake City: Deseret Book Co., 1976, pp. 346–47.
6. D&C 68:25.
7. D&C 131:1–2.
8. Boyd K. Packer, “The Candle of the Lord,” *Ensign*, January 1983, 51.
9. D&C 88:67 (emphasis added).