

**BOOK REVIEW: STEVEN W. FELDMAN'S\***  
**TENNESSEE PRACTICE SERIES CONTRACT LAW AND PRACTICE**

**AMBER BECTON\*\***

Steven Feldman has authored the authoritative treatise on Tennessee contract law. The two-volume work is part of the Tennessee Practice Series published by West. The volumes were first published in 2006 and are updated yearly with pocket parts. The treatise is organized into thirteen chapters, beginning with the basics of contract law and progressing into more complex topics, including an in-depth discussion of government contracts. Each chapter is subdivided into text and forms. The text is succinct and easy to understand, and the forms cover a broad spectrum of practitioner needs.

One of Feldman's goals in authoring the treatise was to create a thorough discussion of relevant law that was easily readable and geared towards helping practitioners find quick answers for clients. Another of Feldman's goals was to help practitioners develop strategies for appeals by providing a neutral discussion of issues that are not well-settled law in Tennessee. Thus, the treatise provides numerous comparisons to out-of-state authorities to place Tennessee law in context and help illustrate current trends in contract law.

Feldman's treatise has already been cited by several courts. Recently, the treatise was cited by Tennessee Supreme Court Justice Malcolm Koch in his concurrence in *Overstreet v. TRW Commercial Steering Division*<sup>1</sup> discussing fiduciary and confidential relationships. The Sixth Circuit has also cited Feldman's treatise in discussing equitable estoppel in Tennessee.<sup>2</sup> In *Rode Oil Co. v. Lamar Advertising Co.*,<sup>3</sup> the Tennessee Court of Appeals cited Feldman's treatise in discussing Tennessee's

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\* J.D. 1978, Vanderbilt University. Feldman is an attorney with the U.S. Army Corps of Engineers in Huntsville, Alabama. In addition to the treatise discussed in this review, Feldman is the author of *GOVERNMENT CONTRACT AND AWARDS: NEGOTIATION AND SEALED BIDDING*, *GOVERNMENT CONTRACT GUIDEBOOK*, and several articles which have appeared in the Tennessee Bar Journal, the Tennessee Law Review, and the Memphis Law Review.

\*\* J.D. 2009, The University of Tennessee College of Law.

<sup>1</sup> *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 641-42 (Tenn. 2008).

<sup>2</sup> *Sparton Tech., Inc. v. Util-Link, LLC*, 248 Fed. Appx. 684, 689 (6th Cir. 2007).

<sup>3</sup> *Rode Oil Co. v. Lamar Advertising Co.*, No. W2007-02017-COA-R3-CV, 2008 WL 4367300 (Tenn. Ct. App. Sept. 18, 2008).

distinction between unilateral and bilateral contracts and its discussion of what constitutes consideration.

Feldman considers one of the treatise's greatest strength to be its user-friendliness. The treatise includes "Practice Pointers" sections at the end of each chapter. These sections provide a brief overview of the major concerns for practitioners discussed in the corresponding chapter. For example, Feldman's Practice Pointers section on consideration informs the Tennessee practitioner that generally, modern courts are unlikely to decline to enforce a contract for lack of consideration. The Practice Pointers sections also discuss underlying policy—in the consideration example, the UCC's desire to encourage contractual relationship and the rule of implied consideration. However, the consideration Practice Pointers section also discusses two instances where an argument for lack of consideration might succeed: non-competition agreements and situations where consideration is excessively low. Feldman concludes this section with a brief overview of the issues surrounding Tennessee's promissory estoppel rule, which is more thoroughly covered in several sections of the chapter. Feldman's practical considerations for bringing claims for promissory estoppel, including the potential response of judges and juries to such claims, are particularly helpful in this discussion.

The consideration Practice Pointers section is only a few pages long, but in this brief space, Feldman manages to succinctly and accurately describe the critical issues regarding consideration. The Practice Pointers sections also contain helpful cross references to related sections. As a result, the Practice Pointers sections are an invaluable starting point for research.

The text of the treatise is easy to read and provides a wealth of valuable information. Feldman characterizes the text as honest and objective, and where Feldman expresses an opinion, he distinguishes between his opinion and the state of the law. For example, when discussing substantial performance, Feldman encourages the Tennessee Supreme Court to consider a more modern and flexible view of the doctrine, but references cases that adopt the traditional view. Feldman critiques Tennessee's stance on issues if he feels the law should be different, and he offers helpful arguments for practitioners to offer before the courts. For example, in discussing promissory estoppel, Feldman devotes an entire section to critiquing the doctrine's lack of clarity in Tennessee law. He points out areas where Tennessee courts have adopted conflicting doctrines, and notes that the issue has been unresolved by the state supreme court. Additionally, he points out that Tennessee courts have declined to define the elements of promissory estoppel, such as with reasonable reliance. Feldman also critiques Tennessee law on topics such as conditions precedent, implied contracts, and equitable estoppel.

Another strength of the treatise is the comparisons to other states, especially where Tennessee law is ambiguous. For example, Feldman goes into detail in discussing the treatment of promissory estoppel as a consideration substitute in other jurisdictions because that use of promissory estoppel is unclear in Tennessee. He points out that some states adopt this doctrine while others do not, and provides relevant cases in the footnotes. Feldman then points out some conflicting views in Tennessee and speculates as to when a Tennessee court may potentially adopt that doctrine.

In these instances, Feldman does an excellent job of identifying issues for the reader and discussing the law of other states, enabling a practitioner to argue either side of the issue. Feldman's treatment of conflicting views is also notable in his discussion of the reasonable expectations of the insured doctrine. Feldman devotes a section to introducing the concept, which provides that in insurance contracts, the terms of the contract must be interpreted as an unsophisticated party would understand them. He succinctly states the several public policy reasons for states to adopt the doctrine and outlines various positions of other states. Feldman then spends the next two sections of the treatise presenting arguments for and against Tennessee's explicit adoption of the reasonableness of the insured expectation. In his section outlining opposition to the doctrine, Feldman points out that the standard in Tennessee is not the reasonable expectation of the insured, but rather the reasonable construction of the contract. Feldman also points out that the general rule is that contracts are interpreted and enforced as written, and that the adoption of the reasonable expectations doctrine interferes with the right of parties to contract. Immediately after this section, Feldman presents the other side of the argument: that the reasonableness of the insured doctrine should be adopted in Tennessee. He points out that Tennessee cases have mentioned the doctrine before, fostering the argument that Tennessee has impliedly adopted the doctrine. He also points out that while Tennessee courts occasionally treat insurance contracts as any other contract, often the courts single out insurance contracts for special treatment—for example, by finding that insurance agreements must be construed against the insurer when determining insurance coverage. Feldman also brings out the public policy rationale for adopting the doctrine in order to protect an unsophisticated party from falling prey to language buried in the insurance contract.

A unique feature of this treatise is Feldman's extensive chapter on government contracts, which deals with both state and federal contracts. Feldman begins the chapter with a helpful explanation of where to find rules and regulations concerning government contracts, as well as a general description of important government agencies. Feldman also describes the interplay and differences between state and federal government contracts, as well as differences between Tennessee city, county, and state government contracts. The author highlights both the sealed

bidding process for procurement as well as the requirements for service contracts. Feldman also provides an in-depth discussion of the sealed bidding process, as well as a critique of the process. In general, Tennessee bidding requirements are more strict than the federal requirements. He points out that, in Tennessee, bidders are required to submit bids that are signed in ink, a more stringent requirement than federal requirements that allow for typed or electronic signatures. Feldman also points out Tennessee's overly strict policy on not accepting late bids, suggesting there is a better way to strike a balance between public policy and allowing the process to be open to vendors. While sealed bidding may be used for some service contracts, the majority of service contracts are awarded under different processes. Feldman outlines each of these processes, requests for proposals, competitive negotiations, and alternative competitive procurement clearly, specifying the pros and cons of each process. Finally, towards the end of the chapter, Feldman details the protest procedures that a bidder or vendor can go through to address grievances with the procurement procedures.

There are few weaknesses in the text of the treatise. Feldman noted that the text lacks truly user-friendly supplement. He would prefer only the new or edited portions to be reprinted in the pocket part. Currently, when a section is updated, the entire footnote or paragraph is reprinted. However, this is a minor flaw; indeed, in some instances, reprinting the entire paragraph makes it easier to place a section in context without flipping between the pocket part and main text.

Another immensely beneficial feature of this treatise is the forms section. For each of the thirteen chapters of text, Feldman provides a variety of helpful forms. The forms sections range from entire provisions to drafting guides and checklists. The forms sections are often subdivided into multiple subsections, making it easier to navigate. There is a general form for almost any situation, as well as many forms that are specifically adapted for a variety of circumstances.

Feldman has done such a superb job in writing the treatise that it is impossible to come up with any significant weaknesses. The work strikes an excellence balance between thoroughly covering the entire spectrum of contract law in Tennessee while still maintaining a high degree of readability and user-friendliness. In an interview with the author of this review, Feldman stated he wrote the book from the perspective of what he would want to read. As a result, he started with the very basics of contract law and built his treatise from the ground up, writing clearly enough for a novice to understand, but in-depth enough to be informative to an experienced practitioner. The result is a well-written and informative treatise, essential for any Tennessee civil law practitioner.