

The Law of Modern Commercial Practices (Book Review)

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BOOK REVIEWS

THE LAW OF MODERN COMMERCIAL PRACTICES. By Frederick A. Whitney.† Mount Kisco, New York: Baker, Voorhis & Company, 1958. Pp. xxix, 1,174. \$12.00 (Student Edition).

It is only proper to begin a review of this work with a reference to the obvious truth implicit in a statement of approach contained in the author's preface. Professor Whitney observes that "commercial transactions" is a single subject of the law, notwithstanding its many facets. His book therefore deals with all the phases which may ordinarily arise in the handling of a commercial transaction from start to finish. The moral is that sales, negotiable instruments, suretyship, bankruptcy and the like are not watertight compartments, but technical conveniences, and to a knowledge of one, knowledge of the others is indispensable. He who would be a knowing lawyer to the business world must take all commercial law for his province.

This statement of basic concept, which is similar to the approach taken by the draftsmen of the Uniform Commercial Code, has been followed faithfully by the author despite the wide field which he covers.

He has admirably integrated not only the subjects of Sales and Negotiable Instruments, but also that part of Bailments dealing with pledges. Briefly he also covers the rights, duties and liabilities of carriers and warehousemen, consignments for sale and bulk sales, and something of Suretyship, Commercial Insurance and Secured Transactions. To round out the scope of "commercial law" some space is devoted to creditors' rights and remedies, including the subject of bankruptcy.

The principal problems he solved were the method by which these various subjects should be integrated and the order in which they should be presented. Treatment of the sale transaction, from the simple and direct to the more complex and involved form, suggested the pattern of integration.

Since the primary, if not the only purpose of making a sale is to transfer the ownership in property, very early in the book is presented a thorough treatment of this subject. This suggests the forms of payment for such transfer: there follow chapters on negotiable promissory notes and bills of exchange. Inasmuch as there are some important differences, legal and commercial, between the two, a sep-

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arate chapter is devoted to each. While these subjects are still fresh in the reader's mind, chapters are inserted at this point on the "Holder in Due Course" and on defenses and burden of proof, the material in which would apply as well to bills of exchange as to promissory notes. By this time enough has been covered in Negotiable Instruments to warrant a switch back to Sales and a treatment of Warranties.

Next in order is the chapter on "Unsecured Creditors' Rights and Remedies"—"unsecured" because the rights and remedies of secured creditors are discussed later under the heading of "Secured Transactions." Bankruptcy is deemed of sufficient importance to deserve treatment in a separate chapter. Following that, a return is made into the realm of Negotiable Instruments, closing out that subject with chapters on "Presentment for Payment, Notice of Dishonor and Protest" and "Discharge."

Returning again to the field of sales, a chapter is devoted to special types of sale transactions, such as sale or return, sale on approval, sale on memorandum, consignment for sale, auction sale, bulk sale, requirement and output sales. This is followed by a chapter on sales by a person not the owner or by one who has a voidable title, involving discussion of the innocent purchaser for value, his rights and protection, wrongful sales or pledges by a factor, by a seller left in possession of sold goods and by a "skip-state" conditional vendee.

Documents of title often have much to do with the transfer of ownership in goods. The subject is so important as to merit a chapter of its own. No treatise on commercial law and practices would be complete without material on two very important assurances against loss, namely, suretyship and commercial insurance. Two chapters are set aside for that purpose.

The great bulk of commercial transactions today is conducted on credit. This means that someone must finance the deal. The second part of this book is given over to discussing the subjects of financing the sale transaction and secured transactions.

The keynote of the book is thoroughness; the treatment is realistic and scholarly. It includes frequent references to the Uniform Commercial Code and its rules, particularly when they are at variance with the rules of the existing law on the subject. The excellent set of forms at the end of the text is also extremely helpful in the illustration of text materials.

In view of the intense interest which exists today in the area of financing sales and secured transactions it is somewhat regrettable that the author did not devote more space to this topic. His coverage however is sufficient to highlight the basic problems and guide the reader safely through the complexities of accounts receivable financing, factoring, field warehousing and the myriad other devices which have come in with the tremendous expansion and diversity of business activities in recent years.

All in all the work is a mine of information, lucidly conveyed and agreeably presented. What cannot be found in the text may be found in the voluminous references and the sources to which they point. Professor Whitney has long been renowned for his production of authoritative works on commercial law and this book is no exception. It is an invaluable and interesting guide to student, teacher and practitioner to and through the labyrinth of modern commercial law.

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CASES AND MATERIALS ON EQUITY. By Zechariah Chafee, Jr. and Edward D. Re. Fourth Edition, Brooklyn: Foundation Press, 1958. Pp. xxxi, 1267. \$12.50.

This edition of one of the most widely used equity casebooks is a fitting successor to its illustrious predecessors. However, while this edition evidences a thorough and painstaking effort by Professor Re, it is not a radical revision of the previous edition. Nor does the scope and organization of this edition represent a substantial departure from the last.

Thus this review will be confined to a consideration of the more significant additions and deletions in the new edition, save for a minor reference to the basic approach of the work in general and not to this edition in particular.

The place of equity in the law school curriculum is frequently the subject of reappraisal. Some favor its abolition;¹ some follow the merger of law and equity to the point of teaching equity "in conjunction with the common law courses wherein it plays its part";² some retain the course but garnish it with the title of "Remedies" or the more descriptive one of "Equitable Remedies."

The above is all apropos of the scope and organization of the subject work. I am of the opinion that the course should be retained in the curriculum and am not overly concerned with the title given it in the catalogue. I find the organization and scope of this casebook to be in the main an excellent vehicle for the presentation of a course in equity, as I conceive it should be presented, with the following reservation. The two most powerful weapons in equity's arsenal are

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¹ Orfield, *The Place of Equity in the Law School Curriculum*, 2 J. LEGAL ED. 26, 35-40 (1949).

² Lee, *A New Role for Equity*, 10 J. LEGAL ED. 338, 339 (1958).