Outline of the Law of Sales (2nd Ed.) (Book Review)

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generation of jurists was accustomed to treat statutes as obnoxious growths. on the body of the law and to attempt an analysis of the legal system, without regard to statutory change. This made the task easy for the teacher and resulted in a one-sided view of the law and the increasingly frequent necessity of explaining away what appeared to be wrongly decided cases. A first-year student has difficulty seeing the relation between Quia Emptores and the modern law of Real Property. He shies at de Donis and is only mildly tolerant of the Statute of Frauds. Yet every Real Property teacher will tell you that a clear understanding of these statutes is essential for the realization of some of the difficulties involved in the common law doctrine of estates. In Chapter One the authors of this case-book have adequately met this problem and have given a lucid introduction to the study of Real Property from which students will readily benefit. Again, by giving actual quotations from ancient statutes and common law writers, they have not only clothed their views with authority but have attempted to introduce the student to the common law psychology. It is suggested that this is of extreme value in view of the fact that to a large extent technical phases of the common law require certain habits of mind for their complete mastery.

A first-year student must learn to find his way through the labyrinth of estates, before he can begin properly to estimate the current social value of our existing Real Property Law. At best, Real Property is one of the most difficult courses in the curriculum of the law school and it must remain so as long as the teacher and the student are unwilling to do the necessary spade work in historical research. It is for this reason that a first-year book which gives a good historical account of the developments of Real Property Law, is of untold value to both teacher and student.

In subsequent years emphasis can be brought to bear upon the fact that the common law doctrine of estates is not necessarily the best system of land tenure that can be devised by the human mind, and that it grows out of the accident of the feudal system as it developed in England. At such time, the students can also be taught to have a better appreciation of the function of legislation in modern Real Property Law. But before we reach this point, it seems to this reviewer that a good legal, historical source book of Real Property is of great use in clearing away fundamental misconception.

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From the termination of our Civil War when Secretary Benjamin put aside the Confederate portfolio of State and left the land of the Stars and Bars to follow the more gentle pursuit of the Law as a member of the English Bar, countless works of high authority on the Law of Sales have been given to the profession. With the great works of Benjamin, Burdick, Williston and numerous encyclopedists on the library shelves the practitioner of today may
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well ask, what place there is for the present treatise. It is fair to assume
that the author has the burden of answering this cogent question and it is
but fair to say at the outset that Professor Whitney has met and sustained
this burden. The ever increasing list of judicial decisions and the very general
codification of the Law of Sales in this country amply justify Whitney's second
edition on the Law of Sales.

Professor Whitney, in the second edition of his book on the Law of Sales,
has written a text which, although intended primarily for the use of law stu-
dents, will readily find a place on an accessible shelf in the library of the
busy general practitioner. The nature and scope of his work include the fun-
damental principles of the Law of Sales defining their extent and setting forth
their limitations. It is a compact treatise on that branch of the law which
Blackstone defines as the “transmutation of property from one man to another
in consideration of some price or recompense in value,” and which the statute
defines in more modern terms as “an agreement whereby the seller transfers
the property in goods to the buyer for a consideration called the price.”

To paraphrase Philip Nichols, an erudite writer on legal subjects, in the
writing of a work upon a topic already specifically covered not only by text-
books of standard authority but by exhaustive articles in encyclopedias of
recent date, the author does not impliedly disparage the soundness or thorough-
ness of the treatment of the subject by others. It is undoubtedly the fact that
many cases involving directly or indirectly the Law of Sales are hidden away
in the reports, in such a manner almost as to escape discovery. A meticu-
lous teacher like the author who for years has taught the topic treated in his book
is bound to have discovered cases in preparing his course which the most
careful practitioner, in the limited time which he can devote to each narrow
point, may well have overlooked. The author's experience, coupled with the
fact that his work contains reference to several hundred cases on this subject,
gives to the present book real value as a digest.

The responsibility of an author who issues a textbook upon a subject
which is considered extremely controversial is indeed a grave one. The reason
for this is that the general practitioner, whether at the bar or on the bench,
confronted with a difficult problem in a debatable field often finds occasion
to fall back upon a readily available and up-to-date textbook on the subject
and errors of a text writer can thus readily be perpetuated in the brief-writer's
points or even in the opinion of the court. Grave as is this responsibility graver
still is that of the author who fails to discuss questions with a degree of full-
ness proportioned to the troubles which they may give to the student or to
the practitioner or to their aptness in applying the principles which are in-
volved. Merely to say that this responsibility has been met by the author
would be but scant praise and if we need authority to bolster up this conclu-
sion we cite to the reader Chapter XII entitled “Trust Receipts” which dis-
cusses a subject which practicing attorneys consider difficult and abstruse in-
volving, as it does, the technical application of the rules of Trusts, Sales, and
in a remote fashion, Negotiable Instruments.

The instant treatment of the Law of Sales as a whole combines a com-
plete analysis of all of the important cases together with a study of the complex
statutory law now in effect in many states by reason of the almost general
adoption of the Uniform Sales Act. In addition to the lawyer-like presenta-
tion of the case and statutory law on the subject, the writer has given consid-
erable attention and thought to our swiftly changing economic system and to
the social and historical background which give rise to the present-day trends
in the administration of this and other branches of our jurisprudence.

The decisions and the frequent statutory references are carefully inter-
woven with a thread of interesting comment and we believe that the time and
labor expended upon this effort were well spent and that it merits high praise
as a textbook, a ready reference and a complete and succinct analysis of the
New York Law of Sales.

JAMES B. M. McNALLY.

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THE AMERICAN DOCTRINE OF JUDICIAL SUPREMACY. Second edition. By
Charles Grove Haines, Ph.D. University of California Press, 1932,
pp. 705.

It cannot be too often emphasized that the American system of judicial
control of legislative and executive action is peculiarly American, both in con-
ception and practical application. Americans tend to get the idea that because
with us the Supreme Court of the United States may declare acts of co-
ordinate bodies to be unconstitutional and therefore void, similar judicial
powers are exercised by high courts in other countries. The English doctrine
of legislative omnipotence, while taught in our elementary schools, seems to
us to some extent unnatural. Almost instinctively we have come to feel that
in cases of a conflict the decision must rest with the Court, and even the
increasing number of five-to-four decisions has failed to make the average
American realize that we are governed essentially by the Court rather than by
the legislature. The advent of the New Deal, with its necessary legislative
innovations, has caused speculation as to the reasoning the Supreme Court will
apply to the constitutional obstacles that will inevitably be raised; and many
now see more clearly than ever before that in the last analysis the problem of
determining whether the New Deal will or will not stand, will be a judicial
problem, rather than legislative or executive. Every fundamental change in
our state and federal laws affecting property rights, every legislative effort to
readjust the law of the land to the pace of changed economic conditions, runs
the judicial gauntlet.

This volume renders an important service by giving a clear and lucid
account of the relations between the judiciary, the legislature and the executive
in countries other than our own, and by comparing these relations with the
American doctrine of judicial supremacy. Perhaps nowhere so clearly as in
the United States has the Court secured so large a measure of control over
domestic affairs and so important a veto power over legislation, both state
and national. There is a familiar note in the protest expressed as early as 1784
against the assumption by the Courts of powers here under consideration: “The