

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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OUTLINE OF THE LAW OF SALES. Second edition. By Frederick A. Whitney.
Brooklyn: St. John's University School of Law, 1934, pp. xix, 309.

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

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 students, 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 fundamental 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 textbooks of standard authority but by exhaustive articles in encyclopedias of recent date, the author does not impliedly disparage the soundness or thoroughness 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 meticulous 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 fullness 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 involved. 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 conclusion we cite to the reader Chapter XII entitled "Trust Receipts" which discusses a subject which practicing attorneys consider difficult and abstruse involving, 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 complete 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 presentation of the case and statutory law on the subject, the writer has given considerable 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 interwoven 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.

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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 conception and practical application. Americans tend to get the idea that because with us the Supreme Court of the United States may declare acts of coordinate 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