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Book Review. Whitney, F. A., Modern Commercial Law and Practices

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BOOK REVIEWS

MODERN COMMERCIAL LAW AND PRACTICES. By *Frederick A. Whitney*. Baker, Voorhis & Co., Inc., Mt. Kisco, N.Y., 1959. Reprint (\$25.00) 1175 pages.

Professor Whitney's recent treatise clearly demonstrates that any proper understanding of modern commercial law must be predicated upon a thorough grounding in the *commercial practices* which mark the distribution of goods in modern society. With this thesis firmly in mind, the author has undertaken the formidable task of combining a critical examination of the pertinent rules of law, and their practical application in commercial settings generated by the immensity and increasing complexity of the present day marketing process. To accomplish this, the author adopts the concept that "commercial transactions" is a single subject of the law, notwithstanding its many facets and historic compartmentation into Sales, Negotiable Instruments, Security Transactions, Bankruptcy, etc. This unitary concept also finds expression in the scope and arrangement of the Uniform Commercial Code, and in the teaching of combined courses in Commercial Law in about one-fifth of our law schools.

Once committed to the principle of the integration of legal materials as a method, there remains the troublesome problem as to which of the various subjects lend themselves to this treatment, and the order in which they should appear. I believe that Professor Whitney has approached this problem forthrightly, and with a greater degree of success than have some of his contemporaries. He has avoided the obvious subterfuge of dealing with each subject as a separate unit, and labelling the result as a kind of "integration." Nor is the treatise plagued by that other unfortunate byproduct of so many efforts to integrate diverse but related legal materials—an apparently aimless "leapfrogging" from topic to topic and from course to course. Instead, he has moved his materials in an orderly progression from the simple and direct cash sale transaction, through the more complex and involved problems of forward contracts for the purchase of goods, effective arrangements for secured credit, and the forms of payment provided. The rights, duties and liabilities of all parties to the sales transaction are next considered, with the subject of Warranties meriting separate treatment. Thereafter, several outstanding chapters deal with Remedies of the Parties, the Rights of Unsecured Creditors, Secured Transactions, and Bankruptcy. The extensive treatment accorded Suretyship and Commercial Insurance, as assurances against financial loss, accurately reflects their importance in modern commercial practice. The law of Negotiable Instruments is presented at all critical points of contact with the sales transaction, and in combined form with a

description of those commercial practices which clarify the functions of commercial paper used to channel the flow of funds, or to control shipment and payment in a given case.

The last 250 pages of the treatise is devoted to Sales Financing. It does more than parade before us such recognized security devices as the chattel mortgage, conditional sale, consignment, warehouse and trust receipts, assignment of receivables, and factor liens. Each of these subjects is extensively developed, but Professor Whitney carries us far beyond these conventional frontiers. The worth and relative advantage of each security device is rigorously examined under the impact of bankruptcy, and legislation designed for the protection of borrowers. Special sections deal with Bank Financing in the distribution of goods from producer to dealer; and with the financing of agricultural products through the phases of growth, distribution, and marketing, with particular attention to governmental financing and control mechanisms.

In this area of Sales Financing, particularly, the author's lavish use of business forms and statutory materials operates as a useful reminder that commercial law can and must be studied and practiced from materials vastly broader than a mere sampling of opinions of the Judges. And throughout the treatise, the counselling role of the commercial lawyer, with his multiple opportunities for the practice of "preventive law" at the primary activity levels, is the subject of continuing emphasis.

We have already noted that the constant preoccupation of this treatise is with modern commercial transaction. As might be expected, high priority is given to the fullest consideration of those judicial, legislative, and commercial practice guidelines which shape and control the distributive process under modern conditions. But despite this fundamentally forward thrust of the book, its value has been enhanced by the inclusion of a wealth of historical and economic background materials. These deal largely with the development of such diverse adjuncts to modern commercial practice as marketing techniques, advertising, documents of title, forms of credit, the theory of money, and national and international mechanisms for the control of money, trade, and credit. Such information is invaluable to any lawyer who assumes the role of advisor to the business community, providing him with a sense of historical direction, and an awareness of what is going on in places other than the appellate courts of the nation.

From the standpoint of format, organization, and skillful exposition, the book is an impressive demonstration of the effectiveness of the integrated approach to the law of modern commercial practices. It is our confident prediction that this treatise will find increasing favor

with teachers, and students, and practitioners alike, as they consider this complex and constantly expanding area of legal concern.

KENNETH B. HUGHES*

PRIMA FACIE CASE—PROOF AND DEFENSE MASSACHUSETTS PRACTICE SERIES, VOLUME 17. By *Richard W. Bishop*. Boston Law Book Co., 1958.

Mr. Bishop has written a well-documented book which should be of great assistance to Massachusetts lawyers. Most practicing attorneys find it extremely difficult to find the time to prepare a trial brief in anything but the most important cases. Because of the great mass of cases and precedents, the expenditure of too much time is required to search out the best cases on each point to be proved by the plaintiff or to be set up and proved by the defendant. In the opinion of this reviewer, the author has given us a book which will permit the lawyer to prepare his case, whether he represents the plaintiff or defendant, with a minimum of effort. With each type of case such as Actions for Death, Actions for Negligence, Actions against Carriers, Deceit, Breach of Warranty, etc., the discussion is preceded by a check list of the essential elements necessary to be proved. The discussion which follows sets out, with citations, the substantive law involved. Each element of the plaintiff's case or the defendant's defense is replete with illustrative cases.

Most of us have found in resorting to footnotes that it is often necessary to read a number of cited cases in an attempt to find a single case paralleling ours. In this book, the author has, in most instances, set out a quick summary of the facts in the particular case. It is easy to run through the text and footnotes to find the fact situation nearest to the case to be tried.

The assistance this book should be able to give the attorney getting ready his case for trial can be illustrated by sampling a few of the headings regarding Specific Torts and Contracts. We find not only the general subject of Negligence but also under it chapters devoted to Automobile Negligence, Actions against Carriers, Actions against Landlords, Malpractice, Actions relating to Food, Nuisance and Escape of Dangerous Things. The book not only covers the ordinary actions of Tort and Contract but Proof of Crimes, Divorce, Annulment, Separate Support, Wills, Equity, Actions in the Land Court and Summary Process.

By way of further sampling let us take the section under Negligence dealing with Gross Negligence. Following the definition, we find a

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