April 1930

Cases and Materials on the Law of Sales

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early English common law. However, even with this limited scope, there are, as compared with other available works, such differences in interest, in emphasis, and in treatment that no one, who pretends to be acquainted with the literature on this subject, can overlook this book.

—Charles H. Kinnane,
University of Wyoming.


For several years we have been conscious of stirrings at the Columbia University School of Law. One of the first fruits, by which the outsider may judge of the nature and merit of the work there being done, is now available in the form of a Sales casebook by Professor Llewellyn. It is safe to say that this book is the most stimulating casebook that has appeared in recent years. In order to discuss in any adequate manner the very important problems of legal education that are raised, a review would have to be expanded far beyond the limits of space available. An attempt will be made to touch on only a few of what appear to the reviewer as outstanding points.

The book differs from the usual Sales casebook in several respects. Introductory remarks by the author are found at the beginning of many of the chapters and sections. Comments and questions follow the cases. The facts of many cases and the decisions are printed without opinions. There are variations in content and alignment of material.

The comments of the author (and he is more than an editor) make this book of far more interest than the ordinary casebook. They give us an insight into Professor Llewellyn’s classroom methods. The doctrine to be found in the cases is revealed not as a static thing but as in the process of growth, moulded by the exigencies of the changing commercial world. The demands of social policy and the promptings of commercial sense are ably presented by way of explanation or criticism of judicial action. The patterns of commercial dealing and the reasons for them are emphasized. Rules of law, statutory and judge-made, are discussed in their relation to types of sales transactions now in use.

Professor Llewellyn imparts a knowledge of the business world and non-legal terminology that is exceedingly valuable for a lawyer to know. It will enable him better to understand the problems of his clients. It will make it easier to grasp the significance of complicated transactions involving business devices that are well
known in the business world but probably strange to the average law-trained man.

The aims of the book are fully stated in the elaborate and brilliant introduction of fifteen pages. With most of them the reviewer is in hearty accord. In view of the care and thought bestowed upon this book by a man of Professor Llewellyn's attainment, it is with no little hesitation that a word of questioning is offered. We are told that the systematic synthesis on a large scale made possible by the employment of full time law teachers is the greatest gain professional teaching offers. (p. ix). Undoubtedly it is a great gain. It is a part of the task of the law teacher to assist in giving order and system to the materials with which he works. But that does not mean his task is merely that. And as he is an educator, it is doubtful if it is a fair portion of his task. A technique for working with and analyzing facts, for recognizing and evaluating the factors that influence decision, is the first and principal need of the student. That is recognized to a certain extent by the author (pp. x, xi), yet the tendency of the book on the whole seems to be to encourage the learning of a large body of "law" in detail. The instructor need not tell the student the law, but he is to look for it himself (p. xxi).

If that can be done without the neglect of intensive analysis, so much the better. But it is at least doubtful if it can be. No lawyer retains in his mind any large content of doctrine, except occasionally in certain fields, if he is a specialist. Should the student be encouraged, then, to master so much doctrine? It is true that in the traditional course he is expected to do it. It is probably the deficiency of ordinary casebook teaching that it is not sufficiently intensive. It skims the problems, leaving a trail of doctrine that all too often has not been pounded by enough facts to place it in its proper more or less subordinate position in the student mind. Professor Llewellyn has tried to avoid this by presenting digests of the facts of over 600 cases, in addition to the main cases. It may be that the doctrinal material can be mastered, without neglecting the facts. But from an examination that is probably too hasty, it appears to the reviewer that the facts are sometimes oversimplified and the questions in the annotations are not always calculated to draw out all the factors that play upon the judicial mind. For example, the case of Wilson Co. v. The M. Werk Company (p. 440) seems to be one, where to use the author's own expression (p. x), "raw facts broke through undistorted to the court's consciousness", yet the doctrinal situation alone is developed in the annotation. On the whole the
reviewer would be content with fewer cases, more undigested facts and less effort to exhaust the doctrinal aspects.

The statement of the facts of many cases without the opinions contrasts favorably with the practice of some other casebook editors of giving us opinions or fragments of opinions without the facts. It may be justified on the basis of space facilities. The author’s argument (p. xvii) that the student in the second-year class has already learned to read the cases is not wholly convincing. Possibilities of finding some clues in the opinion as to the real reason for the decision always make it of consequence even if the doctrinal statements are of little value. There should be a growing ability to search out such clues extending even beyond the law school course. The printing of many facts without opinions, however, may serve a needed purpose.

Whether or not it is advisable to add such extensive comments in a casebook is a matter on which there may be a difference of opinion. May the student not come to lean too heavily upon them? On the other hand, may not the ordinary casebook leave the student to grope too much in the dark in his preliminary study? And in his review, is he not left too dependent upon class room notes that in many instances are inadequate if not erroneous? The reviewer is inclined to believe that in general the idea of questions and comments is a good one, at least for students not far advanced. The casebook work might be supplemented by other student activity giving an opportunity for independent work.

The organization of the book is a departure from orthodox methods and, in the opinion of the reviewer, is a distinct contribution. The material is presented in such a way that the question, "When does title pass?", is not made the central question of the course. The section heading "Title: Its Meaning in the Judicial Process" is indicative of the realistic approach that prevails throughout. The book begins with a study of the contract of sale, rather than the sale. The emphasis is ever upon that. In view of the way modern business is conducted, that is as it should be. The addition of material on conditions in the contract, usually covered in the course of Contracts, is doubtless wise, for such a study can be much more profitably pursued when confined to conditions in the sale contract. The same advantage could be obtained by a realignment of material in the Contracts course. The sections on financing agencies in installment sales and Letter of Credit financing are obviously valuable. The inclusion of negligence cases in connection with the seller’s obligation as to quality shows the tendency toward a departure from doctrinal division of subject matter. The greater attention given to the interpretation of con-
tracts is also highly desirable in view of the multitude of controversies that arise on such matters.

The appendix contains facsimiles of various documents used in sales transactions. The Uniform Sales Act and the Sale of Goods Act are printed, with similar sections on opposite pages. An innovation is the index by commodities in addition to the regular index.

It is unfortunate that the valuable material in the introduction to the various chapters and sections could not have been printed in larger type.

This book is fascinating. It seems to be a step toward fulfilling a need that is being felt more and more. All is not entirely well with traditional casebook teaching. Whether this book blazes a trail that is to be followed in the future cannot be foretold. Certain it is that some of its unorthodoxies cannot be dismissed without very careful pondering.

—HAROLD C. HAVIGHURST.