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Book Reviews

CASES ON NEGOTIABLE PAPER AND BANKING. By Ralph W. Aigler. St. Paul: West Publishing Co., 1937. Pp. vii, 1157.

Many a minutae groggy student has resentfully described the course in bills and notes as "just one thing after another (with or without profanity)" in the firm conviction that there is no unifying theme of concept or function upon which to ground the baffling array of particular instances which have been paraded before him. And it must be admitted, I think, that some contemporary casebooks, being little more than intensive and scholarly annotations of the N. I. L., have not discouraged such a reaction. The book under review, however, is not vulnerable to that criticism. Rather it is so organized and edited as to keep constantly in focus the concepts of property and contract which play such leading roles in the law of Negotiable paper. Moreover, the commercial transactions which alone give meaning and significance to the subject are kept well in the foreground and are adequately highlighted.

However, it is not these contributions—which have also been achieved in varying degrees by other authors—that sets Professor Aigler's book apart from its competitors. Rather it is the fact that he has devoted the first one-third of his book to the law of banking. Much that is included in these pages is to be found in other books intercolated with the usual bills and notes material. The rest is drawn from Personal Property, Trusts, Equity, *et cetera*, and from legal areas not tapped by old line courses. No material is included, however, concerning the organization, administration, and dissolution of banks. Nor is there any treatment of investment banking. On the other hand, the legal questions that arise when a person has business dealings with his bank as depositor, borrower, owner of a safe deposit box, *et cetera* are carefully examined. Likewise, there is an excellent chapter on that most difficult of subjects—collections. This is followed by a thorough treatment of the banker's lien and right of set off.

The last two-thirds of the book contains the usual material on bills and notes, uncomplicated by banking problems, together with sufficient reference to warehouse receipts, bills of lading, stock certificates, *et cetera*, to suggest that the concept of negotiability underlies the solution of many questions concerning these writings. Wisely, I think, Professor Aigler makes no effort to examine all the myriad problems arising in connection with these documents of title—problems which can be considered much better in courses dealing with the functions of these instruments in our economic life.

In arranging his bills and notes material, Professor Aigler has departed from the orthodox order of development and, instead of beginning with a study of formal requisites, his first chapter, entitled "Negotiable Quality," introduces

the student at once to certain salient differences between the law of simple contracts and the law of bills and notes. Thus is provided a frame of reference for that which follows. The second chapter continues the comparison by examining the contract and law merchant rules concerning signature, delivery, and consideration. The third chapter deals with liabilities of the parties. Then, in the next chapter, the formal requisites of negotiable paper are examined. By thus deferring the discussion of formal requisites until after the student has learned, in part at least, why it is important to determine whether or not a particular instrument is negotiable, that which otherwise tends to be a dry and lifeless routine takes on meaning and vitality. The fifth chapter, entitled "Negotiation," is concerned with the various kinds of indorsements. The remaining chapters deal with holders in due course and discharge.

In selecting cases for inclusion in this volume, Professor Aigler did not make a fetish—as have some editors of contemporary casebooks in other fields—of recent cases. On the contrary, he has chosen for the most part, the turning point cases in which the controlling reasons of policy and mercantile usage are articulated far more clearly than in the "new case," which too often relies on the protective aegis of *stare decisis*.

Despite its scope and the practice of reprinting sufficient portions of the selected opinions to let the reader know what the parties did and what the court said, the book is not unconscionably long, because much of the background material is presented by text-summaries. For example, the entire sub-division on consideration consists of text-matter. Again, except in the subdivision on restrictive indorsements, there is not a case in the chapter on "Negotiation." In this connection, it should be mentioned that almost all the textual material in the book has been written by Professor Aigler especially for this volume, with the result that it meshes in splendidly with the case material—a *desideratum* not often realized when excerpts from various books and articles are lifted from their context and sandwiched in with the cases.

Since a case book is, generally speaking, custom built only for its author, it is to be expected that others, however excellent the book may be, will frequently deplore this omission, that arrangement, this emphasis, and so on. For example I wish that the relevant sections of the N. I. L. had been printed in heavy black letter type at appropriate places throughout the book. Again, it is surprising and disappointing to find that the commissioners' notes to the N. I. L. have been omitted, and that neither the proposed amendments to the statute, nor the provisions of the Uniform Fiduciaries Act have been included. Furthermore, if the Act of June 5, 1933, had been set out much of the misleading footnote on page 782 could have been omitted with the result that the student would receive a far better understanding of legal tender.

There are other minor matters which could be enumerated. To do so, however, would accent out of all proportion the relatively unimportant weak spots of a most excellent book, which deservedly is destined, I am sure, for wide adoption.

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CASES ON CONSTITUTIONAL LAW. Second Edition. By Walter F. Dodd. St. Paul: West Publishing Co., 1937. Pp. xxxviii, 1488.

The first edition of Dodd's *Cases on Constitutional Law* was published in 1932. Since that time the pressure of experimental legislation has resulted in, among many others, some twenty odd cases which are the cause of the second edition of this casebook. Except for a few minor changes the arrangement of the book into chapters and sections remains the same. The new cases replace earlier cases in some instances, and are in addition to the earlier cases in others. Notes have replaced cases in some parts, and footnotes appropriate to the new cases have been inserted.

The organization of a casebook into chapters and sections and the order of presenting the same is always a perplexing problem. The two large factors in a course in constitutional law are due process and interstate commerce. The order in which these are studied in class is not material. It is largely a matter of personal likes. Mr. Dodd gives priority to interstate commerce. However, it does seem desirable that a course in constitutional law should include more than these two matters. If, in addition to introductory material, the student is given an opportunity to see how the Court has interpreted and applied other provisions of the Constitution, he is better prepared to understand the decisions on interstate commerce and due process.

The four chapters preceding interstate commerce cover the interpretation and enforcement of a written constitution, the three departments of government, the federal system, and the powers of the national government. The time to be devoted to these may be made to vary with the classes. Those students who have had a good course in government may find that much of this is repetition, but not all students will have had a good course in government. Attention should be directed to the fact that these do present definite questions of constitutional law.

Between the chapters on interstate commerce and due process are cases on rights of individuals and corporations, personal liberty, and political and social rights. Following due process come eminent domain, retroactive legislation, and the amendment of the Constitution.

In all there are over three hundred cases in the 1441 pages. This must mean some omission for the average length course in constitutional law. But it is desirable from the standpoint of the teacher that the determination of what should be omitted or passed over hurriedly is left to each individual. The book is well indexed and the Constitution, with appropriate historical matter, is set out in the appendix.

Of the twenty odd new cases included in this second edition, many result from recent federal legislation. By far the most important from the stand-

point of departure is the case¹ upholding the National Labor Relations Act. Just how far the concept of the proper sphere of regulation under the commerce clause must be made over is still conjectural. *West Coast Hotel Co. v. Parrish*² replaces the famous *Adkins*³ case (a casebook on constitutional law that does not contain the decision in the *Adkins* case is an oddity), and *Kentucky Whip & Collar Co. v. Illinois Central R. R.*⁴ appears in place of *Brooks v. United States*.⁵ In addition the cases involving the N. I. R. A.,⁶ A. A. A.,⁷ Gold Clause,⁸ Debt Moratorium,⁹ Neutrality,¹⁰ and other legislation are included in the second edition.

The case of *In re Neagle*,¹¹ much more interesting than instructive, is relegated to a footnote. It seems that the same treatment might have been accorded the case of *Coyle v. Smith*.¹² It is well to know that Congress cannot admit a state on condition that the state capitol not be moved for a time, but, as a practical matter, little use can be made of such knowledge. It is possible that the case of *Interstate Transit Co. v. Lindsey*¹³ should have been replaced by some of the cases cited in the footnote to that case, or by the case of *Hicklin v. Coney*,¹⁴ not cited in the footnote.

It is unfortunate that Mr. Dodd did not take advantage of the revision by adding notes at the end of each section or chapter. These could have been placed in the form of questions or merely indicated in narrative form. This latter procedure is followed in a few instances. These stated problems or questions do much toward stimulating interest on the part of the student. For some reason they are much more effective when placed at the end of the chapter or section and in the same size type as the principal cases than when put in footnotes.

Looking only at the added cases there is justification for a revision of the first edition. It is better that the latest cases be used in the classroom work, and few libraries would carry enough reports of these cases so that they could be assigned and studied from the reports. That does not mean that the older cases are to be ignored. I have some doubt as to whether Mr. Dodd may not have been a bit premature with this edition. Some cases involving rather far reaching legislation have been decided since this last edition and still others are to be expected. In all probability these will be included in a supplement if they

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1. National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937), p. 640.
 2. P. 640.
 3. *Adkins v. Children's Hospital*, 261 U. S. 525 (1923).
 4. P. 671.
 5. 267 U. S. 432 (1925).
 6. *A. L. A. Schechter Poultry Corp. v. United States* (1935), p. 269.
 7. *United States v. Butler* (1936), p. 512.
 8. *Norman v. Baltimore & O. R. R.* (1935), p. 458.
 9. *United States v. Curtiss-Wright Export Corp.* (1936), p. 436.
 10. *Home Building & Loan Ass'n v. Blaisdell* (1934), p. 1339.
 11. P. 336.
 12. P. 310.
 13. P. 770.
 14. 290 U. S. 169 (1933).

are of sufficient importance. But it may turn out that a supplement in 1937 and a second edition later would have been better.

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