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Book Review: Introduction to Commercial Transactions (1977)

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Introduction to Commercial Transactions. By Robert Braucher¹ and Robert A. Riegert,² Mineola, New York: The Foundation Press, 1977. Pp. 551.

Reviewed by Ellen R. Jordan³

Justice Braucher and Professor Riegert have provided law students and practitioners with a useful one-volume treatment of basic commercial transactions. The book is offered as a reference which blends business background with statutory law, stressing the Uniform Commercial Code but also including federal bankruptcy and consumer protection statutes. The result is a book designed for study and restudy, not light reading, which will reward the reader's effort by providing him with a firm grasp of the basic outlines of commercial transactions.

Introduction to Commercial Transactions is a successor to earlier works by then-Professor Braucher, Professor Sutherland, and others.⁴ But, although the Preface acknowledges the book's forebearers, it is clear that this most recent edition is much more than a mere update. The emergence of the Uniform Commercial Code as the new Law Merchant, the enactment of other commercial legislation, and the exceedingly important development of new mercantile phenomena, such as bank credit cards and computer technology, have changed the shape of commercial transactions from pre-Code days. In recognition of these changes, the authors have completely reorganized and rewritten virtually all of the material presented, providing us with what is essentially a new book. The authors have also eliminated the statutory appendix included in earlier editions, resulting in a more streamlined volume.

The subject matter of the book is organized into five units: I (Introduction), II (Commercial Paper and Bank Collections), III (Sales), IV (Bulk Transfers, Documents of Title, Letters of Credit and Credit Cards), and V (Secured Transactions). Each unit is then subdivided into chapters. The book thus covers all of the Code, although Article 8 on Investment Securities is merely summarized in the introductory overview of the UCC and is not given further attention. A detailed Table of Contents and a good Index make it easy to locate a problem area in short order.

Some quibbles should be noted at the outset. The book is sometimes skimpy on references to other secondary material, especially in the unit on Sales. For instance, the authors do not make the student aware of Professor

¹ Justice, Supreme Judicial Court of Massachusetts (formerly Professor of Law, Harvard Law School).

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³ Assistant Professor of Law, University of Georgia. A.B., Cornell University, 1964; J.D., Columbia University, 1972.

⁴ R. BRAUCHER AND A. SUTHERLAND, *COMMERCIAL TRANSACTIONS: TEXT—FORMS—STATUTES* (2d ed. 1958).

Peter's masterful "Roadmap for Article Two,"⁵ which explores the Code's remedial scheme for breach of contracts for the sale of goods. In addition, the authors could improve the summaries they include at the end of each chapter to inform the reader of the basic minima he should have gleaned from the chapter. In itself, the summary is a good idea, but the method chosen sometimes approaches rather trivial list-making; e.g., "The student should know two situations which the Code declares to be a breach of contract and three situations which the Code declares not to be a breach of contract."⁶

The reader may also be puzzled by the book's organization. The book begins with introductory materials, including a valuable discussion of the legislative history of the UCC and a directory of research aids which a researcher should not overlook when investigating a problem arising under the Code. But the next unit takes up Articles 3 and 4 and the concomitant intricacies of negotiability, the holder in due course doctrine, and the bank collection process. The authors explain in the Preface their pedagogical reason for selecting this starting point: they have found that students need every bit of the enthusiasm which comes at the beginning of a new term to relish the exacting statutory interpretation Articles 3 and 4 require.⁷ Braucher and Riegert have jam-packed this first substantive unit with the definitions the student must master before he can begin to understand the law of commercial paper. In addition, the authors include occasional diagrams to aid comprehension, plus specimens of common forms. For these reasons this early unit is not particularly easy to read, and the authors warn that Chapter 2-2 is one "to come back to again and again."⁸ Unfortunately, there is no way one can avoid this battle with the jargon of negotiable instruments, and it is helpful to have the relevant material in one clearly indexed place. But while the choice of starting place may have been deliberate, the authors do not explain why they sandwiched a section of historical material between check collection and promissory notes, nor why they did not group such payment systems as letters of credit (Article 5) and credit cards (not specifically covered by the UCC) with checks and notes but instead discussed them in Unit IV along with Bulk Transfers. Unit II also lacks any reference to the Permanent Editorial Board's important restudy of Articles 3, 4, and 8⁹ which may result in a new design for the law of payment processes to accommodate the transition to electronic

⁵ Peters, *Remedies for Breach of Contracts Relating to the Sale of Goods Under the Uniform Commercial Code: A Roadmap for Article Two*, 73 YALE L.J. 199 (1963).

⁶ R. BRAUCHER & R. RIEGERT, INTRODUCTION TO COMMERCIAL TRANSACTIONS 317 (1977) [hereinafter cited as BRAUCHER & RIEGERT].

⁷ Preface to *id.* at viii.

⁸ BRAUCHER & RIEGERT, *supra* note 6, at 97.

⁹ See PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, NEW PAYMENT SYSTEMS: A REPORT TO THE 3-4-8 COMMITTEE OF THE PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE (1978).

transfer of funds. Although the authors mention that wave of the future in passing,¹⁰ they do not evaluate its impact.

This failure to examine the emerging law of payment processes may be just one example of the book's most serious drawback: the authors tend to spend very little effort on the difficult, uncertain, and most frequently litigated areas of the Code. For instance, the thorny question of the exact meaning of and place for the concept of "unconscionability" merits only one page and a laconic "Query."¹¹ Similarly, the authors dispose of the protean concept of "impracticability" in one page, with the caveat that "it is not possible to predict the extent of the use courts will make of this Section."¹² While the authors stress that this unsettled law is more appropriate for classroom discussion or particularized research,¹³ a little more material on questions that have arisen to date might help the novice become aware of the complexities.

The book does have definite strengths. One of its most useful contributions is its enlightening discussion of the sometimes puzzling interrelationships among the Code, state consumer protection law, and the federal law which has been superimposed on the two. The chapter on warranties in the sale of goods, for instance, first provides a straightforward review of the Code scheme, complete with a diagram that categorizes the various warranty provisions.¹⁴ Then the chapter compares and contrasts the closely related development of strict liability in tort, after which the authors discuss the impact of the Magnuson-Moss Act¹⁵ and other statutes which regulate the quality of goods. The authors have crammed a complex and increasingly intricate congeries of related law into forty-four pages of text without losing the reader or missing a beat.

Similarly, the unit on Secured Transactions includes an essential background chapter on creditor's rights under federal bankruptcy law. That unit also contains a helpful point-by-point comparison between the 1966 version of Article 9 and the 1972 revisions which are now being adopted by the states.¹⁶ This attention to the 1972 changes in Article 9 make Braucher and Riegert a better reference for Secured Transactions than the popular hornbook by White and Summers¹⁷ with which the book will inevitably be compared. (White and Summers, published in 1972, necessarily covers only the 1966 version of the Code then in use.) The Braucher and Riegert book, however, is much drier in its style, is much shorter, and is

¹⁰ BRAUCHER & RIEGERT, *supra* note 6, at 118.

¹¹ *Id.* at 223-24.

¹² *Id.* at 296-97.

¹³ *Preface to id.* at vii.

¹⁴ BRAUCHER & RIEGERT, *supra* note 6, at 237.

¹⁵ 15 U.S.C. §§ 2301-12 (1976).

¹⁶ Georgia enacted the 1972 revisions during the most recent legislative session. 1978 Ga. Laws 1081.

¹⁷ J. WHITE & R. SUMMERS, *THE UNIFORM COMMERCIAL CODE* (1972).

less ambitious. As previously noted, Braucher and Riegert consciously avoid troublesome and uncertain issues such as unconscionability to which White and Summers devote an entire chapter.¹⁸ In fairness, it should be noted that White and Summers are no help on the concept of impracticability either. They thought the UCC section on impracticability¹⁹ worthy of only three passing references²⁰ and attempted no elaboration of the concept at all, but, of course, White and Summers wrote their hornbook before Westinghouse²¹ forced the legal intelligentsia to confront the meaning of that rather open-ended section of the Code.²²

Another strength of the Braucher and Riegert book is its index of terms, which can help the reader overcome one of the major barriers to comprehension of the Code: its specialized use of language. This index makes the book a great deal easier to use than the Code itself, which scatters its definitions and whose definitional cross-referencing is not always exhaustive.²³

But perhaps the main reason for adding this book to one's library is that it provides a compact, useful, up-to-date overview of the entire Code, as well as of each of its component parts. The authors clearly and concisely explain the often complex interrelationships among the sub-parts of the same Article of the Code, (e.g., the system of remedies for breach of contracts for the sale of goods,²⁴ or the maze of sections on presentment, notice of dishonor, and protest in the law of commercial paper²⁵) as well as the relationships among the various Articles. In addition, the authors include related law, both state and federal, to produce a genuine synthesis. Both the law student attempting to learn commercial transactions from scratch and the practitioner who does not specialize in the area but needs a good basic reference will find their tasks lightened by Braucher and Riegert.

¹⁸ *Id.* at 112-33.

¹⁹ U.C.C. § 2-615.

²⁰ J. WHITE & R. SUMMERS, *supra* note 17, at 17, 95, 106.

²¹ The courts are now considering Westinghouse's attempt to use "impracticability" to excuse its performance of promises to supply uranium to utilities which purchased nuclear reactors in reliance on the supply contracts. *See Westinghouse Elec. Corp. Uranium Contracts Litigation*, 405 F. Supp. 316 (J.P.M.D.L. 1975).

²² *See, e.g.,* Posner & Rosenfield, *Impossibility & Related Doctrines in Contract Law: An Economic Analysis*, 6 J. LEG. STUD. 83 (1977).

²³ *See, e.g.,* U.C.C. § 2-601, which contains no reference to where the reader might find a definition of "tender of delivery," a phrase which appears in that section. Tender of delivery is defined in § 2-503.

²⁴ BRAUCHER & RIEGERT, *supra*, note 6, at 293-317.

²⁵ *Id.* at 78-81.