Book Review: Cases on the Law of Bills and Notes, by Howard L. Smith and Underhill Moore

Carl Zollman

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several members, either those assets controlled by them in common or those assets which each controls himself. This giving of protection to the creditors who have become such through the carrying on of the joint enterprise is an administrative problem. One does not find out anything of practical value if he tries to learn abstractly what a partnership is, whether it is an entity or not, or whether title to the partnership property is in the members or the firm.

There are some instructors who choose to present their courses by emphasizing the manner in which courts meet and handle these administrative problems. Let them be called the realists, functionalists, or even pragmatists. The editors of this book have consciously planned their arrangement of cases to help these instructors. The book is divided into two parts. The first part under the heading, "Liabilities and Assets," deals with the group of problems already suggested. In the second part, under the title, "Management", the editors have collected in cases dealing with controversies among the members as to the carrying on of the business, both before and after a dissolution. In the second part, are also found cases presenting the problems that arise when the members are attempting a final settlement of the firm's accounts.

Whether a better selection of cases might have been prepared this reviewer is not prepared to say. He is familiar with many of the cases included but not with all of them. Whether the editors have in fact prepared a casebook, or whether they have compiled some paragraphs from some judicial opinions he is not yet able to determine. Many of the so-called casebooks now in use are not casebooks. This instructor does not complain for himself because he has to read the original reports. Every instructor should do that. But he does complain if his students find the casebook of little help because they have to read the originals in order to appreciate what the cases really are about. It is seldom that editorial comment makes up for omitted statements of fact or portions from the opinions. On its face this one appears to be a casebook. There are not too many cases for a course of thirty-six hours. There are some one hundred and sixty in all. The notes are good. Perhaps they should not be called notes. They are rather to be considered as text material placed between the cases.

VERNON X. MILLER


This well know standard casebook now has appeared in its third edition dressed up handsomely in green fabricoid binding and presents a large array of new cases (forty per cent according to the statement of the authors). It retains the arrangement of the second and first editions except that the introductory chapter, which dealt with the conception of negotiability, has been omitted. The reviewer has used the prior editions in the classroom for ten years and is therefor well acquainted with the manner of treatment accorded to the subject. He deems any praise lavished upon it as entirely superfluous.

The references to the negotiable instrument act as contained in the cases is to the sections given to the act in the various states in which the respective cases are decided. It would be a great help in teaching the subject if the various references to the act were to be supplemented so as to lead the student without an extra search into the particular section as drafted by the draftsmen of the act. The student then could turn directly from every one of the cases to the act as
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printed in the appendix and would not be forced to consult the tables of the state statutes as published by Brannon or rely on his imperfect knowledge of the act in locating the proper section of the act in the appendix.

The writer of this review does not agree with the authors in omitting the introductory chapter on negotiability. He well remembers a statement made by Dean Max Schoetz ten years ago that the first thing to “put over” on a class is the conception of negotiability. The chapter as contained in the first edition was particularly adapted to this purpose. Possibly the theory underlying the omission of this chapter is that the student is to evolve the conception of negotiability from the cases as he goes along rather than have it presented to him on a platter at the beginning of his course. The experience which the writer has had in the classroom would convince him that his theory while it may work with highly selected groups of students would not work out satisfactorily with the average run of students such as the average law school handles. It has therefore been his practice to refer back to this chapter in the first edition even while teaching from the second edition.

These objection however are of a minor nature and do not substantially detract from the great value of the book as a medium of teaching this difficult subject. The reviewer therefor expects to continue with the third edition just as he has in the past used the first and the second editions.

CARL ZOLLMAN


This collection of opinions, although a few years old, is particularly appropriate for review at this time, in view of the recent retirement of the distinguished jurist, Mr. Justice Holmes, a time when the nation at large is wont to appraise his contribution after twenty-nine years on the bench of the United State Supreme Court. Containing some fifty-five decisions in which he found it necessary to dissent, it gives us an insight into his philosophy of life and of the law in its relation to the business of life. Little did he know that he was to become the “great dissenter,” for in one of his early dissenting opinions, written in 1904, in Lochner vs. New York, 198 U.S. 45, he prefaces his remarks by saying, “I regret sincerely that I am unable to agree with the judgment in this case and that I think it my duty to express my dissent.” He then believed that it was rather futile to object, no matter how vigorously or persuasively, to a judgment already rendered. However, in his later opinions, we find no such apology,—he felt, as the years rolled by, that every decision rendered by such an august tribunal as the highest court of the land, was of tremendous importance in molding conduct; hence, he was justified in pointing out wherein the thought the court was in error.

Though his place in judicial history is indisputably linked with the title, “The Greater Dissenter,” it is well to note that he was not alone in his criticisms, except on one occasion only. Of the other fifty-four cases, in thirty-seven, his dissent was shared by either two or three colleagues, and in no less than seventeen, he was dissenting from a bare five to four vote of the court. It will further be remembered that he has either written or concurred in the judgment of the court in approximately ten cases for every one in which he found it desirable to record his dissent.