Teaching Materials on Commercial Transactions

John D. Ayer

I've just administered a ten-week dose of Dr. Speidel & Co.'s new nostrum for flaccid intellects, and I'd like to deliver a testimonial from a satisfied customer. The Speidel product readily delivers a significant portion of mental elixir from some of the darker recesses of commercial law. Considering the generally unpalatable nature of almost any product in the field, this is cause for rejoicing.1

Most of the reasons are obvious enough. The book is, first of all, funny. Of course I have no objection to the spoonful of sugar approach, although it is a little poignant to consider how easily the students can be tamed by a few laughs.2 The further question has to be: is the book anything else? I think it is. The book makes a fundamentally sound, coherent, and effective presentation of the current problems in commercial law.

I like, first, the stress on security interests.3 I suppose chattel security in the pre-Article 9 era was just too arcane for anyone but the specialist, but there is no longer any excuse for turning lawyers loose on the multitude without giving them at least a fair chance to master the rudiments of this peculiar yet deeply-rooted device.

Second, I like the emphasis on commercial context. One never gets over being impressed by the crucial importance a lawyer's factual understanding plays in enhancing his ability to handle a client's legal problems. The authors assemble a dossier of "Attributes of the Lawyer Who Practices Commercial Law Badly."4 The first item in the dossier is "Lack of Knowledge of General Commercial Background."5 They support their own proposition with attractive and intelligible introductions to field warehousing,6 floor planning,7 and other such abstruse topics.8

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1 I almost said that my students like it, too. I forbear because I'm not sure I have any business purporting to voice their opinions, but the feedback I've been getting from them is good.
2 The last funny casebook I remember is W. Leach & J. Logan, Future Interests and Estate Planning (1961). If it can be done there, it can be done anywhere.
3 Pp. 65-429 are given over to security interests. For the justification of this novel approach, see pp. xiii-xiv.
4 Pp. 35-64.
5 Pp. 35-36.
6 Pp. 159-65, 691-92.
7 Pp. 188-92.
8 I'm sorry they left out the problem about the bull MatriCopulator. See p. xv.

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Third, I think they do a good job with what might be called "consumerism." There is simply no getting round the fact that for my students—and I suspect others as well—state retail installment sales legislation is at least as important as, say, ocean-going bills of lading. In this book, the consumer problems get their due.

Finally, I think the authors have shown a just apprehension of the inevitable fate of negotiable instruments. I haven't inventoried the catalogs lately, but I suspect that the course is about to join, if it has not already joined, the curricular spirit world. This book provides a sensible alternative: a short general introduction, at least partly integrated with the sales and security material.

Now, having shown my good faith, let me list a few complaints. Some may represent mere differences of opinion over the state of the law. For example, I think the authors exaggerate the hazards that may be implicit in joining security interests and negotiable instruments. And I think they have been reduced to a needless piety concerning the Uniform Consumer Credit Code when they say that "perhaps the highest praise that has been paid to it is the fact that both the bankers and the consumer representatives have attacked it, the former because it goes too far and the latter because it goes not far enough." I think it is quite clear that, in California at least, it would be a significant step backwards for consumer protection.

I do have a more general line of criticism. I went through the entire quarter with the nagging sensation that the book was not a book at all, but a collection of photocopied materials bound up in hard covers. Am I getting choleric in my old age? Or is it just a fact of life that today a book must be published before it is edited and printed...
before it is really written? In any event, I do wish they had spruced it up a little more before putting it on the market.

There is no significant single fault at issue here, but rather a number of little sins of omission and commission that seem to mar the book. There are typographical errors.\(^1\) I find some questionable citations.\(^1\) Some of the problem material appears to have got in by accident.\(^1\) Or again, there are a number of places where fewer words might have meant more clarity. Somewhere in Chapter 3,\(^2\) for example, the student needs and deserves one tightly-written summary of the chapter title; \textit{i.e.}, "The Nature of Security." In Chapter 4,\(^2\) he needs the same kind of introduction to the notion of negotiability.

In each case, the essential information is in the book. And surely no diligent student (or teacher) is going to let a problem like this defeat him. But one more run through the typewriter would have prevented this sort of annoyance. I think the same can be said with more or less force about other portions of the book.\(^2\)

\textit{Teaching Materials on Commercial Transactions} is a significant new teaching tool. If the authors have not made a perfect tender, they have surely rendered substantial performance.

\textbf{John D. Ayer*}

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\(^1\) Lines are garbled on p. 483 and on p. 1052 n.4. The printer dropped an “in” before “insolvency” on p. 1030. And I can’t say much for their spelling of “supersede” on p. 482 and on p. 1017. The root is OFr. \textit{seder, to sit}, not L. \textit{cedere, to go, proceed, withdraw, or yield}, as any decent commercial lawyer ought to know.

\(^2\) The correct reference to the article cited on p. 443 is Gilmore, \textit{On the Difficulties of Codifying Commercial Law}, 57 \textit{Yale L.J.} 1341 (1948). The author of \textit{What Is the Law Merchant?}, 3 \textit{Column. L. Rev.} 135 (1903), is Ewart, contrary to the reference on the bottom of p. 440 (SS&W get it right on the middle of the same page). The reference to Llewellyn, \textit{Through Title to Contract and a Bit Beyond}, in \textit{3 Law, A Century of Progress} 80 (1937), at pp. 454-55, needs a citation to 15 \textit{N.Y.U.L.Q.} 159 (1938) as an alternative (and perhaps more readily available) source. And while there is surely no harm in it, I found it at least strange that the student author of Note, \textit{Another Look at Construction Bidding and Contracts at Formation}, 53 \textit{Va. L. Rev.} 1720 (1967), gets more credit at p. 513 than he did in the original.

\(^3\) Problem 7-2 (7) (p. 205) has no visible point whatever. Problem 14-2 (pp. 424-27) includes a number of questions that the student cannot possibly understand until much later in the book. Problem 40-2 (p. 1022) seems untenable.

\(^4\) Pp. 65-83.

\(^5\) Pp. 84-138.

\(^6\) My class this year did not cover the section on sales (pp. 430-984), but it appears to have all the virtues of the rest of the book.

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