

# Handbook of the Law Under the Uniform Commercial Code

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## BOOK REVIEWS

**Handbook of the Law Under the Uniform Commercial Code.** JAMES J. WHITE AND ROBERT S. SUMMERS. St. Paul: West Publishing Company. 1972. Pp. xxix, 1054.

The new *Handbook* on the Uniform Commercial Code, by Professors James White of Michigan and Robert Summers of Cornell, is bound to sell like flapjacks. And little wonder. Here is the first one-volume exposition of the UCC; it will be a boon to the law student struggling through his three or six hours of commercial law and a blessing for the practicing attorney who is, more than likely, scared to death of the Code. Prior to the appearance of the *Handbook*, there were three indispensable research tools for students and practitioners of commercial law: the statute itself, together with its Official Comments; Grant Gilmore's classic two-volume treatise on Article 9;<sup>1</sup> and Callaghan's Uniform Commercial Code Reporting Service, that superhandy guide to recent judicial decisions under the UCC. Now there are four. The practitioner who adds the White and Summers *Handbook* to the other three will have a fine research library in commercial law.

The UCC *Handbook* is not your basic "black letter" treatise. For one thing, the authors have the advantage of working primarily within the confines of a single, well-drafted statute; this gives the book a kind of unity which is often missing in hornbooks concerning huge generic slices of the law. The White and Summers book is a constant exercise in statutory construction, an exhaustive attempt to glean the meaning and purpose of the UCC as an integrated codification of commercial law. Further, the breezy style of the book does not leave the reader with a taste of dust in his mouth. The authors have a sense of humor which constantly enlivens a subject not known for its sex appeal. Here is a sample: the chapter on the statute of frauds opens this way:

The year: 1676. The Place: Old Marston, Oxfordshire, England. Egbert, a Marstonian, owned a fighting cock named Fiste. John sued Egbert, alleging that Egbert had orally promised to sell Fiste to him in exchange for a hundred shillings, a "deal" which John's friend, Harold, claimed he overheard.<sup>2</sup>

In the chapter on warranties under Article 2,<sup>3</sup> the authors rather vividly distinguish a warranty lawsuit from a claim against an insurer:

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<sup>1</sup> G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY (1965).

<sup>2</sup> P. 43.

<sup>3</sup> Pp. 271-305.

If an insurance company insures against the loss of an arm, all the claimant need do to recover is show the bloody stump. If the same claimant wishes to recover in warranty from the seller of the offending chain saw, he has a much tougher row to hoe.<sup>4</sup>

The authors' discussion of the Bankruptcy Act's "strong-arm clause" fairly bulges with humor: "Whereas in an earlier day, 70(c) made the trustee something of a Charles Atlas, his strength nowadays lies somewhere between that of Charlie and that of a ninety-seven pound weakling."<sup>5</sup> Sometimes the joke is found in a throw-away phrase. In describing the statutory antecedents to Article 9 of the UCC, White and Summers refer to the Uniform Trust Receipts Act as "history's most difficult statute."<sup>6</sup> Nor are the authors adverse to explaining in an offbeat manner how the presence of a purchase money security interest does not turn on the magic of a label:

If the seller has retained an interest in the goods sold to secure payment of some or all of his price, he has a purchase money security interest whether he calls this agreement with the buyer a "conditional sales contract," a "bailment lease" or the "Jefferson Airplane."<sup>7</sup>

Williston, Corbin, and Prosser might harrumph at this kind of jollity, but the book is more readable for it. Thanks to White and Summers for "the greening of the hornbook."<sup>8</sup>

The *Handbook* begins with background information about the UCC, including a brief description of the draftsmen and the drafting process, a perspective on the Official Comments as legislative history, a discussion of the reports of the Permanent Editorial Board, and a short bibliography of other secondary literature on the Code. The bibliography is rather unsatisfying because no attempt is made to annotate the works or to offer guidance as to which are the more valuable items for the practicing attorney.

The first twelve chapters in the book deal with sales under Article 2: offer; acceptance; consideration; the statute of frauds; the parol

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<sup>4</sup> P. 272.

<sup>5</sup> P. 870.

<sup>6</sup> P. 755.

<sup>7</sup> P. 799.

<sup>8</sup> White and Summers several years ago joined with Professor Richard Speidel of Virginia to bring to the law schools "the greening of the casebook" in their *Commercial Transactions*. See R. SPEIDEL, R. SUMMERS & J. WHITE, *TEACHING MATERIALS ON COMMERCIAL TRANSACTIONS* (1969). This casebook includes everything from a make-believe dialogue between Judge Skelly Wright and a raven wearing a pince-nez, to a phony judicial opinion written in French. The students in my class disagree; half love it, and half think it silly.

evidence rule; contract terms supplied by the parties, by trade usage and by the "gap fillers" of the statute itself; unconscionability; risk of loss; remedies of buyer and seller; and the law of warranty. The authors very skillfully highlight the problem areas, emphasize the distinctions between the common law of contract and the law of sales under Article 2, and weave together during their discussion appropriate quotations from the UCC, relevant Official Comments, the gist of key law review articles on the subject, and a careful analysis of recent UCC cases. The leading cases are dissected in detail. For example, the important decision in *Zabriskie Chevrolet, Inc. v. Smith*,<sup>9</sup> dealing with the right of a car dealer to "cure" under UCC section 2-508 after he has sold a lemon to a consumer, is analyzed in such detail that Ralph Nader would be proud. Similarly, the authors incisively criticize the court in *Roto-Lith, Ltd. v. F.P. Bartlett & Co.*,<sup>10</sup> a significant decision involving the "battle of the forms" where the court baldly ignored the plain language of the UCC. To their credit, the authors explain much of the Code through such key cases,<sup>11</sup> like a casebook with a teacher's manual attached. Even though many decisions are cited, this is no typical hornbook with a single sentence of "black letter law" coupled with a footnote citing fifty cases. And if the authors feel a decision is wrong, they don't mind telling the reader.

The next six chapters deal with negotiable instruments, bank deposits, and letters of credit—the stuff of Articles 3, 4, and 5. The book is particularly helpful on the liability of parties to a negotiable instrument, the role of the surety or cosigner, judge-made exceptions to the holder-in-due-course doctrine, and the law of forged or stolen checks. The authors explain in great detail the relationship between the payor bank and its customer under Article 4, with special emphasis on recent cases. For example, the controversial decision in *West Side Bank v. Marine National Exchange Bank*<sup>12</sup> is explored in depth, with a provocative reference to a law review article<sup>13</sup> authored by the draftsman of Article 4 suggesting that the court completely missed the boat. Chapter 18 contains a valuable mini-treatise on the Article 5 letter of credit, just as chapter 19 is a good nutshell of bulk sales under Article

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<sup>9</sup> 99 N.J. Super. 441, 240 A.2d 195 (Law Div. 1968).

<sup>10</sup> 297 F.2d 497 (1st Cir. 1962).

<sup>11</sup> In all such case references, the authors cite the UCC Reporting Service, re-emphasizing the importance of this tool to the practitioner as well as its usefulness to the authors in preparing the *Handbook*.

<sup>12</sup> 37 Wis. 2d 661, 155 N.W.2d 587 (1968).

<sup>13</sup> Malcolm, *Reflections on West Side Bank: A Draftsman's View*, 18 CATHOLIC U.L. REV. 23 (1968).

6, and chapters 20 and 21 conveniently summarize the law of warehouse receipts and bills of lading under Article 7.

For some strange reason, the authors entirely omit any discussion of Article 8 (investment securities). Since a fair amount of case law is beginning to develop under Article 8, the omission is unfortunate. But secured transactions under Article 9 receives its due; the last five chapters of the *Handbook* are devoted to issues such as what constitutes an Article 9 security interest, how security interests are created and perfected, how priorities are determined when more than one party claims a piece of collateral, and what happens on default. In one of the most valuable chapters in the book,<sup>14</sup> the authors put together much of the recent learning on the intersection of Article 9 and the Federal Bankruptcy Act. Since there are probably a hundred law review articles on this subject, the book does a real service in nutshelling the problem in thirty-four pages. As usual, all the cases are there, but White and Summers do much of the teaching of individual subjects through a single case. For example, the status of the Article 9 "floating lien" in bankruptcy has fascinated scholars, creditors' attorneys, and trustees for the past decade. With the help of a recent case,<sup>15</sup> the authors distill all this learning in four pages.<sup>16</sup> Other cases which stand for the same propositions are tucked neatly away in a footnote.

I decided to test the utility of the *Handbook* by posing for myself six ticklish problems under the UCC and then going to the book to see how clearly my questions would be answered. As the following discussion indicates, I was generally pleased with what I found.

(1) Will an Article 9 purchase money security interest have priority over a previously filed federal tax lien? To my chagrin, I discovered that the authors never discuss the 1966 Federal Tax Lien Act<sup>17</sup> as it relates to the Article 9 security interest. This is surprising in light of their exhaustive treatment of the Bankruptcy Act. To the Article 9 lawyer these two federal statutes are like tweedledee and tweedledum. In my opinion, this omission is one of the few serious substantive gaps in the *Handbook*.

(2) Can a lawyer rely on a "merger clause" to beef up the parol evidence rule when he wants the terms of a contract to be limited to a writing? Here the reader will get some real satisfaction: the authors

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<sup>14</sup> Ch. 24.

<sup>15</sup> *Grain Merchants v. Union Bank & Sav. Co.*, 408 F.2d 209 (7th Cir.), *cert. denied*, 396 U.S. 827 (1969).

<sup>16</sup> Pp. 873-81.

<sup>17</sup> 26 U.S.C. §§ 6321-26 (1970).

have carefully treated "merger clauses" in a separate section of their chapter on the statute of frauds and the parol evidence rule.<sup>18</sup>

(3) To what extent can a bank in its signature card agreement exonerate itself from liability for paying over a proper stop order? The authors do a good job here also, setting forth a typical bank customer deposit agreement and concluding that such a clause is invalid under UCC section 4-103.<sup>19</sup> White and Summers are not afraid to express their opinion of how such a situation should be resolved under the statute, even in the absence of much case law on the point. On the other hand, the form agreement which the authors set out in a footnote<sup>20</sup> is unfortunately one of the few forms used in the book. It might have been helpful to include, where appropriate, sample financing statements, security agreements, documents to title, and other forms.

(4) If I represent a secured lender, will the trade name of the debtor be sufficient in the Article 9 financing statement? Here again the authors spend several pages<sup>21</sup> collecting and describing recent cases in which someone has goofed in drawing up the financing statement. There is much grist here for both the lender's attorney at the planning stage and the debtor's trustee in bankruptcy after the bottom has fallen out.

(5) Who has priority when the owner of an unencumbered car titled in state A drives it to state B, fraudulently gets a second (clear) title issued, and sells it to a good faith purchaser? I found my answer in section 23-21 of the *Handbook*,<sup>22</sup> which contains an impressive array of hypothetical multistate title problems, backed up by all the recent judicial decisions. The authors come to their own conclusion based on the weight of case authority to date and their own reading of the purpose underlying the relevant UCC provisions, but they admit that things are up for grabs in a number of states. This is the kind of balanced view which is helpful to attorneys on both sides.

(6) Does the UCC statute of limitations for breach of warranty (four years from the date of sale under UCC section 2-725) control in a case where the item sold has a hidden defect which does not injure the plaintiff for five or six years after the sale? The authors fully discuss the Article 2 statute of limitations<sup>23</sup> and highlight "the continuing

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<sup>18</sup> Pp. 76-81.

<sup>19</sup> Pp. 552-58.

<sup>20</sup> P. 552 n.5.

<sup>21</sup> Pp. 837-46.

<sup>22</sup> Pp. 855-62.

<sup>23</sup> Pp. 339-43.

friction between strict tort liability on the one hand and warranty liability under the Code on the other."<sup>24</sup> They also suggest that the court might not follow UCC section 2-725 when the tort statute of limitations favors a plaintiff whose blood has been spilled. But they never directly grapple with the situation posed above, nor do they cite an important New York case<sup>25</sup> under which the plaintiff is thrown out of court if his injury occurs more than four years after the sale.<sup>26</sup>

In sum, the White and Summers *Handbook* is well-written, up-to-date, and comprehensive; it satisfies a real need for both law students and practitioners. However, in addition to the few omissions discussed above, the book does contain several weaknesses. For example, the book is somewhat shallow in its treatment of the new consumer credit legislation which is sweeping the country and is already rendering parts of the UCC academic. Further, the authors fail to deal adequately with those new judicial decisions under the fourteenth amendment which cast a long shadow across portions of the Code.<sup>27</sup>

The authors spend several chapters on the fine points of negotiable instruments and the holder-in-due-course doctrine under Article 3 without warning the reader that this is a prime area of "statutory obsolescence."<sup>28</sup> For example, within two or three years virtually all fifty states will by statute outlaw the negotiable consumer note, the "cutoff clause" and the holder in due course. A majority of the states have already rendered this portion of Article 3 a dead duck.<sup>29</sup> The real battleground these days is in the bank credit card and direct lending areas: when is a lender really a seller in disguise so that the debtor can refuse to pay if the merchandise he purchased with the loan proceeds is defective?<sup>30</sup> Yet the discussion in the *Handbook* of the holder in due course doctrine does not contain a word about these problems.

The same is true in the warranty area. It seems apparent that the use of warranty disclaimers and privity is being rapidly eliminated by statutes which conflict with Article 2, at least where consumers are in-

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<sup>24</sup> P. 339.

<sup>25</sup> *Mendel v. Pittsburgh Plate Glass Co.*, 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969).

<sup>26</sup> *Mendel* presents a classic study of statutory construction under the UCC, and the authors do not score well for missing it. But such an omission is the exception, not the rule.

<sup>27</sup> See text accompanying notes 34-35 *infra*.

<sup>28</sup> See Gilmore, *On Statutory Obsolescence*, 39 U. COLO. L. REV. 461 (1968).

<sup>29</sup> For a compendium of all the recent legislation, see Willier, *Need for Preservation of Buyers' Defenses—State Statutes Reviewed*, 5 UCC L.J. 132 (1972).

<sup>30</sup> See Note, *Direct Loan Financing of Consumer Purchases*, 85 HARV. L. REV. 1409 (1972).

volved.<sup>31</sup> Since this consumer legislation is a direct response to the UCC, it deserves greater attention in a book about the UCC. Similarly, the authors briefly mention the bank overdraft under UCC section 4-401,<sup>32</sup> but fail to point out how overdraft banking is rapidly becoming an important vehicle for the extension of consumer credit.

But perhaps the best example of the book's weakness in treating external bodies of law which collide with the UCC is the discussion of self-help repossession under UCC section 9-503.<sup>33</sup> Here the authors were apparently jolted by the fact that the fourteenth amendment can have a significant bearing on the UCC. Although they cite the recent decision of *Fuentes v. Shevin*,<sup>34</sup> which outlaws replevin in a consumer credit context, the authors spend several paragraphs telling the reader why this decision should not affect self-help repossession under UCC section 9-503, as a matter of public policy. Yet they never come to grips with the *constitutional* questions involved.<sup>35</sup> In the 1970's the commercial lawyer cannot help but learn a little constitutional law; yet the authors give the appearance of being dragged kicking and screaming into the constitutional arena.

The book is also a bit soft in its tactical advice to the practitioner. Often the authors will make a good point about the Code without explaining what the lawyer should do in representing his client. For example, section 24-4 of the *Handbook*<sup>36</sup> discusses how the trustee in bankruptcy has the burden of proving all nine criteria for a voidable preference. But it leaves it at that. A more fitting conclusion to the section would be an exhortation to the secured lender's attorney to fight every preference claim on the chance that even a trustee with an open-and-shut case will not be prepared to meet his burden of proof when the claim is heard. As a former practitioner who successfully resisted several preference claims simply by walking through the courthouse door, I can attest that this is good advice. The same is true of resisting a deficiency judgment under Article 9. White and Summers correctly point out in section 26-15<sup>37</sup> that the courts are snuffing out deficiencies when it can be shown that the creditor violated the default provisions of Article 9, but they do not nail down this conclusion with

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<sup>31</sup> See, e.g., MASS. GEN. LAW ANN. ch. 106, § 2-316A (Supp. 1972).

<sup>32</sup> Pp. 498-99.

<sup>33</sup> Pp. 966-75.

<sup>34</sup> 407 U.S. 76 (1972).

<sup>35</sup> For a case which squarely holds that self-help repossession under the UCC is unconstitutional, see *Adams v. Egle*, 338 F. Supp. 614 (S.D. Cal. 1972).

<sup>36</sup> Pp. 371-76.

<sup>37</sup> Pp. 1000-07.

an exhortation to the debtor's attorney to resist every deficiency claim. A technical violation of the 9-500's can be found in nine cases out of ten. At the very least, the lawyer should push for a favorable settlement. The implication is in the book, but it remains just a touch too academic.

One word in conclusion. The *Handbook* is in general so good that it poses something of a dilemma to teachers of commercial law, especially ones who use the Spiedel, Summers, and White casebook.<sup>38</sup> Any student who gets his clutches on the *Handbook* will carry to class with him the "peanut" of each leading case. What fun is it to discuss *Roto-Lith* when the student has the peanut? How can the teacher lead the class into seeing where the *West Side Bank* court went wrong when the students have already read the answer in the *Handbook*? I am confident that ninety-nine percent of all law students will not go to the trouble of reading a law review article about each case discussed in the casebook. But when a whole commercial law casebook has its curtain lifted in a single volume written by the same authors, is the game all over? I, for one, am willing to take the chance.

*Barkley Clark\**

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<sup>38</sup> See note 8 and accompanying text *supra*.

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**Labor Law: Collective Bargaining in a Free Society.** WALTER E. OBERER AND KURT L. HANSLOWE. Mineola, New York: West Publishing Company. 1972. Pp. xxiv, 1091.

In a field as well served by excellent casebooks<sup>1</sup> as labor law, the appearance of a new casebook prompts the questions of why and to what advantage? Indeed, the decision of the Labor Law Group<sup>2</sup> to abandon its single hardback editions in favor of a series of paperbacks dealing with various aspects of labor law and labor relations<sup>3</sup> reflected a group judgment of labor law teachers that it would not be productive to publish another standard casebook. A field as dynamic and complex as labor law, however, understandably generates a desire for individual approaches. The beast being stalked evolves so rapidly that various hunters may have different views of the appropriate weapon. Professors Oberer and Hanslowe have accommodated us with their particular variation of a labor law casebook, and it is excellent. The final decision of an instructor on whether to adopt it for a course, however, can only be made after a comparison with other textbooks in the field.<sup>4</sup>

Perhaps the most innovative aspect of the Oberer and Hanslowe offering is Part I of the book, which they have entitled "A Short History of Collective Bargaining and the Law in the United States: The Search for Balance."<sup>5</sup> The cases and materials presented in these pages are more than a history. As the editors suggest, they constitute a short course in labor law in which the major conflicts are identified and the responsive evolution of the law disclosed. I think Professors Oberer and

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<sup>1</sup> A. COX & D. BOK, *CASES AND MATERIALS ON LABOR LAW* (7th ed. 1969); D. MELTZER, *LABOR LAW: CASES, MATERIALS AND PROBLEMS* (1970); R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, *LABOR RELATIONS LAW: CASES AND MATERIALS* (4th ed. 1968); C. SUMMERS & H. WILLINGTON, *CASES AND MATERIALS ON LABOR LAW* (1968).

<sup>2</sup> The Labor Law Group is an organization of law teachers formed in 1947 for the express purpose of developing improved materials for the teaching of labor law.

<sup>3</sup> H. SHERMAN, W. MURPHY & E. LEIKEN, *UNIONIZATION AND COLLECTIVE BARGAINING* (The Labor Law Group, Unit 1, 1971); R. COVINGTON & A. CAGHAN, *SOCIAL LEGISLATION* (The Labor Law Group, Unit 2, 1971); R. COVINGTON, J. JONES & A. CAGHAN, *DISCRIMINATION IN EMPLOYMENT* (The Labor Law Group, Unit 3, 1971); D. WOLLETT & D. SEARS, *COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT* (The Labor Law Group, Unit 4, 1971); C. PECK, *CASES AND MATERIALS ON NEGOTIATION* (The Labor Law Group, Unit 5, 1972); J. GETMAN & J. ANDERSON, *MYTHS AND ASSUMPTIONS IN LABOR LAW* (The Labor Law Group, Unit 6, 1972); A. GOLDMAN, *PROCESSES FOR CONFLICT RESOLUTION: SELF-HELP, VOTING, NEGOTIATION, AND ARBITRATION* (The Labor Law Group, Unit 7, 1972); E. TEPLÉ, *ARBITRATION AS A METHOD FOR RESOLVING DISPUTES* (The Labor Law Group, Unit 8, 1972). Two more units of the series are currently under preparation and soon will be published.

<sup>4</sup> A thorough analysis of the features of other available labor law casebooks may be found in Hillman, *Book Review*, 66 *Nw. U.L. Rev.* 146 (1971).

<sup>5</sup> Pp. 1-199.

Hanslowe are right in their belief that students presented with this overview will be better prepared to deal with the details of the particular problems which follow. I wish, however, that they had added a few pages presenting factual information on such topics as the growth of the labor movement, the size of employment establishments, the extent of work stoppages, employment by race and sex, and the distribution of income.<sup>6</sup>

The organization and treatment of materials in the remainder of the book differs from other casebooks primarily in matters of style rather than substance. There is an evenness of editing which reflects the collaboration of colleagues who have worked together for years at the same university. Like other casebook editors, Professors Oberer and Hanslowe have shown little concern for problems arising under the Fair Labor Standards Act,<sup>7</sup> the Social Security Act,<sup>8</sup> unemployment compensation acts,<sup>9</sup> or workmen's compensation acts.<sup>10</sup> They have eschewed the lacy refinements and curlicues of labor law which other editors have considered in short case notes and which occasionally leave students more puzzled than illuminated. Instead, they have opted for presentation of full decisions, complete with dissents and footnotes. Both teacher and student may read the opinions with concern not only for the treatment given the immediate problem at hand, but for the interpretation given earlier decisions by different members of court. The result is an increased potential for meaningful examination of the relationship of various principles of labor law and the varying extent to which different judges and justices pursue one instead of another. Nevertheless, even Professors Oberer and Hanslowe may have overedited an opinion by their deletion of the majority's reliance in *National Woodwork Manufacturers Association v. NLRB*<sup>11</sup> upon its prior decision in *Fibreboard Paper Products Corp. v. NLRB*.<sup>12</sup> The responses of the four dissenters to that reliance<sup>13</sup> are of considerable importance to one searching out the full implications of the *Fibreboard* decision.

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<sup>6</sup> Cf. THE LABOR LAW GROUP, LABOR RELATIONS AND THE LAW 94-100 (3d ed. J. Williams, ed. 1965); D. MELTZER, *supra* note 1, at 32-43.

<sup>7</sup> 29 U.S.C. §§ 201-19 (1970).

<sup>8</sup> 42 U.S.C. §§ 301-1396 (1970).

<sup>9</sup> See, e.g., Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. § 3304 (1970).

<sup>10</sup> See, e.g., Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-50 (1970).

<sup>11</sup> 386 U.S. 612, 640-42 (1967).

<sup>12</sup> 379 U.S. 203 (1964).

<sup>13</sup> 386 U.S. at 662 (Stewart, Black, Douglas & Clark, JJ., dissenting).

A particularly thorough and intensive treatment<sup>14</sup> is given the problem of reconciling the interrelationship of the intent and motive elements in section 8(a)(1) and section 8(a)(3) violations of the Labor Management Relations Act (Taft-Hartley Act),<sup>15</sup> with the Supreme Court's shifting approaches to the resolution of this problem. This emphasis should not surprise anyone familiar with the comprehensive analysis Professor Oberer presented in an earlier law review article.<sup>16</sup>

Cases involving lockouts, partial strikes, and other pressure tactics are placed in a chapter devoted to negotiation of the agreement rather than in the section devoted to interference with organization rights.<sup>17</sup> Although such an approach requires some cross referencing between the portion of the book in which section 8(a)(1) and section 8(a)(3) violations are considered, it is effective in facilitating an understanding of the forces which produce an agreement. More than ninety pages follow in which attention is skillfully directed to questions of the scope and meaning of the duty to bargain.<sup>18</sup>

The important NLRB decision in *Collyer Insulated Wire*,<sup>19</sup> however, is not included in the book. Instead, the relationship of dispute arbitration to the procedures of the NLRB must be explored by discussing the decision in *Unit Drop Forge Division, Eaton Yale & Towne, Inc.*,<sup>20</sup> which represents a mirror image of the current direction of NLRB decisions. Indeed, although the judicial deference to the arbitration process receives traditional treatment in the presentation of the Steelworkers' trilogy,<sup>21</sup> the arbitration process itself receives short shrift. This is unfortunate not only because of the importance of that process in our labor relations law, but also because of the neglected opportunity for exploration into the strengths and weaknesses of a dispute resolving forum other than the courts.

The treatment given the problems of federal preemption<sup>22</sup> also seems to lack an important dimension in the failure to make reference

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<sup>14</sup> Pp. 275-91 & 444-501.

<sup>15</sup> 29 U.S.C. §§ 158(a)(1), (a)(3) (1970).

<sup>16</sup> Oberer, *The Scienter Factor in Sections 8(a)(1) and (3) of The Labor Act: Of Balancing, Hostile Motive, Dogs and Tails*, 52 CORNELL L.Q. 491 (1967).

<sup>17</sup> Pp. 242-500.

<sup>18</sup> Pp. 501-93.

<sup>19</sup> 192 N.L.R.B. No. 150, 77 L.R.R.M. 1931 (Aug. 20, 1971).

<sup>20</sup> 171 N.L.R.B. 600 (1968), *aff'd*, 412 F.2d 108 (7th Cir. 1969).

<sup>21</sup> *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 575 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

<sup>22</sup> Pp. 336-59.

to the decisions in *Amalgamated Clothing Workers v. Richman Brothers*,<sup>23</sup> which held that a union could not collaterally attack a state court's jurisdiction by a suit to enjoin the state proceeding brought in a federal court, and in *In re Green*<sup>24</sup> and *NLRB v. Nash-Finch Co.*,<sup>25</sup> which point in the opposite direction. Perhaps these are the subtleties an experienced teacher can be expected to supply for his students, but they are essential to an understanding of the direction being taken in pre-emption cases. Likewise left to the teacher is the opportunity to point out how changes in NLRB policy are so clearly attributable to changes in NLRB membership produced by political appointments rather than to the gathered insights of a probing expert agency.

The fascinating current developments in civil rights legislation and their impact upon employment practices are given attention in a well-designed section<sup>26</sup> which touches upon race and sex discrimination under Title VII of the Civil Rights Act of 1964,<sup>27</sup> section 1981 of the Civil Rights Act of 1866,<sup>28</sup> and the affirmative action program instituted pursuant to Executive Order No. 11,246.<sup>29</sup> The conflict between free collective bargaining and the public interest is studied in a presentation devoted to collective bargaining and the antitrust laws.<sup>30</sup> A challenging excerpt from *The Labor Sector*<sup>31</sup> may produce in some a feeling of the futility in attempting to achieve full employment and stable prices in a free economy. The ferment of collective bargaining in the public sector is given a fresh and current review in cases and materials almost all of which involve developments since 1969.<sup>32</sup> Somewhat more traditional is the treatment of the problems which exist between the union and the individual member or the prospective member.

Thoughtful and provocative questions, the consideration of which leads to better insights into the materials presented, follow most cases. However, the authors have not included problems, such as those so successfully provided by the Labor Law Group in its third edition,<sup>33</sup> which give students an opportunity to engage in a practice-oriented

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<sup>23</sup> 348 U.S. 511 (1955).

<sup>24</sup> 369 U.S. 689 (1962).

<sup>25</sup> 404 U.S. 138 (1971).

<sup>26</sup> Pp. 768-812.

<sup>27</sup> 42 U.S.C. § 2000e (1970).

<sup>28</sup> *Id.* § 1981.

<sup>29</sup> Exec. Order No. 11,246, 3 C.F.R. 220 (Supp. 1965).

<sup>30</sup> Pp. 813-52.

<sup>31</sup> N. CHAMBERLAIN & D. CULLEN, *THE LABOR SECTOR* 623-50 (2d ed. 1971).

<sup>32</sup> Pp. 903-52.

<sup>33</sup> *THE LABOR LAW GROUP, LABOR RELATIONS AND THE LAW*, (3d ed. J. Williams, ed. 1965).

use of the materials. Professors Oberer and Hanslowe have interspersed their book with citations to relevant periodical literature which will be helpful not only to students but to teachers who may have overlooked an excellent article in one of the less prestigious law reviews.

There are several technical matters worth noting. The large size of the book permits the use of double columns of a large-size type, resulting in less eye strain. On the other hand, like far too many casebooks, the table of cases does not repeat case names in reverse order which can inconvenience one with less than total recall. The index is satisfactory, but like those in most casebooks, it could be improved.

Professors Oberer and Hanslowe have produced a casebook which merits comparison with the others presently available. Whether or not a teacher will be persuaded to adopt this book will depend primarily upon the merit he finds in its initial overview and the value he places upon the presentation of nearly complete majority, concurring, and dissenting opinions. It is, as its editors intended it to be, an excellent book for developing an understanding of the role of labor in a free society and the difficulties encountered in attempting to reconcile the conflicting interests of labor, management, and the general public.

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