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BOOK REVIEWS

INTERPRETATION OF UNIFORM COMMERCIAL LAWS: CASES AND MATERIALS.

By Frederick K. Beutel. Indianapolis: The Bobbs-Merrill Company, Inc., 1950. Pp. xxiii, 881. Pocket Supplement.

Professor Beutel says (pref. p. iii) that he has "created" this new casebook for the purpose of "implementing the rapidly developing courses in Commercial Law which unify the subjects formerly taught as Sales and Bills and Notes." Is it possible or desirable to teach as one these traditionally separate courses? In spite of recent attempts to do so and the impetus probably given them by the proposed "Code of Commercial Law," the question is still open. Nor is it of narrowly pedagogical interest alone, for the answer depends ultimately upon one's estimate of the place of "codification" in our common law system.

From a pedagogical standpoint, the problem of combining Sales and Negotiable Instruments in a single course cannot be solved by the simple editorial expedient of binding up two casebooks in one. Professor Beutel has found another way which frankly reflects his well known position with regard to judicial techniques in applying the Uniform Acts.¹ Once "codification" has come, the courts should make a fresh start. In the presence of new problems, the judges should resist the temptation to "cast one last long lingering look behind" at the pre-existent body of case law. They should proceed more in the manner of the Romanists or Civilians, emphasizing the text of the "Code" and its proper interpretation, and de-emphasizing the traditional common law judicial techniques.

Taking this approach Professor Beutel has given us a scholarly work entirely consistent with his point of view. The very title of the book, its contents and the prefatory warning make it clear that we should not expect an attempt (in the manner of the usual casebook) to build up "an outline of the substantive law" of Sales or Negotiable Instruments from the "holdings of the cases." Thus only about one hundred and thirty cases are reprinted at length. Of these about eighty directly involve the Negotiable Instruments Law; some forty deal with the Uniform Sales Act, the Uniform Warehouse Receipts Act, etc. On the other hand, approximately one-half of the book is given over to excerpts from texts, law review articles and to problems based in part on decided cases. A pocket supplement contains the texts of six major Uniform Acts with the Commissioners' Notes, and the British Bills of Exchange Act.

1. Beutel, *Common Law Judicial Technique and the N.I.L.* (1934), 9 *TULANE L. REV.* 64 (1934); see also, Beutel, *The Necessity of a New Technique of Interpreting the N.I.L.—the Civil Law Analogy*, 6 *TULANE L. REV.* 1 (1931).

Given the avowed purposes of the book—to relegate the cases to a secondary role as merely illustrating what courts have done or should have done in applying the Acts, to encourage students to go directly to the Acts as “codifications,” and thus to develop “high skill in the technique of applying the statutes to commercial situations,”—Professor Beutel has done a splendid job. The book should prove valuable in connection with courses on statutory construction in general. Whether it provides an acceptable substitute for the presently used casebooks in the separate fields of Sales and Negotiable Instruments depends upon one’s attitude toward the Uniform Acts as “codifications.”

Are these “Acts” (the draftsmen of the new “Commercial Code” significantly use the term “Code”) to be considered “Codes” in the Roman, Civilian or Continental sense? Our courts have undoubtedly shown a tendency to regard them as “restatements” rather. This, in part at least, may explain the persistence of the “common law judicial techniques” which Professor Beutel and other legal scholars have deplored. Hence it is not surprising to see in the present casebook excerpts from Justinian’s Code, from the Digest (Iulianus and Paulus), to say nothing of selections from modern Civilians like Geny, Kohler and Salkowski. The student is thus invited to consider the usefulness of the Roman or Civilian methodology and techniques in dealing with our contemporary experiments at “codification.” We of the common law tradition are “yet but young in deed” when it comes to “codification.” Can we ever truly achieve it in the Romanist or Civilian sense and still preserve the distinctive values of the common law system and method? Some may still ask whether we should even try. At any rate we have as yet no Justinian with an imperial decree to forbid our judges “to look over their shoulders” at the case law of the past when presented with a “Code” to apply.

Professor Beutel’s casebook is therefore much more than just another casebook. Its clear and unequivocal choice of method and approach serves to light up the conflict between those who do and those who do not think the common law can or should be “codified,” that judicial techniques appropriate to legal systems which have never known aught but “Codes” are equally appropriate when their application is attempted in our system—so different in origin and development—to what we may choose to call “codification” of the common law. Nevertheless, since in current discussions of the proposed “Code of Commercial Law” there may be heard again the old “*nolumus mutare*,” those who believe that change is due not only in the substance but also in the techniques of Commercial Law will find in Professor Beutel’s carefully edited volume a scholarly presentation of that position.

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