

comes very close to ideas which have been most recently developed by Kelsen,¹⁷ whose works could also have furnished him many valuable suggestions. On the other hand, his critique of the Roman concept of "ownership" as contrasted to the more flexible tenures, estates, and equities of English law brings him, at times, into the neighborhood of those neo-German pseudo-scientific politicians and fanatics who have debased to cheap slogans Gierke's pathetic panegyrics of Germanic law and Oswald Spengler's antithesis of the "static" Roman and the "dynamic" Germanic law. That just a few years ago England has modified her law of real property in such a way as almost to replace the venerable old common concepts by the Romanistic concept of "ownership,"¹⁸ is a fact which could furnish some subject for thought. The least it indicates is that even today this clear-cut concept serves the useful economic purpose of rendering real estate transactions certain and reliable.

A deep-going unrest is stirring up the world of western civilization to its roots. The statement that we live in a period of transition has become a commonplace. The social system which found its classical expression in the Nineteenth Century is in the middle of a process of transformation, which has caused, in almost all countries, a process of legal change. Not only are details being elaborated or changed, but the very foundations of our legal systems are scrutinized. In some countries, where social problems were more pressing than in the United States, this movement started earlier, has already passed the stage of criticism, and has reached the stage of constructive creativeness. Mr. Noyes' book seems to indicate that the United States has now also entered on this phase. In spite of a good many shortcomings, it is an impressive piece of creative work.

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Cases on the Law of Sales. By George Gleason Bogert and William Everett Britton. Chicago: The Foundation Press, Inc., 1936. Pp. 1171. \$7.00.

While teaching techniques in the Law of Sales may differ, it certainly is true that the more recent casebook editors in the field have made an honest endeavor to give the student a picture of what is actually happening in the market place. The latest acquisition to the collection, Bogert and Britton's *Cases on Sales*, or its recent predecessor, Vold's edition of Woodward's *Cases on Sales*, may have little in common (at least as far as arrangement of material is concerned) with Llewellyn's *Cases and Materials on Sales*, published in 1930. But all of these books—and they do not by any means exhaust the list—are not only different in degree but almost different in kind (certainly this is true of Llewellyn) from the earlier collections of teaching materials. These case books all do something which the earlier books did not do. They remove the principles of sales law from the abstract realm of "title chasing" to the every-day world of shipping office, department store, bank or waterfront.

Take, for example, a typical case book published about twenty-five years ago when

¹⁷ *Allgemeine Staatslehre* (1925); *The Pure Theory of Law*, 50 *L.Q. Rev.* 474-96 (1934). As to other modern theories of juristic personality see Enneccerus, *Lehrbuch des bürgerlichen Rechts*, *Allgemeiner Teil* 288 (Nipperdey's 13th ed).

¹⁸ *Law of Property Act*, (1925) 15 *Geo. V*, c. 20; see Bordwell, *English Property Reform and Its American Aspects*, 37 *Yale L. J.* 1, 179 (1927).

the automobile was beginning to take its place in the commercial life of the community. In keeping with the conventional case books of that time, this book had not yet reached the automobile stage. The cases were concerned for the most part with sales of brood mares, flax seed, whale oil, hops and endless crops of wheat and corn. Only two of the first sixty cases printed in the book were later in time than 1900; only ten of the sixty were decided between 1890 and 1900, and although at the date of publication there was a bulk sales law on the statute books of every American State and the District of Columbia, no reference to these laws appeared anywhere in the book. The field of conditional sales was covered in four cases. Therefore, in the face of this type of case book, it is small wonder that some legal minds trained at the time—and now in the full flower of their maturity—have difficulty in visualizing a principle of law against a background of economic facts.

It is a far cry from the Sales case books of twenty-five years ago to those of Llewellyn or Vold or Bogert and Britton. Llewellyn contended that "price is the heart of the sales contract." Therefore he began with price and developed this concept for 150 pages before plunging into delivery, warranties, inspection, etc. His treatment was thoroughly unorthodox with much use of the abstracted case. Throughout, his approach was functional and his emphasis was on the facts.

Bogert and Britton claim no such "novelty of arrangement." Thus they indicate in their preface that their presentation will be along traditional lines. But notwithstanding this determination to follow the beaten path, these editors have gone on at least one frolic of their own. They have treated the Statute of Frauds in the opening chapter instead of in the final one.

This reviewer believes that this shift in arrangement of material on the Statute of Frauds is a real contribution to the pedagogy of Sales. Hitherto, even in Llewellyn and Vold, the Statute of Frauds has been relegated to the final chapter of the book which the class rarely reaches. All this now has been changed and the students for the first time have the opportunity to become acquainted at the very outset of the course with a statute which law teachers tend to ignore but which practitioners constantly invoke.

While the other chapters of Bogert and Britton furnish no such novelty as does Chapter I, several of them are packed full of well selected, thoroughly modern, teachable material. The thirty pages devoted to factors' acts and the several leading bulk sales cases included in the book are samples of the editors' tendency to lean in the direction of emphasizing modern decisions. But it is in Chapter IV (Documents of Title) and Chapter V (Financing Methods) that the editors give to law teachers and students everywhere the benefit of their long years of rich experience in the field of business law. These chapters, which constitute nearly one-fourth of the book, are the last word on such phases of the law of sales as bills of lading, conditional sales, and trust receipts. The same comment also stands for the chapter on Warranties. Of the forty principal cases included in the latter chapter, all except ten old stand-bys were decided after 1900; twenty-two were decided after 1920 and eight after 1930. Here also, as throughout the book, the footnotes cite the leading collateral cases and the important periodical literature.

The appendix also reflects the broad experience of Professors Bogert and Britton in the field of statute law. Instructors in Sales should rejoice that these editors have seen fit to bring together in one place all of the uniform Acts which bear on the problems

of the course, with the New York Factors' Act and the New York Bulk Sales Act thrown in for good measure.

In conclusion it may be noted once more that Bogert and Britton is not a functional presentation of the law of Sales. However, with such a wealth of excellent material at his disposal, no type of Sales teacher, be he functionalist, conceptualist, pragmatist, factualist, or plain garden variety, should encounter any difficulty in giving an excellent course.

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Cases and Materials on an Introduction to Law and the Judicial Process. By Bernard C. Gavit. Chicago: Callaghan & Co., 1936. Pp. xxiii, 633. \$5.00.

Mr. Gavit's book introduces the first year law student to many of the issues which have been fought over by the more jurisprudentially inclined law professors during the past years. It also retains the more traditional material for an introductory law course in the form of material on the court system and organization, and some material on briefing, and on common law procedure and common law actions. Having gone through the traditional material the freshman is then given a dose of what Mr. Gavit terms, with others, "the judicial process." The clear merit of the book is that any student having used all of the book will have a sense of awareness of how the law develops and a feeling for the conflict which is implicit. I suppose, also, that the student will be bewildered by what he finds. This bewilderment will be both good and bad.

The book represents, I take it, most of the old and new notions about law and law teaching now current among law teachers. Retaining the material on common law actions, I think, is a mistake. Such material is not introductory for it leads nowhere. It should either be taught as history, in which case it cannot be quickly taught and needs full development, or as a device whereby almost anything can be accomplished. I am aware that some persons believe that it can be taught as logic, although what that means I do not know, and at any rate to do so would not be to give an introductory course. The place of logic in the law does need treatment in an introductory course, and Mr. Gavit has included it, although I do not think that he has a prize collection of cases on it. Mr. Gavit bows rather deeply to the Hohfeldian concepts, which I also think is something of a mistake. A middle sized bow would be much better and than not because the concepts are useful but because some people think they are. About one hundred pages are given over to what Mr. Gavit calls the judicial function. Here the place of law in any theory of government may be well developed, but I think it extremely questionable whether it can be done by the case method alone. The material on statutory interpretation which appears some one hundred and thirty pages later might better fit in here, and so might the material on constitutional interpretation, which is now placed at the end of the book. Of course the book has in it a great deal of the talk about what is law, and includes Mr. Hutchins' life-story for the edification of the freshman. I do not know why the material on what the law is, is separated by most of the book from the judicial process, but perhaps this is an adaptation of the circular method of instruction.

Certainly it is a mistake to take casebooks too seriously. They are, after all, only