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## BOOK REVIEW

CONSUMER LAW: CASES AND MATERIALS. By John A. Spanogle\* and Ralph J. Rohner.\*\* St. Paul: West Publishing Co., 1979. Pp. LVI, 693.

*Reviewed by Gerald J. Thain\*\*\**

Since early in this century, most American law students have been taught (in what is called the "case method") by textbooks called "Cases and Materials": essentially very heavy compilations of appellate decisions (in Contracts, Torts, Procedure, and so on) interspersed with some expository matter by the author/compiler and even a few questions at the chapter ends. Whatever the pedagogical value of these textbooks, every law student would concede that they are among the world's most boring books.<sup>1</sup>

Mayhap. Mayhap. But I believe that Ms. Adler has overstated the case. Although I have yet to come across the legal textbook which, in holding its readers engrossed, will rival *Hamlet* or *The Brothers Karamazov* (let alone the works of such scribes as Agatha Christie or Harold Robbins), I would not concede that textbooks *must* be dull in order to achieve success. There has been a notable effort in recent years to enliven these texts by the deliberate inclusion of whimsy, puns, and even cartoons,<sup>2</sup> as well as by the judicious selection of materials from outside the arena of appellate decisions in order to give students a better grasp of the relation of the issues in cases to those in the social, political, and economic world "outside" the

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1. Adler, *The Justices and the Journalists*, N.Y. Times, Dec. 16, 1979, § 7 (Book Review), at 24 (reviewing R. WOODWARD & S. ARMSTRONG, *THE BRETHERN* (1979)).

2. For two notable examples in subject areas closely related to consumer law, see D. EPSTEIN & J. LANDER, *DEBTORS AND CREDITORS* (1978); R. SPEIDEL, R. SUMMERS & J. WHITE, *COMMERCIAL AND CONSUMER LAW* (2d ed. 1974). See also J. DUKEMINIER & S. JOHANSON, *FAMILY WEALTH TRANSACTIONS* (2d ed. 1978).

confines of reported opinions.<sup>3</sup> In addition, there is an ongoing effort to provide better treatment and understanding of statutory materials by increasing the time spent on the study of statutes through the use of problems, real and hypothetical, which force students to come to grips with the application of statutes in that untidy arena variously referred to as "practice" or "the real world."<sup>4</sup> Legal educators are not about to abandon the case method (although most professors at most schools have indeed abandoned the Socratic method traditionally associated with it), but most appear to be willing to modify and expand the classical approach of the case method in an effort to enrich the law school classroom experience.

These trends have resulted in a general improvement in the nature of law school texts away from the "standard" text described by Ms. Adler and in the direction of volumes which are reasonably stimulating and enjoyable — as well as enlightening in their treatment of some aspects of the law. If the results remain less emotionally stimulating than some of the best films seen by Ms. Adler in her earlier term as movie critic for the *New York Times*, perhaps that need not be considered a failure — different standards of judgment may properly be applied to different products.

The book I have been asked to review here, *Consumer Law*,<sup>5</sup> by Professors Spanogle and Rohner, can be safely classified as well within the boundaries of the new approaches outlined above. Without stinting on the use of decisions by courts and administrative agencies, the "authors/compiler" have sprinkled specific problems growing out of the issues in the cases and questions concerning the interpretation of statutory material with such "non-legal" but highly pertinent material as an excerpt from a popular magazine on the way a successful Washington, D.C. automobile salesman hooks his customers (right under the nose of the federal

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3. See, e.g., I. MACNEIL, *CASES ON CONTRACTS* (1971). See generally Thain, *Book Review*, 56 B.U.L. REV. 435 (1976).

4. For an example of the extensive use of hypothetical problems as a means of demonstrating commercial law principles, see R. SPEIDEL, R. SUMMERS & J. WHITE, *supra* note 2.

My remarks here should not be misinterpreted as an indication that either the legal education community in general or the text reviewed here in particular favors large scale abandonment of the case method. Indeed, this text proudly and accurately describes itself as containing many more cases than most previously published consumer transactions texts. *Preface* to J. SPANOGLE & R. ROHNER, *CONSUMER LAW: CASES AND MATERIALS* at XV (1979). The point is not that case study and analysis is futile, but that it best achieves its purpose when stirred in a proper mixture of other materials — a mixture with rather more ingredients than Ms. Adler's comment might lead one to expect.

For a spirited and stimulating defense of the case method as an unmatched tool for the development of analytical skills, outside law school education as well as within it, see Kaus, *Teaching Colleges a Lesson*, WASH. MONTHLY, Mar. 1980, at 50, 54-55.

5. J. SPANOGLE & R. ROHNER, *CONSUMER LAW: CASES AND MATERIALS* (1979).

leviathan),<sup>6</sup> and a comment from the comic strips on consumer remedies.<sup>7</sup>

So much for the general approach of the book to law school teaching, an approach of which I heartily approve. What of the substantive contents of *Consumer Law*? Do they provide an adequate (or better) tool with which to expose students to the basic issues, and basic approaches to those issues, in that newly developing and slightly unwieldy area known as "consumer law"? My reading of the book<sup>8</sup> leads me to conclude that the answer is "yes," although I must note that the satisfaction of the individual teacher with this text may depend on that particular teacher's conception of just what is meant by "consumer law."

Professors Spanogle and Rohner have chosen a broad approach. Their text emphasizes credit transactions to a degree that would make it suitable for those who wish to devote almost complete attention to such matters. However, there also is what antitrust lawyers would term a "not insubstantial" amount of material concerning deceptive and unfair sales tactics, misleading advertising, and warranty problems, which undoubtedly would satisfy many who would wish to give more than a passing glance at these topics. (Undoubtedly, some of these teachers will supplement the text with additional materials of their own concerning these topics, but there are few

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6. J. SPANOGLE & R. ROHNER, *supra* note 5, at 1 (excerpting Emmett, *Confessions of a Car Salesman*, WASHINGTONIAN, Nov. 1973, at 94-95). For another telling reference to operations in "the real world," recounting the methods used by collection agents in New York, see *id.* at 319-23 (excerpting Daly, *How Collection Agencies Force You Out of Debt*, THE VILLAGE VOICE, May 22, 1977, reprinted in *Hearings on Fair Debt Collection Practices Act Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing and Urban Affairs*, 95th Cong., 1st Sess. 711-14 (1977).

7. *Id.* at 619 (summary of the action from one installment of "Motley's Crew").

8. Those who may wonder how one can sit down and read a textbook in the same fashion that one reads any other book are hereby referred to the classic comment on the subject by Professor Arthur Leff:

By this point it should have occurred at least to some of the more suspicious types to wonder whether I have read the book under review. The answer, of course, is no. I suppose it is conceivable that one could sit down and read a casebook from cover to cover; after all that's what law students are frequently asked to do over a semester, and one must assume that some, say two percent, actually do it. But I find reading a casebook through, word by word, not in connection with a course (as teacher or student), inconceivable. It would be like cuddling up with a cookbook for a nice evening's read. What I have done is leafed it through page by page, reading what interested me and noting what I had already read, seeing what it all was and how it all fitted together, testing an occasional recipe to see if it worked. That may be insufficient, but it will have to do.

Leff, *Book Review*, 49 TEX. L. REV. 827, 833 n.15 (1979).

Obviously, the only completely satisfactory way to review a legal textbook is to use it as the text for a course for at least one semester. In the absence of an assignment to teach consumer law this year (although I have taught the course in the past and expect to teach it in the future), "second-best" review methods were necessary.

law professors able to resist the temptation to supply students with their personal supplements to any set of teaching materials.)

It is a poorly kept secret among law professors that the compartmentalization of various aspects of legal experience into neat little areas labelled Torts, Contracts, Administrative Law, Property, and so on, is more a matter of curricular efficiency than of reality. The law has the messy quality of resisting neat categorization and frequently raising issues which, if they are to be dealt with satisfactorily, require the application of principles from a variety of legal fields.

Oh, we have experts in particular areas of the law — but they, more often than not, are experts in particular fields of endeavor (*e.g.*, corporation structure or labor relations) to which they bring not just a knowledge of some one category of law (termed “corporations law” or “labor law”) but a knowledge of how a variety of “law-categories” such as torts, contracts, administrative law, procedure, constitutional law, etc., are utilized in the application of policy to the behavior of parties within those political, economic, or social fields of endeavor.<sup>9</sup>

Nonetheless, it is quite useful, perhaps even necessary, for all of us in legal education — students and professors alike — to engage in some compartmentalizing, so long as the exercise does not delude us into thinking that the boundaries of the compartments are more than vague but helpful lines. Traditional courses and the materials for such courses have had their boundaries rather well-defined over the years. Significant change in the substantive matters covered by a course in one of those areas is most likely to come slowly and through the general consensus of those who teach the course (although the emphasis on particular topics may be altered in response to important doctrinal shifts by courts or scholars).<sup>10</sup>

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9. To my mind, the classic example of this occurs in administrative law. “Old Washington hands” usually means practitioners of securities law, communications law, trade regulation law, and the like, not practitioners of administrative law who specialize in certain areas. Nonetheless, the traditional law school approach to the problems of the administrative process has been to prepare textual material which presents some rather abstract set of principles drawn from a bewildering variety of specialties instead of endeavoring to demonstrate the way the process operates in a few carefully selected specialties. For notable exceptions to this approach, see G. ROBINSON & E. GELLHORN, *THE ADMINISTRATIVE PROCESS* (1974); G. ROBINSON, E. GELLHORN & H. BRUFF, *THE ADMINISTRATIVE PROCESS* (2d ed. 1980). See also the “non traditional” approaches of S. BREYER & R. STEWART, *ADMINISTRATIVE LAW AND REGULATORY POLICY* (1979); H. LINDE & G. BUNN, *LEGISLATIVE AND ADMINISTRATIVE PROCESSES* (1976). It is my belief that this approach must bear much of the blame for considerable student confusion as to the nature of the amorphous beast labelled “administrative law.”

10. An example would be the way in which the Supreme Court’s approach to the constitutionality of prejudgment remedies of creditors has forced much more extensive consideration of this area in courses covering debtor-creditor relations than was the case a scant 15

The teacher of a new subject in the law school curriculum is in a better position to define the boundaries of appropriate coverage for his or her course where time has not yet hardened the basic expectations of schools, teachers, and students as to the proper treatment of the subject matter. Surely, this is the case today for a professor about to embark on the teaching of a course in consumer law.

Prior to July 1, 1969, there existed fairly substantial bodies of law defining unfair trade practices in the sale of goods and services to consumers and delineating the kinds of sales practices considered deceitful or unconscionable.<sup>11</sup> On that date, however, the provisions of the Consumer Credit Protection Act (CCPA)<sup>12</sup> went into effect, and the growth of courses in consumer law undoubtedly can be traced to that moment. Efforts to treat the sprawling body of consumer credit regulation in courses in Contracts or Commercial Law on anything more than a superficial level clearly seem doomed. The adoption of Truth-in-Lending and the problems created by it were sufficient to justify separate courses in Consumer Credit, sometimes simply called Consumer Law, at some law schools.

Within a decade of the effective date of CCPA, additional significant consumer credit legislation had been passed at the federal level. That legislation governs to some degree the conduct of the credit reporting industry,<sup>13</sup> unwarranted discrimination against women and minority groups by those who grant credit,<sup>14</sup> and the practices of independent debt collection agencies.<sup>15</sup> In addition, one state, Wisconsin, adopted a comprehensive overhaul of its consumer credit regulations, constituting a dramatic restructuring of debtor-creditor relations in that state and presenting a possible laboratory for change in other jurisdictions.<sup>16</sup>

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years ago. See, e.g., *North Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969). Compare the treatment of this topic in any recent debtor and creditor rights textbook with a text published before the *Sniadach* decision. An expansion of a particular legal right inevitably leads to consideration of the boundaries of that expansion. See *Flagg Bros. v. Brooks*, 436 U.S. 149 (1978).

11. See the pre-1969 cases collected in, among others, P. KEETON & M. SHAPO, PRODUCTS AND THE CONSUMER: DEFECTIVE AND DANGEROUS PRODUCTS (1970); Jeffries, *Protection for Consumers Against Unfair and Deceptive Business*, 57 MARQ. L. REV. 559 (1974); Lovett, *State Deceptive Trade Practice Legislation*, 46 TUL. L. REV. 724 (1972).

12. Pub. L. No. 90-321, 82 Stat. 146 (codified in scattered sections of 15, 18 U.S.C.).

13. Fair Credit Reporting Act, 15 U.S.C. § 1681 (1976).

14. Equal Credit Opportunity Act, 15 U.S.C. § 1691 (1976), as amended by Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94-239, 90 Stat. 251. The Act originally covered only credit discrimination against women. These amendments to the Act added minority groups and the elderly to the protected class.

15. Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Supp. II 1978).

16. Wisconsin Consumer Act, WIS. STAT. §§ 421-427 (1975). See Davis, *Legislative Re-*

At the same time, the Federal Trade Commission was not only engaging in some significant restructuring of credit practices entirely apart from its enforcement of the statutes noted above<sup>17</sup> — but also was undergoing a revitalization which resulted in a more aggressive posture being asserted by other federal and state regulators against those who engage in practices injurious to consumers.<sup>18</sup>

Other developments could be cited, but these would have been sufficient in themselves, in my judgment, to lead many law faculties to the conclusion that a course in Consumer Law was highly advisable. The topic remains sufficiently new that the matter covered in a consumer law course will vary not only from school to school but, on occasion, from teacher to teacher within the same school. Allowing for the hazards of generalization, the major differences appear to be between those who give exclusive or near exclusive treatment to consumer credit matters and those who would utilize a broader approach by giving some rather extended treatment to the problems of abusive sales tactics, misleading advertising, and warranty questions both within and outside the scope of the Magnuson-Moss Act.<sup>19</sup>

The editors of *Consumer Law* define “consumer transactions” for their purposes as “those in which individuals enter into consensual arrangements for the purchase of property or services, or for the borrowing of money” in order to treat the legal rules designed to protect a consumer’s economic expectations in those transactions.<sup>20</sup> The approach they utilize is to develop, in four separate chapters, four specific, albeit sometimes over-

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*restriction of Creditor Powers and Remedies: A Case Study of the Negotiation and Drafting of the Wisconsin Consumer Act*, 72 MICH. L. REV. 3 (1973); Grau & Whitford, *The Impact of Judicializing Repossession: The Wisconsin Consumer Act Revisited*, 1978 WIS. L. REV. 983; Heiser, *Wisconsin Consumer Act — A Critical Analysis*, 57 MARQ. L. REV. 389 (1974); Whitford & Laufer, *The Impact of Denying Self-Help Repossession of Automobiles: A Case Study of the Wisconsin Consumer Act*, 1975 WIS. L. REV. 607.

17. Most notably, the FTC took giant strides in limiting the applicability of the holder in due course rule. 40 Fed. Reg. 58,131 (1975) (codified in 16 C.F.R. § 433 (1980)). Spanogle and Rohner discuss the FTC’s rule at 243-63 of the text.

18. See, e.g., Hammer, *FTC Knights and Consumer Daze: The Regulation of Deceptive or Unfair Advertising*, 32 ARK. L. REV. 446 (1978); Thain, *Suffer the Hucksters to Come Unto the Little Children? Possible Restrictions of Television Advertising to Children Under § 5 of the Federal Trade Commission Act*, 56 B.U.L. REV. 651 (1976); Thain, *Advertising Regulation: The Contemporary FTC Approach*, 1 FORDHAM URB. L.J. 349 (1973). See also Note, *Section 5 of the Federal Trade Commission Act — Unfairness to Consumers*, 1972 WIS. L. REV. 1071; Note, *Psychological Advertising: A New Area of FTC Regulation*, 1972 WIS. L. REV. 1097.

19. Magnuson-Moss Warranty — Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301-2312 (1976). The text refers to the Act in the introduction and later considers it in greater detail. J. SPANOGLE & R. ROHNER, *supra* note 5, at LV, 234-38.

20. The authors note that this excludes from their consideration “such matters as products liability, . . . regulation of product safety . . . [and] the rights of consumers in land-

lapping, theories of consumer protection law—*viz*: regulation of information disclosure, regulation of abusive practices, impact on resource allocation and credit availability, and regulatory enforcement.

The materials on disclosure of information treat such matters as the disclosure of credit costs and terms and the need to disclose material facts in certain advertising. The treatment of abusive practices and their regulation considers, *inter alia*, unconscionable contracts and the techniques traditionally used (such as the holder in due course doctrine) to cut off consumer defenses. In the third section, the materials on resource allocation take up the questions of usury, interest rate regulation, and unwarranted pricing tactics. The final section, covering enforcement, considers the putative and actual deterrent effect of class actions by aggrieved consumers, the remedies available to public enforcement agencies, and other means of settling disputes arising out of consumer transactions.

In sum, this is a well thought out and skillfully presented collection of materials which should serve most teachers and students of the “developing nation” of consumer law quite satisfactorily. The sequence of the book flows smoothly from section to section, and the utilization of problems with the materials should serve to prod all but the most lethargic students to some analytical thinking about the implications of cases, statutes, and announced public policy on the operation of consumer transactions. The materials are as up-to-date as the exigencies of the publishing process allow. Moreover, *Consumer Law* not only provides the necessary food for intellectual nourishment, it also contains sufficient yeast to serve as a worthy example to rebut Ms. Adler’s gloomy characterization of legal texts.<sup>21</sup>

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lord-tenant or employment relationships.” J. SPANOGLE & R. ROHNER, *supra* note 5, at XVI.

For a litany of the potential breadth of the area which might be included in a course in consumer law or consumer transactions, see Leff, *supra* note 8. See also Thain, *supra* note 3.

21. The materials are clearly sufficient to take up the time of a three credit course; they also may be utilized, by individual professorial editing, in a two credit course or in a seminar on consumer problems. The specific problems in the book seem to me to be suitable either to discussion led by the teacher in a big class or to extended attention by individual students in seminars.

Finally, I must add that I have been greatly aided by teaching notes used by Professor Rohner in his classroom presentation of these textual materials. These notes, which were loaned to me for purposes of this review, are, in a word, excellent. Along with the classroom notes of Professor Spanogle, they can now be found in a teacher’s manual accompanying the text. The value of the text to teachers — and the performance of teachers in presenting the materials — should be greatly enhanced by the use of this teaching aid.

