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BOOK REVIEW

HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE. By James J. White and Robert S. Summers. St. Paul: West Publishing Co. 1972. Pp. xxix, 1054.

Ralph J. Rohner*

Some lawyers (including this reviewer) find fascination in the questions that attend forged indorsements in the check collection process, and believe that some of the key cases in this area, decided under the Uniform Commercial Code, are dead wrong. Such lawyers should then be delighted to learn that White and Summers agree in no uncertain terms. Their considered view of UCC 3-419 (3) as interpreted in the *Dauphin Trust* case includes the following:

So much for the work of the Code draftsmen. Thereafter, the courts have taken up section 3-419 (3), and what they have done to it shouldn't happen to a dog.

* * * * *

Perhaps those bankers whose hands were doubtless at work in the drafting of 3-419 (3) got what they deserved. If the section be not dead it certainly is mortally wounded; one can only mourn that *Dauphin Trust Co.* inflicted fatal wounds with such little grace and that legislatures will doubtless not give it a decent burial for years to come.²

This gives a flavor of the White and Summers prose, and there are countless other bits of spice through the whole volume. Their text is readable, opinionated and iconoclastic. There is much more academic speculation on Code issues than doctrinaire recapitulation of caselaw and paraphrasing of statutory text.

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1. *Ervin v. Dauphin Deposit Trust Co.*, 38 Pa. D&C 2d 473, 3 UCC Rep. Serv. 311 (1965).

2. J.J. WHITE & R.S. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE 504-05 (1972) [hereinafter cited as HANDBOOK].

But it is obviously impossible to deduce from a sampling of prose, or an assessment of style, the overall worth and scholarship of a book that is the first of its kind and which fills a distinct void in commercial law literature. A more substantial review is in order.

As the Uniform Commercial Code celebrates its twentieth birthday, it is almost incredible that no comprehensive single volume text on the Code has been published during those two decades—until this book became available in late 1972. The lack of such a hornbook has been cause for despair among law students since this reviewer's law school days, and I suspect the same frustration has been felt by practitioners confronting Code problems for the first time. The book thus has one virtue before it is even opened—it fills a need.

This is not to suggest that there are no competent texts already available dealing with the Code. There's the classic Gilmore treatise on Security Interests in Personal Property,³ the volumes by Coogan, Hogan and Vagts,⁴ also on Article 9, and another Article 9 book by Professor Henson is in the pipeline. There are the Duesenberg and King,⁵ and Nordstrom⁶ texts on Sales, and the more comprehensive multi-volume works on the entire Code by Anderson⁷ and by Willier and Hart.⁸ The collective weakness of this literature is hardly its scholarship, but rather its dispersal through volume after volume of series put together at different times and with different orientations. Too, no book dealing with the dynamics of commercial law can hope to be timeless; even a set such as Gilmore's suffers from the passage of time and the accumulation of new caselaw and statutory revisions.

The pervasive values of the White and Summers effort are therefore easy to catalog: it treats as an integral whole nearly the entire UCC, not just isolated articles; it draws almost exclusively on court decisions interpreting the Code itself rather than its ancestors; it is packaged in a single volume of 1000 pages which is manageable by law students and practitioners.

In scope the book treats all the substantive articles of the Code, except for Article 8 (Investment Securities) which has apparently yet to find a home in course or treatise. In addition good chunks of the Bankruptcy Act and of the Federal Bills of Lading Act are considered in the contexts of Articles 9 and 7. While special problems in consumer transactions under the Code are dis-

3. G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY (2 vols.) (1965).

4. P. COOGAN, W. HOGAN, D. VAGTS, SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE (2 vols.) (1963).

5. R. DUESENBERG & L. KING, SALES AND BULK TRANSFERS UNDER THE UNIFORM COMMERCIAL CODE (1966).

6. R. NORDSTROM, HANDBOOK OF THE LAW OF SALES (1970).

7. ANDERSON'S UNIFORM COMMERCIAL CODE (1961).

8. W. WILLIER & F. HART, U.C.C. REPORTER-DIGEST (3 vols.) (1965).

cussed, there is no particular treatment of the Uniform Consumer Credit Code or other exclusively consumer legislation.

White and Summers treat each Article of the Code in numerical order, and their balance seems fair, though light on negotiable instruments. The breakdown is as follows: Art. 2 (Sales), 376 pages; Arts. 3 and 4 (Commercial Paper; Bank Deposits and Collections), 198 pages; Art. 5 (Letters of Credit), 40 pages; Art. 6 (Bulk Transfers), 27 pages; Art. 7 (Documents of Title), 77 pages; and Art. 9 (Secured Transactions), 248 pages. Without conducting an exhaustive study, I suspect this coverage is roughly proportionate to the reported decisions under the various articles and to some extent reflects the authors' desire to crank all the relevant caselaw into their text. Since the authors are both law professors who have earlier collaborated (with Speidel) to produce a casebook on commercial law, it is not surprising that their emphases in this new text parallel those in the casebook. I wonder, though, whether the practitioner necessarily wants the same peaks and valleys in a "Handbook" intended for his use.

In some respects the sheer timing of the book's publication was fortuitous. By 1972 there had grown a sizeable mass of Code caselaw crying out for analysis and synthesis—which White and Summers provide in both text and footnotes. By waiting until after 1971 they are able to incorporate the recommended revision of Article 9, both by citing to the text of the new provisions and by quoting from the Review Committee's "Reasons for Change." By luck, the decision in *Fuentes v. Shevin*⁹ issued from the Supreme Court before White and Summers' book went to press, and they are able at least to speculate on the momentous questions that case poses for secured financing.

A total assessment of the scholarship of the book would be difficult without probably matching its 1000 pages. But perhaps a few examples will help readers draw at least some conclusions as to the book's value.

A whole chapter is devoted to "Unconscionability," in which the Code and caselaw are discussed in journeyman fashion. The substantive/procedural distinction is analyzed, and the thorny question of unconscionable price is properly described as "still in the embryonic stage." But why no mention or discussion of the latest New Jersey pronouncement in this area, *Kugler v. Romain*?¹⁰

While there are separate subsections dealing with judge-made and legislative limitations on the holder-in-due-course doctrine, focusing on *Unico v. Owen*¹¹ and certain Uniform Consumer Credit Code provisions, there is no treatment of the "related lender" problem that has emerged as a bone of

9. 407 U.S. 67 (1972).

10. 58 N.J. 522, 279 A.2d 640 (1971).

11. 50 N.J. 101, 232 A.2d 405 (1967).

contention in consumer legislation. Is this, and the similar problem of retaining defenses against credit card issuers, really too new or too unrelated to the Code proper for inclusion in this volume?

Code *aficianados* are aware that ambiguities exist in the Code provisions dealing with financiers' priorities and inventory and accounts. The book treats clearly such matters as the *Coin-O-Matic* problem¹² (does a financing statement establish priority for all subsequent advances or only those made pursuant to a future advance clause?); the question whether priority as to proceeds of inventory is controlled by 9-306 or 9-312; the possible need for multiple notices to prior lenders under 9-312(3); and the effect of the 1971 Revisions on these problems. As to the latter, White and Summers conclude: "We believe that the proposed amendments to 9-312 can be fairly characterized as cosmetic changes," and they do challenge the Review Committee's conclusion that it "seems appropriate" to give continuing priority in proceeds to non-inventory purchase-money financiers.¹³ (They might equally have questioned the Review Committee's judgment that accounts financing is so much "more important" than general inventory financing as to justify denying continuing priority to the inventory lender.)

In the last section of the book, the authors address the question whether the secured creditor who violates the foreclosure rules of Article 9 may still recover a deficiency judgment—a most significant question in both commercial and consumer default situations. The cases are split, and White and Summers are also equivocal in their assessment of possible answers to the question.

In the area of final payment of checks, the *West Side Bank* case¹⁴ is the landmark exposition of the Code rules. White and Summers correctly analyze its dual implications—for determining final payment, and for determining the timelessness of stop orders and other "legals"—and conclude that the case was wrongly decided. But their treatment irks this reviewer (sour grapes admitted) by overlooking his article¹⁵ on the case while citing a casenote done contemporaneously by one of his students.

The book has its limitations, and indeed its faults, but limitations are not necessarily also faults. The expressed goal of the authors was a manageable handbook on the entire sweep of UCC transactions, suitable for law students and practitioners. The former are necessarily neophytes in the Code, and

12. *Coin-o-matic Service Co. v. Rhode Island Hospital Trust Co.*, 3 UCC Rep. Serv. 1112 (R.I. Super. Ct. 1966).

13. HANDBOOK, at 913, 922.

14. *West Side Bank v. Marine Nat'l Exch. Bank*, 37 Wis. 2d 661, 155 N.W.2d 587, 4 UCC Rep. Serv. 1003 (1968).

15. The reference must be to Rohner, *Posting of Checks: Final Payment and the Four Legals*, 23 Bus. LAW. 1075 (1968)—Ed.

those practitioners who find the book useful will probably also be relatively inexperienced in commercial practice. That the book is an overview of material that can and has filled volumes does not detract from its value as an integrated, understandable, comprehensive and provocative text. Some of its faults are objective—the lack of an index by Code sections, for example, or the absence of any treatment of UCC 2-403 on *bona fide* purchaser. Others are faults only subjectively for each reader—the interpretation of a case or Code provision, the suggested resolution of a Code ambiguity, the projection of a trend of cases.

From the perspective of one who has struggled to impart to law students an understanding of commercial reality and of the Code in action, the White and Summers book is immensely helpful. It provides a ready source of outside readings which can only improve the level of classroom instruction, and for which there is still no better alternative.