

# Fordham Law Review

---

Volume 32 | Issue 4

Article 8

---

1964

## Book Reviews

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the Law Commons

---

### Recommended Citation

*Book Reviews*, 32 Fordham L. Rev. 871 (1964).

Available at: <https://ir.lawnet.fordham.edu/flr/vol32/iss4/8>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

## BOOKS REVIEWED

**Business Law: Principles and Cases.** By Harold F. Lusk. Homewood: Richard D. Irwin, Inc. 7th ed. 1963. Pp. xxi, 1200. \$11.95.

**Modern Business Law.** By A. Lincoln Lavine. Englewood Cliffs: Prentice-Hall, Inc. 2d ed. 1963. Pp. xvi, 844. \$11.95.

In 1959, a pair of bombs burst on the field of education in the form of two reports: *Higher Education for Business*, by Robert A. Gordon and James E. Howell, sponsored by The Ford Foundation; and *The Education of American Businessmen*, by Frank C. Pierson, sponsored by The Carnegie Foundation.

Perhaps nothing is more valuable than this kind of critical impartial evaluation of performance in a field of endeavor. Here, a competent observer, preferably one who has not been steeped in the biases of the area, is able to bring to bear a wealth of broad concepts which can relate the particular field to the community at large. Such an observer can study the past history of the area and its present status, and most importantly evaluate whether the area has shown sufficient responsiveness to our economic, educational and social environment so that it plays as vital a role as possible.

Our purpose now is to review briefly two new editions of well-known business law texts: *Business Law: Principles and Cases*, by Harold F. Lusk, and *Modern Business Law*, by A. Lincoln Lavine. To what extent have these editions responded to the suggestions of the Carnegie and Ford Foundation reports? Our answer will indicate in some measure the impact of these reports on the field of business law.

First, we must understand how the Carnegie and Ford reports evaluated the business law field. The Gordon and Howell report noted that business education has grown at a phenomenal rate. "At present in the United States one out of every seven degrees awarded by institutions of higher education is in business administration. The number of degrees awarded in this field is second only to the number in education."<sup>1</sup> One can readily appreciate the importance of business education as part of the total educational program in the United States. Further, this report noted that "business law, like economics and accounting, is found in practically every business curriculum."<sup>2</sup> Thus, the business law area is a critical part of business education.

An understanding of the traditional role of business law in education requires that we examine its origin. Today's schools of business had their origins in schools of commerce, beginning about the turn of the century. The emphasis was on finance, accounting and trade, and usually confined to the problems of the small concern. Business law focused on the commercial problems of business and emphasized in detail the legal aspects of business transactions. Business law became a "trade" or "tool" course. The environmental role of law was largely ignored.

The Gordon and Howell report recommended that this type of "tool" course be dropped as a requirement.

This is clearly *not* the kind of legal background that the typical businessman, particularly the more responsible business managers, will need in the closing decades of the twentieth century. The nature of business and the role of the business schools have changed dramatically in the last fifty or seventy-five years. This is the age of the large firm, of specialized staff services, of a growing emphasis on administration

---

1. Gordon & Howell, Preface to *Higher Education* at v (1959).

2. Id. at 204.

and on a scientific approach to management problems, and of an increasingly complex environment that impinges on business operations in ever new ways. It is an age, also, that cries for broad and farsighted business leadership that comprehends how the present evolved out of the past and is evolving into the future.<sup>3</sup>

This report recognized that the businessman needs a broad comprehension of the law to set business policy. This could be achieved by giving "students an appreciation of the workings and origins of legal institutions and the functions of the law as a system of social thought and social action."<sup>4</sup> It was suggested that such topics as our legal system, role of law in society, private property, contract and the relation between business and the government would be appropriate. The report raised the question whether the teachers would be able to widen their mental horizons sufficiently in order to make the changes.

The Pierson report also stressed the environmental factors in studying the role of business law. It pointed out the tendency to skim over too much ground in too little time. The traditional "tool" course has the wrong emphasis. An imaginative, broad approach is needed in the relation of law to business.

Such a course would deal with technical details of contract, agency, employment, etc. only to the extent necessary to show some of the ways the living law enters into specific business situations. How society pursues its varied purposes through law, how the great themes in the development of jurisprudence parallel and fuse with the changing position of business in society, how the role of law in business can be illumined by inquiry into the nature of legal reasoning, how the relationship between private law (business law) and public law (antitrust or public control law) has come to assume its present form—these are some of the questions which might well be given prime attention. Since much of the province and function of law can be taught with cases and other materials concerned primarily with business, the work would be particularly useful in developing the student's capacity for analytical investigation and for responsible action in a social setting.<sup>5</sup>

These two reports caused a flurry among business law teachers, who often were put on the spot to justify their courses. Business law associations held meetings to consider the reports. Let's now briefly examine the new editions of the two representative business law books, which were previously noted, largely from the viewpoint of the rationale of the Pierson report and the Gordon and Howell report. Let's see to what extent these widely used books reflect the philosophy of the reports.

*Business Law: Principles and Cases*, by Professor Lusk, is now in its seventh edition. This edition reveals the same careful and accurate work which characterizes the previous ones. The style is clear and the organization logical.

For a teacher looking for a traditional, old-line book of text and cases, covering the conventional areas, this work will do well. Chapter I deals with the function and evolution of law, while Chapter II covers historical development. The author states that in response to the Carnegie and Ford Foundation reports he has included more history and philosophy of law, but he notes that there are practical limits to the space which can be devoted thereto.<sup>6</sup> Yet his treatment is purely factual and expository, attempting to cover so much that it becomes capsule-like in presentation. Where is the development of the rationale for our important legal rules and institutions? Alas, the background material is little related to the substantive areas. Also,

---

3. Id. at 205.

4. Ibid.

5. Pierson, *The Education of American Businessmen* 213 (1959).

6. Lusk, Preface to *Business Law: Principles and Cases* at v (7th ed. 1963).

the questions at the end of these chapters don't provoke thought and searching inquiry. "What is the Napoleonic Code?"<sup>7</sup> or "What was the Justinian Code?"<sup>8</sup> Surely these are rote memory questions.

The Carnegie and Ford Foundation reports on the status of business law deplored the lack of challenge and intellectual stimulus in most business law courses and their texts. And what the reviewer finds lacking here is the critical approach to our law, an inquiring attitude as to the desirability of rules of law, and discussion of how well the rules serve the ends for which they exist. The author, indeed, counts heavily upon the instructor to develop a critical approach and supply the rationale in classroom discussion.

Court procedure, crimes and torts are briefly treated. Some 250 pages are devoted to contracts, and rightly so, since this area is such an important cornerstone in so many other areas of law.

In the remaining substantive areas the author uses a text and case approach, followed in each section by a number of problem cases. The problem cases should promote good classroom discussion. The style is expository, the treatment rather detailed and too factual. The reviewer feels that so many cases have been included that they necessarily have had to be over-cut, often losing the court's development of the rationale and merely stating the rule of law.

A considerable area, some 300 pages, is given to agency, partnership and corporations. These are important topics and the emphasis is well placed. The Uniform Partnership Act is included in the Appendix. Both personal and real property are covered in the text. Here is where a bit of history is worth its weight in gold in order to explain the oddities of real property law. But once again the reasoning is not exploited. Secured transactions, bankruptcy and insurance are included.

Sales and negotiable instruments occupy 260 pages. An attempt is made to bridge the gap between the Uniform Acts and the Uniform Commercial Code. A short discussion follows each section to point out the changes brought about by the Code. But the changes are not integrated into the materials, nor are the reasons which impelled the changes developed. Since over half the states have already adopted the Code, including some of the largest commercial states, a more integrated treatment is needed and one which gives more emphasis to the Code. The Uniform Sales Act, the Negotiable Instruments Law and extracts from the Uniform Commercial Code are included in the appendix.

*Modern Business Law*, by Professor Lavine, is designed for use in business law courses by its well-known author. Its contents are as follows: Structure of the Law, 37 pages; Contracts, 96 pages; Agency, 42 pages; Employment, 20 pages; Sales, 60 pages; Negotiable Instruments, 77 pages; Partnership, 38 pages; Corporations, 78 pages; Real Property, 84 pages; Personal Property, 32 pages; Bailments and Carriers, 39 pages; Liens and Secured Transactions, 31 pages; Security Relationships, 55 pages; Wills and Estates, 38 pages; Bankruptcy, 32 pages; The Regulation of Business, 16 pages; Appendix, 13 pages; Glossary, 16 pages; and an index.

Should a student taking an introductory course in law attempt such an ambitious undertaking? The basic weakness of the book is that attempting to cover so much, the presentation becomes a catalogue of rules and definitions. Does this give the business student an understanding or an appreciation of what our legal system really is? Will he have any conception of what the problems are in our law? Will he be able to help mold public opinion intelligently concerning legislative changes?

7. Ibid.

8. Ibid.

Rather, is not a basic philosophical understanding of our judicial process and a critical approach to selected substantive areas of law essential if the business student is to become a leader?

The reviewer, then, takes issue with the basic concept of presentation of this book. There is little stress on the "why." There is little critique as to the utility of the rules so carefully laid out or discussion as to how well these rules serve the objectives they are designed to meet. For example, an evaluation of the doctrine of consideration as such is a challenge. Why do we have the consideration doctrine? Where did it come from? Does it make any sense? Should we retain it in our law? The reviewer believes that a maze of rules will soon be forgotten, but the concept or fabric upon which a doctrine is based will be remembered because it has made the student analyze and think critically. This type of approach is not too advanced for an introductory course.

The book begins with an introduction pointing out many legal pitfalls into which the unwary student may fall. To illustrate:

[S]uppose your business is radio and television. A customer wants to buy a \$350 television set on a down payment of \$100, balance in thirty days. You are willing to take a chance if a responsible person will guarantee payment. Whom does the customer know? He gives you the name of his uncle, an established business man. You telephone the uncle; the uncle says yes, he will guarantee payment; the customer walks off with the set; and that is the last you see of both customer and set. Can you hold the uncle? Not on this oral guaranty, for that is one of the types of contract that must be in writing to be enforceable.

The point is, that each of these unfortunate experiences could have been avoided by an "enlightened suspicion" as to the law applicable to the situation.<sup>9</sup>

Each section of the book is introduced with an illustration posing such questions, and this technique will catch the student's interest. The textual material which then follows contains snappy, to-the-point illustrations. At the end of each section a court case is usually presented to show the application of a rule. The text is clear, highly factual in approach, and sets forth the majority and often the minority rules. Footnotes indicate the positions taken by various states. The book is carefully done and accurate.

While the Appendix contains an impressive array of states which have adopted the Uniform Commercial Code, the sales and negotiable instruments sections are approached primarily from the viewpoint of the Acts, with brief comments noting Code changes. Reasons for the Code changes are not generally given. The Appendix also contains excerpts from the Code. Elsewhere throughout the book, Code changes are noted.

The reviewer believes that the great majority of books used in business law courses today are open to the same criticisms as those in respect to the Lusk and Lavine texts. Likewise, it is the reviewer's observation that there has been little change in the type of business law course generally offered. Much lip service has been done to the reports, as by souping up chapter or section titles with words which would indicate a new approach. But it is the same old horse. The reviewer's personal position leans strongly toward the philosophy expressed by these two reports, but would include a bit more of the substantive law than the reports suggest.

Pierson, in the Carnegie Report, emphasizes that the central problem is to materially increase academic standards and he stresses the importance of the liberal

---

9. Lavine, Preface to *Modern Business Law* at xii (2d ed. 1963).

education for the businessman.<sup>10</sup> A foundation can be laid for a life of self-education. The impact of this report and that of Gordon and Howell has been all too little. Here and there, happily, there has been a change, but the fire has not spread. Perhaps the seeds sowed by these reports will catch root one day; or are we, as business law teachers unable to widen our mental horizons sufficiently in order to make the change.<sup>11</sup>

GEORGE C. THOMPSON\*

**Studies on Copyright: Arthur Fisher Memorial Edition.** Compiled and edited under the supervision of the Copyright Society of the United States of America. South Hackensack: Fred B. Rothman & Co.; Indianapolis: The Bobbs-Merrill Company, Inc., a subsidiary of Howard W. Sams & Co., Inc. 1963. 2 vols. Pp. xxv, viii, 1731. \$35.00.

"[C]opyright is the right of an author to control the reproduction of his intellectual creation."<sup>1</sup> Thus spoke the Register of Copyrights, Abraham L. Kaminstein, in his Report on general revision of the copyright law. The Register's Report was the climax to a series of studies from 1955 to 1960, which were distributed originally to "29 members of the Panel of Consultants appointed by the Librarian of Congress."<sup>2</sup> These were later made available to the clientele of the Copyright Office and, as Senate Judiciary subcommittee prints, were distributed to a still wider group.

The Copyright Society of the United States of America has compiled and edited the studies into a two-volume, hard cover opus, to memorialize the outstanding efforts of Arthur Fisher, Register of Copyrights from 1951 to 1960, who planned and organized the general revision program, and who was the founder of the Copyright Society in 1953.<sup>3</sup> A special committee of the Society, consisting of Sidney M. Kaye, Chairman, Harriet F. Pilpel, Sigrid H. Pedersen and Abe A. Goldman, formulated and implemented the necessary arrangements for publication. Register Kaminstein wrote a eulogy to his predecessor, entitled Arthur Fisher Memorial.<sup>4</sup> Alan Latman prepared the introductory materials preceding the studies, and in the Preface states the purpose of this Edition: "It is proposed to weave the studies into a cohesive and permanent statement of the law of copyright in the United States, thereby emphasizing the usefulness of the studies over and above their original purpose."<sup>5</sup>

The work consists of the thirty-four original studies plus a thirty-fifth, dated February 1963, on the Manufacturing Clause of the United States copyright law, plus the Register's Report and Title 17 of the United States Code. The thirty-five studies are not reproduced in sequence of original publication, but are rearranged into nine categories by subject matter. For example, five studies which were not originally published successively are grouped under Part III, Publication and Notice, the topic

---

10. Pierson, *op. cit. supra* note 5.

11. Gordon & Howell, *op. cit. supra* note 1, at 206.

\* James L. Dohr Professor of Accounting and Business Law, Graduate School of Business, Columbia University; Member of the New York Bar.

---

1. 2 Copyright Society of the U.S.A., *Studies on Copyright* 1203 (1963).

2. Latman, *Preface to id.* at xv.

3. Kaye, Pilpel, Pedersen & Goldman, *Introduction to id.* at ix.

4. Kaminstein, *id. at xi.* (Arthur Fisher Memorial).

5. Latman, *Preface to id.* at xv.

to which they pertain. The Annotated Copyright Code, Table of Cases and Index complete the work. Space is provided in the bindings for pocket supplements but the reader is uninformed as to the nature of any additional material that might be included therein. Presumably the studies are permanent. Possibly the pocket supplements may include proposed copyright bills, Congressional Committee Reports, a new Copyright Code and like materials.

The notice of copyright recites that copyright is in the Copyright Society of the United States of America, with a most interesting addenda: "Claim of copyright does not extend to the studies included herein which are reprints of publications of the United States Government and therefore in the public domain."<sup>6</sup>

The "employer for hire concept" is evidently utilized for claim of authorship of the book as a composite work. The title page states that "Studies on Copyright Arthur Fisher Memorial Edition" is "Compiled and edited under supervision of the Copyright Society of the U.S.A." No individual is credited as editor of the work.

The studies themselves cover various phases of copyright in a comparative and historical manner. A typical study, "The Unauthorized Duplication of Sound Recordings" by Barbara A. Ringer, dated February 1957, contains a preliminary outline of seven subdivisions. She states the problem, discusses present United States law, reviews its legislative history, the laws of foreign countries, international conventions and treaties, as well as the basic problems involved, and then summarizes the issues. Unfortunately, the Table of Contents does not identify any author. Nor does the listing of "Studies Arranged Alphabetically." A breakdown of "Contributors" gives their respective credits but fails to mention the study authored by each. Only by turning to the first page of each study does one learn who has written that study.

The authors' efforts merit easier and faster identification, for the studies as a whole are excellent. This reviewer read them at the time of original release and re-read them in this edition. The level of scholarship and research is superlative. This reviewer has often used the separate paperbound studies as a reference work and research tool for a number of years. The permanent edition now merits the appellation "treatise," for this is precisely what the studies constitute in the aggregate. Of course, they were intended as an aid to the Register in synthesizing the problems and issues discussed in the respective studies and in formulating proposals and recommendations for general copyright revision which are contained in the Register's Report.

The permanent edition is therefore an acknowledgement of the excellence of the studies. However, the excision of the interesting and provocative commentary of various members of the Panel of 29 Consultants, which is included in a number of the original studies, is distressing. The commentaries represented a variety of views on a number of subjects and gave the reader the context in which the copyright industries and interests viewed these problems and issues. By deleting them, the editors have tended to serve the reader a bland dish, when in reality the studies in copyright revision were highly seasoned with controversy. Fortunately, the Register's Report could not be made bland. For the Register considered not only the studies, but the studies-*cum*-commentary. Thus, the Register states in his Report:

Before the International Copyright Act of 1891, the works of foreign authors had been freely and widely pirated in the United States. The piratical printing of foreign works had become such a large part of the domestic printing industry that the printers opposed any extension of copyright to foreign works unless their interests

---

6. Id. at iv.

were protected. . . . The manufacturing clause was the price exacted by the printers for establishment of international copyright protection in the United States.<sup>7</sup>

Although these statements may not have been directed at any particular commentary, they indicate a sensitivity to the positions and problems of the various industries and groups involved.

Indeed, if copyright revision is effectuated, it will be because the Register of Copyrights has been so adept in the jurisprudence of interests. For the past year, more or less, periodic meetings have been held in Washington and elsewhere by the Copyright Office, to which the interested copyright public has been invited to discuss and review, seriatim, sections of legislation to be embodied in a new bill to be proposed to Congress by the Copyright Office. Various proposals and alternative proposals indicate that the recommendations in the Register's Report are not rigid and inflexible formulae but were also intended to be exposed to the scrutiny of the copyright public for consideration in advance of submission of a general copyright revision bill to Congress. What may or may not eventuate in the proposed new bill must first be sifted through the sieve of compromise and conciliation of copyright interests, e.g., authors, publishers, motion picture producers, broadcasters, etc.

Even then one must raise the questions whether the most articulate and organized interests, identifiable as an industry or not, are necessarily representative of their membership, and whether new trends have not diminished the importance of some of these interests. For example, in the last decade, independent production in motion pictures has substantially replaced studio-owned production. In the last few years independent production of phonograph recordings has become more important. Concomitantly, the role of financing has assumed greater importance.

Thus, the task of general copyright revision is formidable. A technological revolution has transformed the world since the enactment of the present Copyright Code in 1909.<sup>8</sup> Yet the lawyer's tools are the concepts and language of an Age of Innocence—the decade following the Gay Nineties. In addition to bridging this historical and technical gap, the Register of Copyrights must correctly assess the true strength of the copyright interests at the present time and prognosticate with reasonable accuracy their strength in the future. Copyright revision, if and when it comes, is truly a herculean task.

But the history of copyright in this country, in a sense, indicates that a fair compromise may be reached. American copyright has matured from the isolationism of a hundred years of refusal to acknowledge the rights of foreign authors in the United States before 1891, to our adherence to the Universal Copyright Convention in 1954, after repeated refusals on our part to adhere to the earlier Berne Conventions. The Register's recommendations evidence further growth of American interest in arts and letters and concomitant protection of their creators. Even if general copyright revision becomes a reality, we shall have a long way to go in future general copyright revision to accord the American creator the status which was so honored by the late President Kennedy.

In the meantime, we can rejoice not only that *Studies on Copyright* is a first-rate copyright treatise for scholar and practitioner alike, but also that the history of American copyright is a progression, however slow at times, of which we can be proud, and whose future direction is even more reassuring.

JOSEPH TAUBMAN\*

7. 2 id. at 1319-20.

8. 35 Stat. 1075 (1909), as amended, 17 U.S.C. §§ 1-216 (Supp. IV, 1963).

\* Member of the New York Bar.

**Business Aspects of Pricing Under the Robinson-Patman Act.** By Albert E. Sawyer. Boston: Little, Brown and Company. 1963. Pp. xvi, 514. \$22.50.

The labyrinth that is the Robinson-Patman Act presents sufficient difficulties for those of the legal profession that the nonlawyer engaged in the day-to-day management of a selling organization would not be expected to have sufficient background or detailed knowledge to understand the reasoning or functioning of this statutory mandate. Those lawyers concerned with the instruction of the custodians of our economy's merchandising operations in the rigors of our nation's antitrust prohibition oftentimes merely can offer general instructions when seeking to anticipate possible difficulties in the pricing of a company's product. Some, more courageous, might attempt to offer outlines of the facts necessary to determine the existence of a price differential or, assuming there is a price differential, those facts necessary to raise a defense. However, the futility of attempting to create general rules applicable to the daily operations of any business in this regard is as well exemplified by Albert E. Sawyer's *Business Aspects of Pricing Under the Robinson-Patman Act* as any other article or book on this subject to date. One might believe from the title of this work that it is a book which could be placed on the desk of a business executive as a handbook of what not to do, or as a readily available reference to guide operations through this aspect of trade regulation. It is not that at all. Rather, it is a collection of discourses, not necessarily related except in general, on various problems encountered in understanding the Robinson-Patman Act. There is no continuity between the discourses. Substantial space is devoted to tabular recordation of proceedings before federal tribunals.<sup>1</sup> Additionally, certain chapters discuss in great detail material not sufficiently meriting the emphasis received.<sup>2</sup> However, in those areas in which the author's expertise is well known<sup>3</sup> the book is excellent, and this justifies the entire work. One such instance is the author's chapter dealing with "cost justification,"<sup>4</sup> where the dichotomy between cost accountants and lawyers which occurs in considerations directed toward cost justification defenses is discussed.

The dichromatic characteristics resulting from the interplay between lawyers and accountants in considerations directed toward cost justification are not readily evident until one has become intimately involved in a situation where this defense is raised. There is sufficient confusion in the cases dealing with cost justification on matters unrelated to the operations of cost accountancy that frequently one loses sight of the basic concept sought to be generated by a defense of this type. Mr. Sawyer's exploration of the purpose served by accountants, generally, is very helpful in providing a basic understanding of the data which accountants prepare in the normal course of doing business. He also indirectly indicates the thought which many a corporation melancholically espouses when involved in antitrust litigation: records are not kept

1. Appendix A at 325-422, sets forth basic detail on adjudicative proceedings before the Federal Trade Commission grouped according to various types of price discriminations. Appendix B at 423-58, is a chronological tabulation of complaints issued by the Federal Trade Commission during approximately a 25-year period ending in the latter part of 1961.

2. Over 100 pages are devoted in Chapter 5 to a discussion of price differentials resulting from utilization of geographic factors in pricing structures.

3. Mr. Sawyer has contributed to symposia and written articles on various aspects of law and accounting under the Robinson-Patman Act; e.g., *Accounting and Statistical Proof in Price Discrimination Cases*, 36 Iowa L. Rev. 244 (1951); *Cost Justification of Quantity Differentials*, 1 Antitrust Bull. 573 (1956); *Counselling Clients in the Application of Cost Justification Studies to Pricing Before a Complaint Is Filed*, 5 Antitrust Bull. 521 (1960).

4. Ch. 4, "The Cost Justification Proviso of Section 2(a)."

for purposes of lawsuits but for the purpose of running a business. Additionally, cost accountants are the first to admit that much of their operation is based upon judgment acting within the context of somewhat objective accounting principles. Where judgment enters the picture you have gone beyond the record-keeping operation of a financial accountant and have entered into a complexity of refinements and assessments which can present difficulties of the greatest magnitude. Mr. Sawyer's treatment of this topic is recommended to all concerned with this aspect of the Robinson-Patman Act.

Aside from the author's treatment of cost justification, this book is one which generally (1) demonstrates how competition can be affected by price differentials at various levels, and (2) explains how different types of pricing structures can result in price differentials.

The longest of the author's six chapters,<sup>5</sup> comprising one third of the book's textual material, is devoted to a topic which, for purposes of knowing the present state of the law, could be set forth in less space. The discussion presented is an interesting analysis of the historical development of the f.o.b. mill vs. mill net corollary to the Robinson-Patman Act, but, for the most part, is detail of more interest to the academician than one interested in knowing the present state of the law. This is not to disparage a knowledge of the past which is always important in understanding the present. However, since the primary thrust of this book is stately and implicitly pragmatic in nature, to serve the present needs of the business community and those lawyers instructing such community, the extensive treatment given this topic detracts from its purpose and creates imbalance when considered with the other topics discussed.

Classifying Robinson-Patman cases by "type of injury to competition" is an interesting exercise and is, of course, designed to illustrate the levels of competition which may be affected by a price discrimination.<sup>6</sup> Effect on competition is a necessary ingredient of a Robinson-Patman violation, and the chapter devoted to this subject is helpful in pointing out to the uninitiated the levels at which such effect can be felt. It should be noted, however, that, as pointed out by the author,<sup>7</sup> such examples as are given are merely illustrative, and do not delineate boundaries outside of which injury to competition does not occur. In fact, it would appear, since *Anheuser-Busch*,<sup>8</sup> that an effect on any line of commerce with the necessary causality relative to a price differential constitutes a potential Robinson-Patman violation. Where you have a price differential and where that differential can be shown to affect competition, just where that competition is affected is of no consequence.

One very interesting chapter<sup>9</sup> illustrates various methods of pricing which may result in price differentials. The author has set forth, in effect, eight pricing methods, each of which can result in discriminatory pricing. The most simple, of course, is "ad hoc" pricing practices and other arbitrary concessions. From there you can readily develop differentials based upon quantity discounts, volume discounts (distinguished from quantity discounts in that here the sales may be *cumulative* in time or among locations), trade and functional discounts, geographic differentials, etc. The

5. Ch. 5, "Price Differentials Conditioned Upon Location of the Point of Delivery."

6. Ch. 2, "The Section 2(a) Cases Classified by Type of Injury to Competition."

7. "That this effort to neatly categorize the infinite variety of business situations that exist and the new ones that continue to be born may not be mutually exclusive must be expected." Sawyer, *Business Aspects of Pricing Under the Robinson-Patman Act* 13 (1963).

8. *FTC v. Anheuser-Busch, Inc.*, 363 U.S. 536 (1960).

9. Ch. 3, "The Section 2(a) Cases Classified by Type of Price Discrimination."

subject matter contained in this chapter is one which perhaps should be reviewed by every executive responsible for pricing a company's products where Robinson-Patman liability may exist. The one caveat in this connection, however, is that here pricing structures which result in discriminatory prices are not in themselves violative of the Robinson-Patman Act, but are one essential ingredient, the *sine qua non* of Robinson-Patman.

This book is not a treatise which covers the range of all significant matters which may arise in a consideration of pricing under the Robinson-Patman Act and should not be looked upon as a ready reference work for such purpose. However, the subjects which are discussed are well treated and the work should receive the attention of antitrust practitioners.

RAYMOND M. MAGUIRE\*

---

\* Member of the New York Bar.