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BOOKS REVIEWED

The Law of Contracts. By John D. Calamari and Joseph M. Perillo. St. Paul: West Publishing Co. 1970. Pp. xxx, 621. \$11.00.

REVIEW I

Hee learned to frame his cases from putting Riddles and imitating MER-LINS PROPHECIES, and so set all the Crosse rowe together by the eares.

These words may seem to describe the typical Socratic method of law school teaching, but they long antedate modern legal education, appearing as the description of "a meere Common Lawyer" published in England in 1615.¹ The reference to the "Crosse rowe" is the connection between that early statement and this review, for the allusion is to the first line appearing in ancient hornbooks, and the book being reviewed is one of the latest in West's Hornbook Series.

No modern day reviewer of any hornbook, no matter how excellent, can hope to surpass or even equal the encomium of the original hornbooks in a poem of one Thomas Tickell written (while the author was incapacitated by gout!)² in 1728. The following extracts will present the high esteem in which hornbooks were once held:

Hail *ancient Book*, most *venerable Code*,
Learning's *first Cradle* and its *last Abode!*

. . .

'Twas *Cadmus*, who the first *Materials* brought
Of all the *Learning*, which has since been taught,
Soon made compleat; for *Mortals* ne'er shall know
More than contain'd of old the *Christ-cross Row*;

. . .

But how shall I *thy endless Virtues* tell,
In which *thou* dost all other *Books* excell?
No *greasy Thumbs*, *thy spotless Leaf* can soil,
Nor *crooked Dogs Ears thy smooth Corners* spoil;
In idle *Pages* no *Errata* stand,
To tell the *Blunders* of the *PRINTER'S Hand*:
No *fulsom Dedication* here is writ,
Nor *flatt'ring Verse* to praise the *Author's Wite*
The *Margin* with no *tedious Notes* is vext;
Nor *various Readings* to confound the *Text*:
All *Parties* in *thy lit'ral* Sense agree,

1. A. Tuer, History of the Horn-Book 73 (1897). The description is of one of the "Characters" in "New and Choise Characters, of severall Authors, Together with that exquisite and unmatcht Poeme, The Wife, Written by Syr Thomas Overburie. London . . . Printed by Thomas Creede for Lawrence Lisle at the Tygershead in Pauls Churchyard, 1615."

2. The reviewer feels a bond across the years, for he now is hampered by a broken thumb which intereferes with the use of writing tools.

Thou perfect Center of Concordancy!

. . .

Thy Heavenly Notes like Angels musick cheer
 Departing Souls, and sooth the dying Ear.
 An Agent Peasant, on his latest Bed,
 Wish'd for a Friend some godly Book to read.
 The pious Grandson, *thy* known *Handle* takes,
 And (Eyes lift up,) this sav'ry Lecture makes:
Great A, he gravely roar'd, th' important Sound
 The empty Walls and hollow Roof rebound:
 Th' Expiring Ancient rear'd his drooping Head,
 And thank'd his Stars that *Hodge* had learn'd to read;
Great B, the Yonker bawls: O heavenly, Breath!
 What Ghostly Comforts in the Hour of Death!
 What Hopes I feel. *Great C*, pronounc'd the Boy;
 The Grandsire dyes with Ecstasy of Joy.

. . .

All humane Arts, and ev'ry Science meet,
 Within the Limits of *thy single Sheet*,
 From thy vast Root, all Learning's Branches grow,
 And all her Streams from *thy deep Fountain* flow.³

The book Professors Calamari and Perillo have written about the law of Contracts is excellent and deserves praise, but times have changed and this reviewer lacks the style of the good Mr. Tickel, so this review will suffer somewhat by comparison. Nonetheless, it should be made clear that the reviewer finds the Calamari and Perillo book to be a joy to read and use, and a book most likely to be of value to law students struggling with the law of contracts.

The advantages to be gained from the use of any hornbook may be debatable. As a law student, this reviewer first gained exposure to that kind of book in a first-year course in "Common Law Pleading." The casebook, whose author I cannot recall, seemed to be a mishmash of unrelated cases involving horse back riders running into logs left in odd places on muddy roads, horses dumped into raging streams by ferry boat operators, and a variety of events whose relevance to the age of the chrome plated, code pleaded motor vehicle was at best obscured. It fell to one of the first of the West Hornbook Series, *Shipman on Common Law Pleading*,⁴ to extract the then eternal verities and subsume the materials in tolerably manageable proportions under chapters on Trespass, Trespass on the Case, Assumpsit, and the like. From that early exposure, this reviewer has been grateful and appreciative for books that can concisely provide a tool which a student can use to fill gaps and organize materials offered by the case method of study.

Messrs. Calamari and Perillo have produced a treatise on contracts which seems to this reviewer to have the following major characteristics: first, the style is clear, accurate, precise, and concise. Too often authors, in seeking

3. A. Tuer, *supra* note 1, at 224-29.

4. B. Shipman, *Hand-Book of Common-Law Pleading* (1894).

brevity, make statements that literally raise more questions than they answer. More often than this, statements appear which are devoid of applicability to resolve any particular issue. I do not find these egregious errors present in this book. Indeed, there are virtually no instances where I would take issue with conclusions reached by the authors, though I am troubled by the statement that: "Similarly, a guaranty of payment made after the principal obligation has arisen does not bind the guarantor unless new detriment is incurred by the promisee in exchange for the guaranty."⁵ I am concerned by the impact of section 3-408 of the Uniform Commercial Code on that problem.

This leads to the second characteristic of the book: aside from the detail in the previous paragraph, the book is extremely well oriented to the Uniform Commercial Code. If no other justification exists for a new book at this time, the authors' care in analyzing the UCC's impact is enough. Indeed, students who use the book will need constantly to keep in mind that the UCC does not govern all kinds of contracts. Thus, in the discussion of auction sales, an important footnote appears, identifying the possible application of Commercial Code doctrine to non-covered transactions.⁶ Nonetheless, a shock is experienced when, after the rubric is announced that the sale or contract is final at the fall of the hammer, a wiser than average student asks if this can possibly be true of sales of real estate, and if so what provides the written memorandum to bind the bidder.

Indeed, the book is characterized by extensive reliance on authority, and this seems to be the third major characteristic. Publishers have always seemed to the present reviewer to throw a curtain of silence about available texts, tending to limit references to books to which they hold the copyright. Messrs. Calamari and Perillo have leaned extensively on Professor Corbin's book, but in addition they give extensive references to and quotations from the works of Williston, Simpson, Duesenberg, and King—to cite only those books which have tended to become recognized authorities in contracting under the Uniform Commercial Code. It is almost as if Macy's is telling its customers that some goodies are available at Gimbel's.

The authors do not intrude their own pet ideas about what the law of contracts ought to be. Where differences among the available authorities exist, they state the view they deem preferable—but loyalty to the given doctrinal authority pervades the book. Argument by reference to authority, then, rather than by reason tends to characterize the book. The discussion of the Parol Evidence Rule, though, is a notable instance where the authors' have presented policy considerations to aid the student reader in reaching decisions about the desirability of a particular rule of law. Thus the book is not entirely limited to citations to authority without supporting argument.

Among the authorities relied upon rather extensively is the *Restatement of Contracts, Second*. In view of the fact that if the present version of that Restatement is finally approved, many established usages in the field of contracts

5. J. Calamari & J. Perillo, *The Law of Contracts* § 54, at 106 (1970).

6. *Id.* § 19, at 23 n.49.

may become obsolete, the desirability of references thereto is obvious. One thinks at this point of the efforts to eliminate terms like "unilateral," "bilateral," "creditor beneficiary," "donee beneficiary" and the like—such usages are currently as habitual as "meeting of the minds" was to former generations, so the habits may be hard to extirpate.

Earlier hornbooks tended to announce doctrines in rubric form, so that the student found "the rule" in bold type, thus reducing eyestrain, for the lighter type could be omitted. Even the text that was contained in those old books tended to be written as statements of rules devoid of any factual content. This lulled the student into memorizing rules which he was unable to apply to any known set of facts, thus deferring or terminating his legal education until he learned that the essence of law is application of doctrine to facts in the real world. Professors Calamari and Perillo avoid this by frequent brief, but accurate, summaries of the facts of the cases from which the rules derive. No doubt by this, they help students to appreciate the rules they read, to see how they apply, and thus to discern their very limits. How often do students announce after an unsuccessful examination that they knew all the rules but couldn't seem to put them down on the paper? The relationship of rule to facts is often the essential missing ingredient, so the factual content of law must not be overlooked.

The final observed characteristic of the Calamari and Perillo book is completeness. The topics covered in standard courses in contracts are, with one exception, well covered. Where new concepts are evolving, such as the concept of unconscionability which is evolving at an unconscionable rate, these topics, too are touched upon. The reviewer has, as the course in contracts proceeded, tried to use the treatise as a guide to how he might handle particular cases or problems. Only one surprise was uncovered—the coverage of problems of mistake is peculiarly abbreviated, indeed almost nonexistent. It is a shame that one may read the treatise without learning that there once were two Peerless vessels—to the dismay of two merchants and of all law students since.

But even on a point like this, the dedicated researcher will find in a footnote reference to *Raffles v. Wichelhaus*,⁷ so the point is not irretrievably lost. Further, omission of this detail is a small price to pay to achieve a concise, usable text.

RICHARD COSWAY*

REVIEW II

Far too frequently, student contracts texts serve only to bolster the egos of their authors. They show how clever the authors are in spotting, and sometimes offering solutions for, newly discovered problems; and allow, occasionally, the clever fellows an opportunity to find a flaw in Corbin's reasoning. What such

7. 159 Eng. Rep. 375 (Ex. 1864).

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treatises usually fail to do, however, is furnish the beleaguered student with an aid that will help him understand the concepts that are, collectively, the law of contracts. Professors Calamari and Perillo, by subverting their egos, have served the student need well; and, in the process, have written an honest work that might well be utilized by any lawyer in need of refreshing his recollections of the law of contracts.

The authors' obvious concern with student needs is evident from even a cursory perusal of this treatise. Preceding every chapter and subdivision thereof is an "analysis." These carefully conceived analyses serve a far greater function than merely to inform the reader of the subjects that will be discussed thereafter. Additionally, they constitute capsulized check-lists of the problems that are encountered, and which must be dealt with, in each subject area. For example, the analysis preceding the sections dealing with the concept of acceptance asks, *inter alia*, the following questions:

Must the Offeree Know of the Offer and if so at What Point of Time?

Must the Offeree Intend to Accept?

Who May Accept the Offer?

Must the Offeree Give Notice of the Acceptance of an Offer to a Unilateral Contract?¹

It is precisely these types of questions that a student—or a lawyer or judge—must apply to a conglomeration of facts to determine whether an offer has been properly accepted, thereby altering the legal status and obligations of the parties. Thus, in the area of acceptance—as in all other areas of this treatise—the "analysis" serves two vital functions as a student aid: (1) by flashing-in the analysis from class notes and information taken from the text of the treatise a student can prepare a complete outline of the concept of acceptance which should prove invaluable for review; and (2) in its bare-bones form the analysis serves as a check-list that can be applied to any set of facts that might be encountered in an examination to determine if there has, or has not, been a valid acceptance of what was previously concluded to be a valid offer.

Reading beyond the most helpful "analysis," the usefulness and validity of the text becomes even more apparent. This is not a "rule-oriented" work—*i.e.*, each section is not prefaced by a rule of law—and the reader is not deluded into thinking that it is of primary importance that he commit the rule to memory. But, neither are those concepts that have achieved the status of "rules" neglected. The authors, in narrative rather than dictatorial terms, tell the students what the courts have generally done and then *examine* the past decisions in the light of what the courts were trying to accomplish. Thus, the student obtains some understanding of what the "rules" are without being awed by their "black-letter" presence, and stands a better chance of being able to evaluate these "rules" or holdings in the light of their intended purposes—and *this* is what a contracts course is all about!

As a further aid to encouraging students to approach concepts in a "thinking" manner rather than to memorize them, the authors make liberal use of hypo-

1. J. Calamari & J. Perillo, *The Law of Contracts* 38 (1970).

thetical and real case situations to illustrate their discussions of the various concepts. Moreover, the illustrations chosen for such purposes are often cases contained in most of the leading contracts casebooks. This is particularly helpful to student readers in that it enables them, after reading and thinking about an assigned case, to check their analysis against the analysis of the authors; providing, in some instances, a comforting assurance and, in others, a non-embarrassing warning that more penetrating analysis must be performed.

One final aspect of the treatise that makes it both a delight to read and a welcomed student aid is its format. The large type, plentiful margin arrangement seems to reach out and invite the student in to browse—as well as to underline and jot down notes! And, the authors have arranged the book in short sections that, even when picked out of context, can be beneficially read by the student with a minimum of expended time and effort. Furthermore, the authors, both whom obviously write with clarity and ease, have worked to keep the basic text tight and to the point, with all ancillary or only peripherally applicable discussion relegated to the footnotes. As a result, the book can be read quickly and somewhat effortlessly—indeed, because of the frequent interesting and often familiar case illustrations, even pleurably, if that can be said of any text! And, since what is being digested in so palatable a manner is a legitimate discussion of important and complex concepts, this added dimension of form and style lends much to the overall value of the treatise.

If the treatise has any flaws they are most likely sins of omission rather than of commission. Long intrigued with the confusing concept of mistake, I would have enjoyed reading what Professors Calamari and Perillo had to say about my heroine, Rose II of Aberlone,² and about the hosts of innocent little girls who travel about selling pebbles that are really diamonds to both suspecting, and unsuspecting, vendees.³ And, I feel that a final chapter dealing with the importance of the interrelation of contract concepts in determining the rights and liabilities of the parties would have been useful to assist the student readers to tie the course together. But, in order to find flaws I've had to look for the picayune!

Professors Calamari and Perillo have written a most useful, and most legitimate, student text. Indeed, it is difficult to conceive of any student who, if he attends classes and *thinks* as he reads this treatise, could not help but improve his contracts grade.

ALFRED S. PELAEZ*

REVIEW III

Student texts were anathema to my old contracts teacher. It was bad enough to sneak into the law library to find out just how Messrs. Williston and Corbin

2. *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887) (the case about the lovely bovine who, alas, could not conceive).

3. E.g., *Wood v. Boynton*, 64 Wis. 265, 25 N.W. 42 (1885).

* Professor, Duquesne University School of Law.

explained why promissory estoppel did not save "Dear Sister Antillico" in *Kirksey v. Kirksey*.¹ To stoop so low as to consult a mere hornbook was a foul deed which induced in its perpetrators an acute sense of guilt and the fear of perpetual commination.

To our teacher the casebook (preferably one hewing close to the Langdellian pattern by dispensing with such frills as explanatory notes) was a self-contained system. Being the master teacher that he was, he made it come to life. There were no rules, only working hypotheses which we deduced ourselves with one weather eye constantly peeled to the slightest changes in facts or policy matrix that would test and delimit our tentative formulations. Naturally our teacher was not about to have our carefully nurtured perceptions blunted by some textwriter's capsuled half-truth that, *e.g.*, offers were revoked upon insanity or death.

Much can still be said for such heuristic method, but surely not even its staunchest adherents will claim that it acquaints students with that large portmanteau of legal problems which we call Contracts. Our subject matter is snowballing. Large portions of Article 2 of the Uniform Commercial Code and some parts of Article 9 are now legitimate grist for our mills. At the same time we have to fend off rapacious curriculum planners who are ever plotting to whittle down "core" courses to release more hours for such topical endeavors as seminars on the population explosion.

I believe that a first year contracts course should subserve two functions. The first is to initiate students into our "tribal rites" which encompass case analysis, statutory interpretation, speculation about judicial behavior antecedent and subsequent to the syllogistic exercise we call precedent, and so forth.

The second is to encourage students to become broad-gauged lawyers who can spot a contracts problem, classify it, and hammer it into researchable shape. This knack for "spotting" or "classifying" a problem, which profoundly affects the effectiveness of this research that follows it, is hardly an accident. It may be the product of information remembered. It is more likely the product of information *seemingly* forgotten, but which lingers on as a kind of trained or programmed instinct, as a sense of relevancy that characterizes the better lawyer. This means that at one time at least the student ought to absorb a good deal of information. Not so much information about rules as information about varied problems that call for their imaginative application.

In order to accomplish both of these functions I have for several years required that students buy a designated text and have held them responsible for their readings both in class discussions and in final examinations. At the same time I have pruned my casebook to a point where I can amble along at a more leisurely pace and still cover the book.

Having just finished a term of use of the Calamari and Perillo book I might as well give away my plot by stating that I have found it to be the best available student contracts text for the purposes described.

1. 8 Ala. 131 (1845).

It is both manageably concise and, to a surprising extent, intelligibly detailed.² As a comparison of tables of cases reveals, most of the trend-making decisions and venerable landmark cases encountered in the leading casebook have found their way into this text. Although there is a sufficiency of brand-fresh decisions the authors have happily resisted the temptation to display that excessive amount of footnote learning which often induces a sense of futility in students and frightens them away from the most scintillating materials. As a student text should be, this book is more polyphyletic than profound. The "masters" are freely quoted and cited. In the more complex areas that are particularly in a state of flux the authors, rather than regaling the reader with an overabundance of case citations, invite his attention to the most recent legal articles. This should be useful even to the practitioner who seeks a time-saving way of getting into a subject and therefore commends the book for inclusion in his law library.

The authors' style is crisp. Sentences are generally terse. Overly subtle and convoluted statements are avoided by the simple device of putting qualifications and caveats into separate sentences. Different views and authorities, particularly those that overlap and exhibit a surface similarity to each other, are clearly delineated. Altogether there is a certain lean artistry about this book for which the reader can only be grateful.

While structuring a doctrinal framework that is amply fleshed out with illustrations, the authors have shied away from simplistic and superficial shorthand formulations that lull the student into a deceptive sense of security and completeness when he should instead be sensitized to the fact that all formulations are provisional, not only the end product but also the starting point of inquiry. This is achieved in two ways. First, the student is continually confronted with a broad range of alternative solutions. Even in those placid areas where one would think conflict has long been laid to rest and which therefore invite black-letter treatment, the reader is given no respite. For example, after making a convincing case for the proposition that the parol evidence rule does not come into play until there is a writing, the reader is thrown off balance by the observation that the parol evidence rule just might, in carefully articulated circumstances, apply to an *oral integration*.³ He is thus constantly reminded that credulity sits on a lawyer's head like a dunce cap.

Second, the authors tone down the process of reification which yields abstractions that are easily memorized but are practically worthless, a form of legal Esperanto. Doctrines are limned by the litigation context that has given rise to them. Where they have not reached the stage of general propositions a higher synthesis is either approached with circumspection or entirely avoided.⁴ It is this overall feature which, more than any other, encourages the teacher

2. See, e.g., J. Calamari & J. Perillo, *The Law of Contracts* §§ 287, 288, 289 (1970) [hereinafter cited as Calamari & Perillo] on The Main Purpose (or Leading Object) Rule as an exception to the Statute of Frauds.

3. *Id.* § 40, at 76 n.5.

4. See, e.g., *id.* §§ 107, 108, 109 which discuss promissory estoppel in the context of sub-contractors, franchises, and pension plans.

to assign the book without fear that its use will undo the socratic accomplishments of the classroom.

A few more outstanding features warrant comment. To my knowledge this is the first student text in contracts which truly integrates the Uniform Commercial Code and the proposed *Restatement of Contracts, Second*. By that I mean that these new materials are integrated as part of the original blueprint, not as an afterthought with a few references tucked away in the footnotes or a few slim sections sandwiched between prior sections as a result of a boilerplate editing venture. Sections like those matters on nonconforming acceptance under section 2-207,⁵ of the Statute of Frauds under section 2-201,⁶ on the trend limiting the importance of the distinction between unilateral and bilateral contracts under section 2-206 and proposed Restatement Second⁷ are gems which alone demonstrate conclusively the excellence of this book.

The reader is also given a binocular view of new trends which are either carefully articulated or, where this is still impossible, at least adumbrated. Particularly noteworthy examples are the sections on the future of promissory estoppel,⁸ on the franchise cases and their gradual acceptance of a doctrine analogous to *culpa in contrahendo*,⁹ on estoppel and its relation to the statute of frauds,¹⁰ and on reliance damages as an alternative to compensatory damages.¹¹

While the organization of the book proceeds on fairly orthodox lines without radical departures from traditional compartmentalization, taxonomy and symmetry have generally been sacrificed for function with beneficial results for the reader. For example, the parol evidence rule is not cradled in a single chapter but is interspersed throughout the text. There is, of course a separate chapter on the parol evidence rule,¹² but the reader also encounters the rule in those contexts in which he is most likely to run into it in practice, in the chapters on consideration,¹³ the statute of frauds,¹⁴ interpretation,¹⁵ and waiver.¹⁶

As is to be expected, there are some features that evoke less enthusiasm and some that are perceived as shortcomings. If I animadvert upon them it is not because I want to remain in good standing with the *Honorable Company of Reviewers* by writing a "balanced" critique, but simply because they are there.

It seems a pity that a contracts text which contains a splendid chapter on damages and covers restitution in virtually all its forms should treat equitable

5. Id. § 32.

6. Id. § 297.

7. Id. § 38.

8. Id. §§ 110-11.

9. Id. § 108.

10. Id. §§ 326-27.

11. Id. § 210.

12. Id. chapter 3.

13. Id. § 77.

14. Id. § 308.

15. Id. § 50.

16. Id. § 167.

remedies with such parsimony. Specific performance is encountered but once when the reader is informed that the presence of a liquidated damages clause does not prevent recourse to this remedy.¹⁷ There are two fleeting references to reformation in the body of the book¹⁸ and footnotes twice caution the reader that reformation is not within the purview of this text.¹⁹

Given the fact that many casebook assignments deal with specific performance and the further fact that one can easily overestimate the sweep of the parol evidence rule unless one is made aware of the availability of reformation, this omission appears unjustified.

The problem of mistake has also been given wallflower treatment. Mistakes as to identity²⁰ and mistakes in the transmission of offers²¹ are barely touched upon. Mutual mistakes of the *Sherwood v. Walker*²² variety and unilateral mistakes are not mentioned at all. Yet surely coverage of the contract formation process appears a bit lopsided if one ignores mistakes that represent important formation defects.

Although the authors do not lack that sure instinct for cases that yield the most mileage, there are several leading cases that perhaps should have received more amplification. To cite a random instance: *Henningsen v. Bloomfield Motors*²³ is a landmark case in the field of disclaimer of automobile warranties. It is cited three times in footnotes and always in support of fairly bland and general statements.²⁴ It is only in connection with its third appearance in the footnotes that the reader is given an inkling that the case involved an exculpatory clause²⁵ (which, arguably, is a slight misnomer).

Sometimes statements in the text are so pithy that they cannot be comprehended without reading their supportive authority in the footnote.²⁶ This appears self-defeating, for one need hardly document the well established phenomenon that most students would prefer to leave a gap in their legal education than go to the law library to decode a footnote.

I have only found one error, or better, what I believe to be an error. *Clark v. West*,²⁷ the case of the thirsty law book writer, is used to illustrate the proposition that a waiver before breach of condition requires no consideration but does require detrimental reliance.²⁸ In this context the case makes no sense.

17. *Id.* § 234.

18. *Id.* § 42; § 313, at 486. I could not find any reference to reformation on page 76 despite the index's claim to the contrary.

19. *Id.* § 308, at 481 n.36; § 313, at 486 n.71.

20. *Id.* § 27.

21. *Id.* § 36.

22. 66 Mich. 568, 33 N.W. 919 (1887).

23. 32 N.J. 358, 161 A.2d 69 (1960).

24. Calamari & Perillo § 3, at 6 n.16; § 25, at 39 n.30; § 56, at 111 n.50.

25. *Id.* § 56, at 111 n.50.

26. E.g., the illustrations in § 106 are of little use because the type of reliance is not indicated.

27. 193 N.Y. 349, 86 N.E. 1 (1908).

28. Calamari & Perillo § 168, at 272.

However, it would make sense if it were used to illustrate a waiver after the breach which requires no detrimental reliance.

In order to add to the book's utility it is suggested that the authors consider adding a table of Uniform Commercial Code citations, Restatement citations, and perhaps a table of leading articles cited in their next edition.

Last but by no means least, there is one omission which strikes me as infelicitous. The authors have generally ignored civil rights and consumer protection materials or limited them to a "But see . . ." treatment in an occasional footnote.²⁹ I am by no means saying that they should have yielded to the topical and embraced every *croisade du jour*. The inclusion of some contemporary materials would surely date this text more swiftly than their exclusion. Thus an extensive treatment of topical "credit card" cases would have been rendered obsolete by recent federal legislation.

I am saying, however, that some such materials should have been included in order to put into sharp relief the materials on freedom of contract and the contract formation process. For example, how valid are conventional assumptions that preliminary negotiations are not binding and that offers need not be accepted in light of the Fair Housing Act,³⁰ which prohibits certain home owners who use the services of brokers from discriminating by refusing to sell or rent after a bona fide offer is made?

How valid are conventional assumptions regarding the formation process in light of the recent Door-To-Door Sales Acts³¹ which provide for "decompression" periods and allow consumers to cancel certain contracts, and of the Truth in Lending Act³² which contains similar provisions for transactions resulting in a lien upon the consumer's home. The section on freedom of contract³³ and cognate sections,³⁴ although otherwise excellent, hardly do justice to this theme. Since such recent statutes govern a sizeable percentage of our total contract activities, they cannot be dismissed as insignificant exceptions or relegated solely to civil rights or consumer protection seminars. They should be mentioned, if only in outline or skeleton form, in the context of contract formation.

I hope that my critical comments have not degenerated into mere flyspecking. There is always a temptation for reviewers to criticize authors for not writing the book that the reviewers would have written, had they been blessed with the authors' stamina and talents. I also hope that my choice of the word "best" will not be considered a blatant use of hyperbole in light of my criticisms. I do believe that this is the best student text for those contracts teachers who do not want to lose in breadth what they gain in depth. Although the opinions of first-year first-semester students on the efficacy of their teaching materials

29. See, e.g., § 41, at 83 n.42 containing a passing reference to the New York Retail Installment Sales Act.

30. 42 U.S.C. §§ 3601, 3603(b)(1), 3604 (Supp. V, 1970).

31. For general discussion see Sher, The "Cooling-Off" Period in Door to Door Sales, 15 U.C.L.A.L. Rev. 717 (1968).

32. Consumer Credit Protection Act, 15 U.S.C. § 1635 (Supp. V, 1970).

33. Calamari & Perillo § 3.

34. Id. §§ 17-18.

should perhaps be taken with a grain of salt, I shall not omit to mention that student comments elicited in anonymous course evaluations do, on the whole, agree with my own assessment.³⁵

MAX A. POCK*

35. Because of an administrative error only about two-thirds of the students in my two sections filled out their evaluation forms. Since the forms encouraged students to write out their comments (which sometimes ran to two or more sentences or paragraphs) I found it necessary to translate these into some sort of scale in order to make them more meaningful. In constructing the scale I have used the "key" words which I have found in the comments.

It must also be noted that many students complained about printing errors in the book.

COMMENT	DAY DIVISION	EVENING DIVISION	TOTAL
1. Excellent, of tremen- dous help	20	10	30
2. Good	22	20	42
3. Adequate, satisfactory, useful	5	23	28
4. Sometimes confusing and difficult to understand. Not as useful as instructor might think	9	7	16
5. Inadequate, poor	2	3	5
6. No comment	8	8	16
Number of students handing in evaluation forms	66	71	137

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World Trade and the Law of GATT. John H. Jackson. New York: Bobbs-Merrill Company, Inc. 1969. Pp. xl, 948. \$27.50.

The General Agreement on Tariffs and Trade, GATT,¹ is a series of multi-lateral international agreements in which more than seventy-five countries participate.² It governs to some degree about eighty per cent of world trade. The tariff negotiations—held in a succession of “rounds” under the auspices of GATT—have played an important part in reducing tariffs to a point where they probably no longer constitute an effective barrier to world trade. GATT has similarly produced a dismantling by the world’s industrialized countries of most quantitative restrictions on the importation of industrial products into those countries.

And yet, once tariffs have been laid aside, nations resort to the more subtle non-tariff trade barriers. This book opens with the observation that within six months after the June 30, 1967 signing of the Final Act of the Kennedy Round of trade negotiations, both Great Britain and the United States were adopting trade restrictive policies because of balance-of-payments difficulties.³ Merely one year after this book’s publication, the United States Senate was considering legislation passed by the House, the so-called Trade Act of 1970,⁴ which among other things would, in apparent violation of GATT, have maintained for an indefinite future annual quotas on textile articles and shoes to be imported into the United States.⁵ The Senate Committee on Finance was, moreover, striking from the bill the appropriation for the United States’ share of GATT expenses, and was proposing amendments which would require the Executive Branch to study GATT and report to Congress about a variety of practices by other countries under (or in spite of) GATT which are arguably unfavorable to the United States and discriminate against it.⁶

The Trade Act of 1970 died with the end of the 91st Congress, but it remains significant that, in considering that bill, the United States, a moving force in the creation of GATT and originally a crusader against quantitative restrictions (QR’s) or quotas, was contemplating the increased use of QR’s

1. GATT is only the first of the acronyms with which the reader of this work must become familiar. There are others such as OECD (Organization for Economic Cooperation and Development), OEEC (Organization for European Economic Cooperation), and UNCTAD (United Nations Conference on Trade and Development) which might have been added to the list of abbreviations immediately preceding Chapter 1.

2. For a list of GATT Participating Countries, see J. Jackson, *World Trade and the Law of GATT* 898-901 (app. D) [hereinafter cited as *Jackson*].

3. *Jackson* 1-2.

4. H.R. 18970, 91st Cong., 2d Sess. (1970).

5. These quotas would have been subject to waiver by the President where imports were found to be non-disruptive or where quotas were otherwise found not to be in the national interest. *Id.* at 31-32.

6. Press Release from the Senate Committee on Finance, Nov. 30, 1970.

as a protectionist device. As this book explains, GATT is also being violated both by the other developed⁷ and the developing nations.⁸

GATT is, however, far from dead, and Professor Jackson's⁹ work is of high interest because of the timeliness and importance of its technical subject matter. The determination of European countries to free themselves from what they considered to be the subjection of their economies to undesired influences consequent upon the American balance-of-payments deficit suggests that the future of the American trade account, and the influence of GATT thereon, will be of the greatest significance in the foreign affairs of the United States. Also of interest is the book's illumination of the blend of international jurisprudence and politics, of which GATT is a prime example. The author explains those various obligations—"hard" or "soft"—which GATT purports to impose on its members.¹⁰ He recounts the shifting recourse of the member nations to and from the "legal process" and the "negotiation" procedures of GATT in their economic struggles with each other.¹¹

Professor Jackson indicates that there are at least three purposes intended to be served by this work: presentation of an analysis of GATT to the person approaching that institution for the first time; presentation of GATT to the lawyer or official attempting to solve a practical problem involving GATT; and investigation of GATT as an institution with a jurisprudence all its own.¹² Through no fault of the author, accomplishment of these intended purposes is impeded, at least as to the first two aims, by the difficulty of the GATT treaty text. The initial pages of the book contain Senator Millikin's famous comment: "Anyone who reads GATT is likely to have his sanity impaired."¹³ The reader finds himself constantly shifting between the author's explanations and the treaty text, reproduced in an appendix at the back of the book, in search of some concise statement of the GATT provision under consideration. A future edition would perhaps be improved as a learning tool for the beginner by the addition of a synopsis of the thirty-eight GATT articles.

Much space is devoted to the preparatory work, or what may be called the "legislative history" of GATT, with copious footnote references to the sources. In some instances this history is quite interesting. An example is the description of the contest, which occurred during the early conferences in London, Havana and Geneva, between the United States and the other delegations concerning quantitative restrictions.¹⁴ In other instances, as with national legislation, the legislative history is inconclusive and uninformative.

For the lawyer or official with a practical problem, who must bring to bear

7. Jackson 668.

8. *Id.* at 670.

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10. Each obligation is subject to "universal exceptions," while some of the less harsh regulations admit of exceptions peculiar to themselves. Jackson 537-39.

11. *Id.* at 760-61, 763-68.

12. *Id.* at 3-4.

13. *Id.* at vii.

14. *Id.* at 308-14, 628-40.

every available resource in support of the position for which he is contending, footnote references to source material and other documentation are of great value. For the reader interested in learning how GATT actually has worked, it would be helpful to have the footnotes expanded, in some cases, to include a summary of the facts of the incident in question. An example is the case where the United States was permitted waiver of its obligation under GATT article XI to abstain from quantitative restrictions on imports, so that it might legitimize domestic import quotas on fats, oils, and dairy products erected by the 1951 amendments to the Defense Production Act of 1950¹⁵ and to section 22 of the Agricultural Adjustment Act.¹⁶ Unfortunately, this subject is mentioned several times,¹⁷ without clear indication of why the quotas established by these amendments fail to qualify under the exception for agricultural and fisheries products to the ban of article XI on quantitative restrictions.

This is a comprehensive work on GATT, with detailed discussion of the various GATT obligations such as most-favored-nation treatment in the application of tariff concessions,¹⁸ national treatment in the application of internal taxation to imported products,¹⁹ operation of state trading enterprises and monopolies,²⁰ subsidies,²¹ and antidumping and countervailing duties.²² There is also detailed discussion of the exceptions to the GATT obligations such as waivers,²³ the escape clause,²⁴ the balance-of-payments exception,²⁵ free trade areas,²⁶ and customs unions.²⁷ Much attention is given to the subject of developing countries and GATT. The author sets forth the considerable indulgence exercised under GATT in favor of the developing countries²⁸ and discusses Part IV of GATT,²⁹ added for their particular benefit in 1965.

Professor Jackson's book includes thoughtful observations on the possibilities for international cooperation in trade and on what it is wise to attempt.³⁰ Thus he discusses what obligations it is reasonable to expect sovereign states to undertake with respect to each other and the degree of flexibility which it is necessary to accept in the performance of those obligations. He notes with concern the tendency of GATT obligations to become diluted. For example,

15. Act of July 31, 1951, ch. 275, § 104, 65 Stat. 132.

16. Act of June 19, 1951, ch. 141, § 8, 65 Stat. 75.

17. Jackson 308, 319 (quantitative restrictions), 546 (waivers under GATT art. XXV), 733-37 (agriculture and commodities).

18. *Id.* at 249-72.

19. *Id.* at 279-86.

20. *Id.* at 329-64.

21. *Id.* at 365-99.

22. *Id.* at 401-26.

23. *Id.* at 541-52.

24. *Id.* at 553-73.

25. *Id.* at 673-716.

26. *Id.* at 618-21.

27. *Id.* at 610-18.

28. *E.g.*, *id.* at 670-71.

29. *Id.* at 640-48.

30. *Id.* at 769-88.

the "escape clause" of article XIX³¹ is hedged about by various restrictions in the GATT text, but it has been interpreted in a way which seems to make a mere rapid increase in the proportion of imports to domestic production sufficient to justify recourse to this escape clause.³²

Interesting contrasts are also drawn between the present and prior positions taken by the United States. At the beginning of the GATT negotiations, the United States was somewhat doctrinaire and "legalistic" on issues such as quantitative restrictions. On the other hand, it was "pragmatic" or loose on such matters as the consistency of the Rome treaty³³ and the European Economic Community (EEC) with the legal requirements of GATT. More recently the United States has to some extent shifted its position in respect to quotas, and, on the other side of the coin, has come to have second thoughts about the legal consistency of the EEC with the customs union and free trade area provisions of GATT article XXIV. Here the variable levy on agricultural products introduced into the EEC is a particular thorn. So also is the subsequent formation of special trading arrangements of the six countries of the EEC with eighteen African associated overseas territories, as well as Greece, Turkey, Tunisia, Morocco and now with Israel and Spain. Perhaps a country in the position occupied by the United States at the end of World War II should beware of being too eager to impose its notions of polity on others not at that moment enjoying the same power and independence. Perhaps also such a country should beware of how far it encourages other countries to join in groups to rival with it. This may be the most valuable lesson taught us by GATT and its progeny.

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31. *Id.* at 553-73. This article permits a member country to suspend an obligation assumed by it under GATT, such as a tariff ceiling on a particular product to which it is "bound" by a "concession" entered into under GATT, if as a result of unforeseen developments that obligation causes a product to be imported into the territory of that country in such quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.

32. An example of such an invocation of the escape clause is discussed in Jackson at 560-63.

33. Treaty establishing the European Economic Community, March 25, 1957, 295 U.N.T.S. 3.

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