

---

# Braucher: Introduction to Commercial Law ; Cases on Commercial Law

John F. Sembower

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

---

## Recommended Citation

John F. Sembower, *Braucher: Introduction to Commercial Law ; Cases on Commercial Law*, 1 DePaul L. Rev. 157 (1951)  
Available at: <https://via.library.depaul.edu/law-review/vol1/iss1/16>

This Book Reviews is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact [wsulliv6@depaul.edu](mailto:wsulliv6@depaul.edu), [c.mcclure@depaul.edu](mailto:c.mcclure@depaul.edu).

These lectures are no Jeremiad. Professor Corwin is not so much decrying the tendency of the times as depicting it. And his picture gives solid ground for worried thought. The lectures, contrived with good humor and gracious style, flow deceptively like a rich after dinner conversation by a thoroughly educated man. I say "deceptively" because a closer glance will show that the materials of discussion were most carefully chosen with scholarly care, making the ease of presentation all the more gratifying. The principal suggestion emerging, that the present administrative Cabinet be replaced by a Joint Legislative Council, seems to me more intriguing than, in the fundamental sense, helpful.<sup>2</sup> The tendency toward concentration of power in Executive hands, as it seems to me, is part of a drive in our times which will not be stayed by some regular pattern of Presidential conversations, no matter with whom they may be. If we would arrest the drift to centralization of power, we must aim at more fundamental causes.<sup>3</sup>

JOHN P. FRANK\*

*Introduction to Commercial Law.* By ROBERT BRAUCHER and CHARLES CORKER. Brooklyn: The Foundation Press, Inc., 1950. Pp. xxi, 308. \$5.00.

*Cases on Commercial Law.* By ROBERT BRAUCHER. Brooklyn: The Foundation Press, Inc., 1951. Pp. xx, 709. \$8.00.

There should be nothing sacred about the division of law into the commonly listed courses as we have known them, such as Sales, Bailments, Bills and Notes, and so on. To a large degree they are artificial and chiefly for the convenience of the curriculum architects. In the dynamic development of the law, there are certain to be situations which do not conveniently classify into these historical pigeonholes. One is inclined to applaud at the outset any earnest attempt such as that of Professors Robert Braucher of Harvard and Charles Corker of Stanford to start somewhat from scratch and create a new division, that of Commercial Law.

The appearance last year of their *Introduction to Commercial Law* consequently stirred much more than passing interest. It was an event which transcended the mere appearance of another new textbook, albeit an unique one, because a clue was provided as to the newer approach being made by two leading law schools to several traditional fields. Now Professor Braucher's *Cases on Commercial Law* arrives to fill in the picture, and we see it more completely.

Professor Braucher, in his Foreword, takes us behind the scenes, and explains the problem he confronted when he worked out this solution. It had been decided that no longer was there justification for an allocation of six hours to the courses in Sales and Bills and Notes. The objective was to find a way to cope with these two time-honored areas in only two hours a week! It is to the credit of these two resourceful authors and teachers that they did not retreat; they chose to attack.

Their goal was to use two hours more effectively and purposefully than six had been employed before. After testing their new tack for three years, Pro-

\* Professor of Law, Yale Law School.

<sup>2</sup> The thought is also considered in Corwin, *The President*, 304 et seq. (1940).

<sup>3</sup> Elimination of the popular over-demand for "secrecy," for example, would do something to eliminate the excessive delegation of power to specialized technical experts; cf. Gellhorn, *Security, Loyalty, and Science* (1950).

fessor Braucher has pronounced it tentatively successful, saying that he is better prepared to defend it as a required course, and to resist encroachments on its allotment of time than he is to defend the six hours given to the courses in Bills and Notes and in Sales.

Part of the time-saving at Harvard was accomplished by asking the students to cover the *Introduction* as summer reading, in line with the theories of the Harvard Committee on Legal Education. However, even under that optimistic program, it is not envisaged that the students will peruse the various Uniform Laws which appear in the materials. At Stanford, Professor Corker has used the *Introduction* as collateral reading during the regular course, and Professor Braucher suggests that it be reviewed in that fashion as the course progresses, even when assigned as summer reading.

Professor Braucher explains the course which uses his new casebook as a course in short-term finance in the distribution of goods, with particular emphasis on the concepts of negotiability and security and on the effect of the Uniform Laws. Some of the elements of the traditional courses have been allocated elsewhere: Warranty and the Statute of Frauds to the first year courses in Torts and Contracts; formation and performance of sales contracts to the first-year Contracts course; corporate bonds, notes secured by real estate, or notes given by or to stockbrokers presumably to other courses.

With a justifiable flair for showmanship in course presentation, Professor Braucher has chosen to start with the student where he finds him, and to lead into his interests through the first-hand experience he is almost certain to have had with checks. This seems particularly fortunate, because it eschews the all-too-common experience of the student struggling for weeks through a clinging underbrush of unfamiliar situations, and then suddenly breaking into a clearing, as it were, in the legal forest, where he recognizes—lo and behold!—that here is something about which he already has some working knowledge.

Often, at this belated juncture, the student for the first time sees legal theory and his practical experience in a nexus relationship. He is able to correct his sights, both as to the theory and practice. It affords him with a set of personal standards which help him orient all the material he encounters on less familiar things. All credit to Professor Braucher for harnessing in so positive a fashion a great natural resource of teaching and learning.

And that approach is symptomatic of the two books produced by these authors. The out-sized *Introduction* is full of facsimile instruments of various kinds which are a boon to instructor and learner alike. In a more sedate fashion, because it is after all a casebook, the new *Cases on Commercial Law* reflects this attitude. Professor Braucher has done an exemplary job of selecting and editing the cases. Too much praise can hardly be given for this workmanlike compilation.

All along, Professors Braucher and Corker have said that they wished to give the students a "feel" for commercial situations, and a familiarity with the vocabulary of the business lawyer as well as the nuances of commerce. They have given this ambitious endeavor more than lip service. The cases become what cases always should be: vivid vignettes of actual business situations, strengthened by their authenticity as abstracts of official reports. Some of them read like intriguing narratives of commercial incidents, so skillfully has the dead wood and surplusage been eliminated.

Of course, a unique feature of this book is that it cannot be considered apart from the frontier thinking which gave rise to the new course itself. It is legiti-

mate to go beyond the book and inquire as to what Professor Braucher, in his three-year trial run, has found to be the best *modus operandi* of the classroom.

He states that "class time is almost entirely taken up with the discussion of problems. Most of the problems are my abstracts of recent cases, with the court's decision omitted. Sometimes the problem is moved back from the litigation stage to the planning or drafting stage. . . . We discuss the solution of the problems under the principles elaborated in the cases, under the governing uniform acts, and under the proposed [Uniform Commercial] Code."<sup>1</sup>

An obvious difficulty is that the new course cannot be inserted simply into any existing curriculum. Its elbows touch many other courses. To the extent that this will inspire general re-examination of the setup of courses in this area, this is wholly desirable. To the extent that it may delay adoption of the new format and perhaps the new book in many specific instances, it is to be regretted.

Professor Braucher's course and book may have another salutary effect. Conceived to meet the requirements of reduced time for this area, they go a long way toward justifying more time. If Sales and Bills and Notes went to seed as they existed, they are revived in this new frame. One wonders what else is so important in the law school that only two hours can be spared for this stimulating new study, especially in view of the practicing lawyer's need for preparation in this theatre.

Fortunately there is enough material here in these two books to permit expansion wherever that is feasible. At the same time, Professor Braucher has tried to keep his materials within bounds, obviously to avoid the demoralizing effect upon instructor and student of large sections being left untouched under the goad of a too-rapid schedule. If the need demonstrated by Professor Braucher leads to a more generous allocation of time—as would indeed seem to be the concomitant development—it is conceivable that he may later wish to expand his materials considerably. One's appetite is sufficiently whetted to make such a possibility welcome.

JOHN F. SEMBOWER\*

*Cases on Equity.* By ZECHARIAH CHAFEE, JR., SIDNEY POST SIMPSON, and JOHN PHILIP MALONEY. The Third Edition of Chafee and Simpson's *Cases on Equity*. Brooklyn: The Foundation Press, Inc., 1951. Pp. lxxiii, 1401. \$8.00.

Fifty years ago Professor Ames published his excellent casebook on Equity Jurisprudence, which is still being used and is a sort of hornbook in many law offices. Hence this 1951 third edition which draws extensively from Ames is introduced as a collateral heir of a famous ancestor. It has been well said that an equity casebook based on Ames is the answer to the needs of the law schools. A glance at the table of contents of the 1951 volume being reviewed shows that it bears a common resemblance to the table of contents found in the fifty year old classic. Many of the cases found in Ames are repeated in this work. The first case in the earlier volume was the classical *J. R. v. M. P.* from the Year Book under the date of 1459. It and other standard cases are found in the latest volume, including some from *Pound's Equitable Relief*, the 2d edition by Chafee, 1930.

The first cases decided from the viewpoint of Chancery are very important because they are extant examples of pristine equity. In the beginning the Chancellor was an ecclesiastic and usually a Bishop of the Catholic Church. He was

\* Member of Chicago Bar; Professorial Lecturer in Business Law, Northwestern University; President, American Business Law Association.

<sup>1</sup> From the Harvard Law School Bulletin.