class actions. Not one of those five has become law. Only one, privacy, failed after the Attorney of the day took action, only to be defeated in Parliament. The others are in limbo. Every law reform agency has its own catalogue. Anyone who has studied the history of the Reformation knows that far reaching and feasible schemes of canon law reform preceded it — drawn up by men at least as able, as devoted, and as godly as the root and branch "Reformers" and yet the gradualist reformers Winzet, Hamilton and Quintin Kennedy went down to defeat while Knox, Buchanan and Melville became part of the mythology of a nation. Is it to be once again the old story that those who will not read history are doomed to repeat it and that gradual law reform will be implemented too late?

Fellow feeling makes us wondrous kind and so I read Mr. Justice Hutley's contribution with the utmost enjoyment. Like him I have to try and serve two masters: the Judicial Committee and the High Court, whilst longing for another Gratian to produce a new *Concordia discordantium canonum*. Like him I have to allow for the fact that the High Court varies its rules as to appeals on fact and on mixed fact and law every few years — there have been two if not three new sets of rules since he wrote. I particularly commend his analysis of what constitutes a discretionary judgment for the purposes of appeal — a concept which has been too often taken for granted in the past.

Of the other contributions I can only refer in passing to Dr. Lumb's assessment of the difficulties of throwing off the inherited shackles from our colonial past and Professor Zines' study of the conflicting approaches used by the High Court in interpreting the words of the Constitution, both of which will repay careful and thoughtful study.

This is an excellent book. Please read it yourself and make sure that everyone you know — lawyers, politicians and public alike — reads and ponders it.

HOWARD ZELLING*

Introduction to Commercial Transactions by Robert Braucher[1] and Robert A. Riegert.[2] Foundation Press Inc., Mineola N.Y., 1977.

Australian teachers of Commercial Law who have any time at all for the comparative aspects of the subject, law reformers and practitioners who simply want to know what the Americans are doing will find this a most valuable book.

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Essentially, it consists of descriptions and explanations of the various commercial transactions governed by the Uniform Commercial Code of the U.S.A. and shows how the Code regulates those transactions. It also shows how federal legislation bears on the transactions and at many points makes comparisons with the former law. Occasionally the authors refer to the law of other countries for comparison.

Australian readers will learn from the book just what topics make up an American commercial law course — and a pretty formidable list it is — how the subject is taught by two influential teachers, and what the substance of the law is on the various topics.

The Nature of the Uniform Commercial Code

The authors deal with the nature and history of the Code and give an overview of its contents in the first five chapters of the book and there is probably no better introduction to the Code available.

The main purpose of the Code is to provide a body of rules on the principal commercial transactions to be adopted by the legislatures of all the American States and so to produce uniformity in the legal control of the principal areas of commerce. The Code was first proposed to a National Conference of Commissioners on Uniform State Laws in 1940. The first *Official Text* was produced in 1951 and adopted by the State of Pennsylvania in 1953. The present *Official Text* is that of 1972 and this has been adopted by all States except Louisiana which has adopted only some of the Articles. The Conference and the American Law Institute have established a Permanent Editorial Board to keep the Code under review, to make recommendations for its improvement and to seek to maintain uniformity.

It is interesting to consider just how far the Uniform Commercial Code *is* a code. In many ways, the Code looks like a collection of statutes whose only common factor is that each regulates a commercial activity. An attempt has been made to keep the statutes mutually consistent and to make provisions for any conflict but some commentators have thought the attempt unsuccessful. Certainly the Code is not fully a code in the civil law sense. It is by no means self-contained and expressly provides[3] that the general law on such matters as principal and agent, mistake and bankruptcy continue to apply unless inconsistent with the express provisions of the Code. On the other hand, the width of some of the provisions has led one commentator[4] to the view that the Code not only has the force of law — like an Anglo-Australian statute — but is a source of law — like a civil law code. Section 1-102, for example, states:

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[3] Section 1-103.

[4] Professor Mitchell Franklin, (1951) 16 *Law & Contemp. Prob.* 330. See also Hawkland, (1963) 9 *Wayne Law Rev.* 531.

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

Professor Mitchell Franklin has said of this:

> . . . in important respects, the lex Llewellyn (*sc.* the U.C.C.) "displaces" the legal method of the Anglo-American common law and substitutes the legal method of the civil law. Formally, such "displacement" which is cautiously stated, represents a remarkable advance in the history of American law.[5]

The Code is the work of many scholars and committees and wide differences of style and approach are apparent. Some sections are clearly generalized statements of judicial decisions, some are slightly or considerably modified forms of sections of earlier legislation like the English Sale of Goods Act and Bills of Exchange Act and others are broadly stated general principles in the fashion of continental codes. The work of the American Realists is everywhere apparent. For example, Professor Karl Llewellyn was the leading figure in the preparation of that part of the Code dealing with the sale of goods.

The language of the Code has been praised by some writers and criticized by others. Professor Corbin, for example, wrote:

> He [*sc.* Llewellyn] had clearly in mind the idea of a case-law Code: one that would furnish guidelines for a fresh start, would accommodate itself to changing circumstances, would not so much contain the law as free it for a new growth.[6]

On the other hand Professor Millinkoff in a merciless and very funny article wrote:

> The Code itself is devoid of the uniformity it prescribes for the substance of the law. The language is now clear, now mud; now grammatical, now illiterate, now consistent, slapdash and slovenly. It wallows in definition that does not define and definition that misleads — definition for the sake of forgotten definition. It includes many ways of saying the same thing, and many ways of saying nothing. The word *reasonable,* effective in small doses, has been administered by the bucket, leaving the corpus of the Code reeling in dizzy confusion. And overshadowing all else, even in a gallery of elaborate ugliness, are the ambiguity and vacuity

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[5] *Ibid.*
[6] (1962) 71 *Yale L.J.* 805, 814.

inherent in the determined and needless use of the long, long sentence.[7]

Certain it is that the Code is wild country not to be entered without experienced guides.

Range of Topics

The Code is divided into eleven Articles, as follows:

Article 1. General Provisions. This consists chiefly of definitions and principles of interpretation.

Article 2. Sales. This covers the sale (which in the U.S.A. includes the exchange) of goods.

Article 3. Commercial Paper. This is concerned with negotiable instruments and corresponds broadly to our Bills of Exchange Act except that a number of the corresponding provisions protecting bankers are dealt with in the next Article.

Article 4. Bank Deposits and Collections. This Article deals with the relationship of paying banker and customer and that area of law we know as the statutory protection of bankers.

Article 5. Letters of Credit.

Article 6. Bulk Transfers. This Article is concerned with the situation which arises where business debtors, usually retailers, have incurred unsecured debts and then sold their stock in bulk and disappeared.

Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title. The Article deals with such matters as the liability of warehousemen and carriers and the negotiation of documents of title.

Article 8. Investment Securities. The Article regulates the transfer of securities like bearer bonds and stock certificates.

Article 9. Secured Transactions. This Article deals with those transactions where a debtor gives security over personal property to a creditor.

Articles 10 and 11 are procedural.

The Code and the Official Comments of the draftsmen explaining the purpose and meaning of the sections runs to more than 800 pages in the U.C.C. Reporting Service version.

The authors deal with all the Articles except Article 8. This they regard as outside the general subject-matter of the Code — the progression of goods from raw materials to consumer goods. In addition they deal with a number of matters not regulated by the Code such as bank credit cards and bankruptcy.

Method

The authors take the reader by the hand and lead him through the bush. They give full descriptions of the transactions to which the code applies as well as explain the provisions of the Code. The chapter

[7] (1967) 77 *Yale L.J.* 185.

on the collection of cheques, for example, contains a description of the American banking system and the nature of Electronic Funds Transfer. They assume very little knowledge in their readers. Their language is conversational and they often seem to be addressing a tutorial group or a seminar.[8] They commonly put questions to the reader for consideration. Each chapter ends with a summary of the key points the student should have mastered. Bibliographies are frequent.

The authors assume that the reader has a copy of the Code at hand and the book cannot be appreciated fully by the reader if he has not. This may give difficulty to Australian readers who will have to go to a largish library to find a copy of the Code. Some sections of the Code are set out in full in the book but other absolutely central ones are not. So, for example, although there is a full commentary on the terms implied by the Code into contracts for the sale of goods the reader must produce his own copies of the sections.

The Australian law textbook writer will observe with surprise how few cases are cited by the authors. Only about two hundred cases are listed in the Table of Cases. Of those a fair sprinkling are basic English decisions like *Hadley* v. *Baxendale*.[9] Even when cases are used in the text there is rarely any quotation from the judgments.

The reason for this can hardly be want of material. The Uniform Comercial Code Reporting Service had publishd twenty-one volumes of Cases and Comments by the end of 1977 and twenty-seven by the end of 1979. Each consists of a thousand or so pages.

The authors state that they intend to concentrate on principle rather than detail so as to avoid the need for frequent revision of their work and this may be part of the explanation. Perhaps more importantly they seem to be philosophically civilians for whom the opinions of the draftsmen and academic commentators may be more important in the interpretation of a section than the views of a trial judge. The authors write:

> . . . we can expect the views of experts to take on a gradually increasing importance while the views of local courts — that is State courts — can be expected to occupy a less dominant position than they once did.[10]

The book is generously illustrated, professional, lucid and always interesting. There will be few people who will not know a great deal more about law and commerce in the U.S.A. after reading it than they did before and very few law teachers who will not get from it a substantial stock of new ideas and perceptions.

W. J. CHAPPENDEN*

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[8] E.g. "This is *kiting*. The word makes bankers nervous. They would quickly catch this simple scheme; don't try it."

[9] (1873) L.R. 8 C.P. 131.

[10] At p. 42.

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