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Handbook of the Law Under the Uniform Commercial Code

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BOOK REVIEW

Handbook of the Law Under the Uniform Commercial Code. Second Edition. JAMES J. WHITE & ROBERT S. SUMMERS. West Publishing Co., St. Paul, Minn., 1980. Pp. xxxvii, 1250.

When the first edition of *Handbook of the Law Under the Uniform Commercial Code*¹ [hereinafter *Handbook I*] was published in 1972, it was greeted with acclaim. Professors White and Summers had taken on an "extraordinarily demanding [task] . . . that most academicians would find a nightmare"² and succeeded. Not only did they make sense out of a highly complicated body of law, but they did it with uncommon verve and wit. As one reviewer observed, *Handbook I* was "comprehensive, highly analytic yet readable, often practically oriented, and punctuated by flashes of humor."³ Indeed, the treatise's "enliven[ing of] a subject not known for its sex appeal"⁴ led another reviewer to praise Professors White and Summers for the "'greening of the hornbook.'"⁵

Although reviewers greeted *Handbook I* with raves, lawyers' tendency to nitpick survived sufficiently to point out a variety of alleged deficiencies. Many of these criticisms were of the "I would have done it differently" sort, but a few did raise some issues of substance, including the lack of an index by code sections,⁶ inadequate discussion of Uniform Commercial Code [UCC] section 2-403, and failure to discuss the Federal Tax Lien Act. These relatively minor problems, however, did not significantly diminish the warm reception of the treatise by students and the profession.

Eight years have now passed since the publication of *Handbook I*. While eight years may be a relatively insignificant period of time in the development of the law of an established field, such as, say, trusts or agency, the relative youth of the UCC,⁷ combined with its recent

¹ J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE (1972).

² Peters, *Book Review*, 71 MICH. L. REV. 1487, 1487 (1973).

³ Weinberg, *Book Review*, 58 MINN. L. REV. 712, 714 (1974).

⁴ Clark, *Book Review*, 58 CORNELL L.Q. 1273, 1273 (1973).

⁵ *Id.* at 1274.

⁶ This problem was apparently remedied in later printings of *Handbook I*. My copy, denominated "3rd Reprint-1979" contains such an Index.

⁷ The first official text of the UCC was promulgated in September 1951. The first state to adopt the UCC was Pennsylvania, effective July 1, 1954.

amendments⁸ and the recent radical changes in bankruptcy law,⁹ have resulted in eight years of substantial and significant development of the law relating to the UCC. Therefore, the appearance of *Handbook of the Law Under the Uniform Commercial Code, Second Edition* [hereinafter *Handbook II*] is most welcome.

The structure and coverage of *Handbook II* are nearly identical to those of *Handbook I*. Every substantive article of the UCC,¹⁰ with the exception of Article 8, is explained and analyzed in depth. Articles 2 and 9 receive the weightiest consideration—an aggregate of 689 pages out of the treatise's 1250, and 17 of 26 chapters—but each article is examined fully. As in *Handbook I*, federal law is introduced when it is closely linked to UCC sections under discussion—the Magnuson-Moss Act¹¹ is discussed in connection with warranties,¹² the Federal Trade Commission Holder-in-Due Course Regulations¹³ in connection with the holder-in-due-course doctrine,¹⁴ the Electronic Funds Transfer Act¹⁵ in connection with forged checks,¹⁶ and the Bankruptcy Reform Act¹⁷ in connection with secured transactions.¹⁸ All material has been updated, and several parts of the book have been rewritten for clarity.¹⁹

Handbook II is a worthy successor to *Handbook I*. All the virtues of the first edition are preserved in the updated version. The treatise is concise; the exposition of virtually the entire UCC in one portable volume is nothing short of amazing. Furthermore, the treatise is written so as to be useful to both students and practitioners. Finally, and most important, *Handbook II* is readable. The writing is always understandable without undue effort and is frequently quite funny. It is an uncommon treatise that closes a diatribe against regulators over-

⁸ See Perm. Ed. Bd. UCC Rev. Comm. Art. 9, Final Report (1971) for a complete discussion of the 1972 amendments to Article 9.

⁹ See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, 11 U.S.C. §§ 1-1160 (Supp. 1979).

¹⁰ Articles 10 and 11 are for transition purposes only, and therefore excluded from *Handbook II*.

¹¹ Act of January 4, 1975, Pub. L. No. 93-637, 88 Stat. 2183, 15 U.S.C. §§ 2301-12 (1976).

¹² *Handbook II* at 367-74.

¹³ 16 C.F.R. § 433 (1980).

¹⁴ *Handbook II* at 570-72, 1137-45.

¹⁵ Pub. L. No. 95-630, Title XX § 2001, 92 Stat. 3728, 15 U.S.C. §§ 1693-693r (Supp. 1979).

¹⁶ *Handbook II* at 640-46.

¹⁷ Pub. L. No. 95-598, 92 Stat. 2549, 11 U.S.C. § 1-1160 (Supp. 1979).

¹⁸ *Handbook II* at 992-1029.

¹⁹ Compare, for example, the discussion about proceeds of collateral in *Handbook I* at 883-88, with the discussion of the same subject in *Handbook II* at 1011-17.

stepping their bounds by observing: "So make no mistake, the kids at the FTC are often wrong, seemingly devious, but far from stupid."²⁰

Although the structure and content of *Handbook II* are similar to *Handbook I*, there are, of course, differences. New cases have been added, new thoughts have been integrated into discussions, and new trends have been recognized. A comparison of the treatises' treatment of whether a financing statement may serve as a written security agreement is illustrative of the authors' sensitivity to changing doctrines. *Handbook I*, while disagreeing with, and criticizing the formalism inherent in, the infamous *American Card* case²¹ and related doctrines, pays at least lip service to the existence of the requirement of an actual identifiable security agreement specifically granting a security interest.²² *Handbook II*, on the other hand, states without hesitation that the "better view . . . is that 'specific words of grant' are not required" and that "[*American Card*] and its progeny are in error."²³

Some discussions have been expanded and reorganized. For example, *Handbook I* discussed UCC §2-403, dealing with sellers' power to transfer title to goods, only in connection with the rights under section 9-307 of purchasers of goods subject to an Article 9 security interest.²⁴ *Handbook II* has trimmed the analysis of 2-403 in Article 9,²⁵ and added a well-written discussion of the section as a whole.²⁶ Overall, this has resulted in improvement, but I do have one misgiving. One of the most confusing aspects of Article 9 to most students is the operation of section 9-307(1). In particular, the implicit existence of the so-called "shelter principle," and the distinction between situations in which it is available to protect buyers in the ordinary course of business of goods subject to security interests not created by their sellers and situations when it is not, are difficult topics not easily susceptible to normal UCC analysis. *Handbook I* addressed this issue, albeit in a rather cursory manner, in its discussion of Article 9.²⁷ Although the authors did not discuss the problematic nature of assuming the existence of a major doctrine despite its ab-

²⁰ *Handbook II* at 572.

²¹ *American Card Co. v. H.M.H. Co.*, 97 R.I. 59, 196 A.2d 150 (1963) (financing statement cannot serve as security agreement because it does not contain words of granting).

²² *Handbook I* at 790-91.

²³ *Handbook II* at 907 & n.34.

²⁴ *Handbook I* at 900, 944-46.

²⁵ *Handbook II* at 1031, 1073-75.

²⁶ *Id.* at 139-46.

²⁷ *Handbook I* at 900-01.

sence from an extremely comprehensive codification, they did adequately inform readers of the nature and limitations of the principle. This discussion, unfortunately, has been eliminated from *Handbook II*, apparently as a result of the reorganization of the discussion of section 2-403. All that remains is the following paragraph, which is hardly adequate to make the topic understandable:

At the outset, the reader should note the operation of the "shelter" principle in this branch of law. That common law principle enters the Code via 1-103 and 2-403 and provides that a buyer gets as good a title as his seller had.²⁸

Of course, the largest task facing the authors in revising the treatise was to incorporate the major changes in the law since the publication of *Handbook I*. There have been at least five such developments, four of which involve federal law imposed on Code jurisprudence. First, the 1972 revisions to Article 9 were officially promulgated; second, the Magnuson-Moss Act was passed; third, the Federal Trade Commission [FTC] adopted its holder-in-due-course regulations; fourth, the Electronic Funds Transfer Act was adopted by Congress; and, finally, the Bankruptcy Reform Act became law. Each of these developments is addressed in *Handbook II*.

The discussion of Article 9 in *Handbook II* has been substantially revised to reflect the 1972 revisions to that Article. In fact, *Handbook II* analyzes secured transactions using primarily the 1972 Code, while noting differences in the 1962 version. Although this poses a slight inconvenience to readers in any of the eighteen jurisdictions still operating under the 1962 Code,²⁹ *Handbook II* is quite helpful even to those readers inasmuch as the vast majority of issues faced by the student or practitioner are treated the same way in both versions of the Code. Not surprisingly, the quality of the revisions matches the overall outstanding nature of the treatise.

Handbook II does not purport to treat the Magnuson-Moss Act in great depth. Rather, the authors sought "only to suggest some of the ways in which the Act will mesh or conflict with the Uniform Commercial Code."³⁰ Nonetheless, the treatise contains one of the best summary analyses of the Act I have seen anywhere. The analysis is divided into three issues—disclosure requirements, "full" and "limited" warranties, and remedies. Each topic is explained and incisively

²⁸ *Handbook II* at 1031.

²⁹ As of June 1, 1980, 32 states had adopted the 1972 revisions.

³⁰ *Handbook II* at 367.

analyzed. My only criticism of the authors' analysis is their too cursory treatment of section 108 of the Act.³¹ Section 108 provides that, with one minor exception, any disclaimer of implied warranties to a consumer about a consumer product is ineffective as a matter of federal *and state* law if the seller either makes any written warranty about the product or enters into a service contract with the consumer within ninety days. Unlike the remainder of the Magnuson-Moss Act, which adds requirements which complement and supplement Article 2, section 108 supersedes Article 2, particularly section 2-316, rendering ineffective warranty disclaimers which would be effective under the UCC. I believe the authors should have made this point more forcefully, and given examples of the application of section 108.

The authors' discussion³² of the Holder-in-Due-Course Regulations promulgated by the FTC is, to say the least, bizarrely organized, and presented in a fashion satisfactory to neither practitioners nor students. These regulations severely, although indirectly, limit the applicability of the holder-in-due-course doctrine in consumer credit sales. The regulations raise important questions for both students and practitioners, none of which are dealt with in the body of the treatise. Rather, the section in *Handbook II* dealing with the holder-in-due-course regulations consists primarily of a diatribe against "the rascals at the FTC" and their legislation by regulation.³³ Questions of analysis and interpretation are relegated to an Appendix.

The FTC rule provides that it is an unfair trade practice, and, therefore, prohibited, to take or receive the proceeds of a "consumer credit contract" which fails to contain a legend to the effect that any holder of the contract is subject to all claims and defenses which the debtor could raise against the seller of the goods or services obtained with the contract or its proceeds. Despite the rather straightforward language of the legend,³⁴ its legal effect is not obvious to the uninitiated. *Handbook II*, in the Appendix, correctly and lucidly points out the legal route by which this legend eliminates

³¹ 15 U.S.C. § 2308 (1976).

³² *Handbook II* at 570-72, 1137-45.

³³ *Id.* at 571-72.

³⁴ *Id.* The legend reads:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICE OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY DEBTOR HEREUNDER.

Id.

holder-in-due-course rights. The legend itself does not subject holders to the consumer's defenses, rather, the legend prevents the paper from embodying an "unconditional promise to pay," which, in turn, renders the paper non-negotiable pursuant to UCC section 3-104, and, therefore, not subject to the holder-in-due-course doctrine.

As the treatise points out, the FTC rule was not the first limitation ever imposed on the holder-in-due-course doctrine in consumer transactions.³⁵ Indeed, all but six states have statutory limitations in this area.³⁶ Given this underlay of state law, one would expect the authors to have addressed the practical effect of the FTC rule, but no such analysis appears. The treatise offers no guidance concerning the extent, if any, to which the law has been changed by the FTC rule in the forty-four states which have their own legislation in this area. Only a few of those states have related lender, or "drag the body", provisions, extending the holder-in-due-course limitations to enabling loans somehow induced by the seller of goods or services; as a result, it is in this area that the FTC rule will probably have its greatest impact. Further elucidation of this point would have been helpful. Finally, the treatise gives no indication of any potential difficulties for creditors in complying with *both* the FTC rule and any applicable state law.

The Bankruptcy Reform Act of 1978 completely rewrote the federal bankruptcy laws, making several substantive changes in the process. Among the sections revised were those directly affecting Article 9 security interests.

Until the publication of *Handbook II*, a student learning secured transactions and its relationship to bankruptcy for the first time had no useful secondary materials to which to turn. Most law review articles on the subject are too technical for the novice trying to get a grasp on the difficult concepts involved. The treatises and hornbooks which had addressed the new bankruptcy statute and its effects were even less helpful. Some analyzed the new statute primarily in terms of changes from the old one, which although helpful to students who had mastered the old bankruptcy law, was not helpful to someone learning the subject for the first time.³⁷ Others analyzed the new statute line-by-line with no real synthesis or methodology of analysis.³⁸

³⁵ *Handbook II* at 570-71.

³⁶ *Id.* at 570 & n.52.

³⁷ See, e.g., R. HENSON, HANDBOOK ON SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE (2d ed.) (Supp. 1979).

³⁸ See, e.g., 4 KING, COLLIER ON BANKRUPTCY ¶ 547.41 (1980).

Handbook II falls into neither of these traps. Its discussion³⁹ of the interrelationships of Article 9 and bankruptcy is excellent. My only qualm relates to the discussion of floating liens.⁴⁰ Under the interpretations of the old bankruptcy act which ultimately prevailed, a perfected floating lien was not susceptible of avoidance by the bankruptcy trustee as a preference. The Bankruptcy Reform Act, however, changed all this by adopting an "improvement in position" test pursuant to which a floating lien creditor whose indebtedness is undersecured ninety days before the filing of the bankruptcy petition is deemed to have received a voidable preference to the extent that the amount by which the indebtedness is undersecured is reduced by the date of the filing of the petition. Unfortunately, the drafters of the statute chose to develop this rule as part of a convoluted subsection which, strictly speaking, contains exceptions to the general rules concerning preferences. The treatise does its usual fine job in explaining the improvement in position test and its application. From a teaching standpoint, however, it would have been more helpful if the statute were analyzed more closely to show how the test can be derived from the opaque language of the statute.

The Electronic Funds Transfer Act, enacted in 1978, governs, *inter alia*, consumers' liability for unauthorized electronic funds transfers. At this point in the development of the law, it is not clear to what extent, if any, the UCC also governs such transfers. Nonetheless, *Handbook II* contains a brief summary of the Act. This summary, not surprisingly, conveys the important aspects of the legislation in a comprehensive, yet easily understandable manner. However, inasmuch as the scope of *Handbook II* is the UCC, I would have expected that more than one throwaway paragraph would be devoted to the UCC's coverage, or lack thereof, of the issues with which the Act is concerned.

Overall, Professors White and Summers have done a very fine job incorporating these new developments in the law into their treatise. Even with their questionable discussion of the FTC Holder-in-Due-Course regulations, *Handbook II* contains the best discussion of these developments that can be found in one place.

³⁹ *Handbook II* at 992-1029.

⁴⁰ *Id.* at 1007-11.

Just as its predecessor, *Handbook II* is certain to be a best seller. Its usefulness to students, practitioners, and, even rusty professors guarantees that. The success of the *Handbook* will be well-deserved.

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