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## Review of “Cases on the Law of Negotiable Paper and Banking,” By Ralph Aigler

Albert Salisbury Abel  
*West Virginia University*

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It is to be hoped that the probable merits of this somewhat novel book will soon be tested by actual experience in many law schools. All law teachers, bar examiners and publishers of law books recognize that the Northwest Passage to the ideal teaching of adjective law has not yet been discovered.

TYRRELL WILLIAMS.†

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CASES ON THE LAW OF NEGOTIABLE PAPER AND BANKING. By Ralph W. Aigler, St. Paul: West Publishing Company, 1937. Pp. xvi, 1157.

There can be no blinking the fact that the law of negotiable instruments is not *prima facie* a fascinating branch of legal study. The high emprise of public law, the story book narratives of criminal law or torts, the cunningly complex contrivances of real property make their various appeals to reader interest. Not so negotiable instruments. They cast no mystic spell of glamour and grandeur for they lie in the workaday field of business and commercial activity, too near at hand to be exciting. On the other hand, they have not the charm of familiarity and old acquaintance, for the law student, with rare exceptions, is acquainted only with the existence and not with the operations of the commercial world, whose mechanics confuse and dismay him. Finally, the situations illustrated by the cases are on the surface bloodless and impersonal, wholly unrelated to human nature or human behavior. The makers of casebooks therefore must present their materials with something more than usual adroitness to make the students embrace, with anything more than the cold embrace of duty, a subject thus handicapped. In this difficult endeavor it seems to the reviewer that Professor Aigler has succeeded unusually well.

The principal thing that makes this latest casebook in the field notable is the addition of cases on the law of banking to the usual materials on negotiable instruments. It is seemingly this addition which makes dynamic the hitherto static subject of commercial paper. Its significance is not alone—not even mainly—the introduction into the curriculum of an opportunity to get acquainted with the law governing an institutional development which becomes increasingly more important to society and to the practicing lawyer. By bringing banking activities into the picture it stresses the way in which bills and notes and their variants are trafficked in and transmitted. A very large proportion of such instruments pass at some time in their existence through or into the hands of banks. By calling attention to the banker's activities and relations, Professor Aigler has cast the emphasis upon the transition rather than the mere existence or position of negotiable paper. From the banking cases the student learns to regard bills and notes as things in motion, and this approach will, it is to be predicted, be carried over when he deals with the other materials not classified under the law of banking. Professor Aigler has thus hit upon an admirable device to convey the lesson that the course is not so much concerned with commercial paper as with dealings in commercial paper. The fact that appellate cases come up as they do, with the paper in the hands of one of the parties, perforce

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† Professor of Law, Washington University.

induces one to think of the status of such paper when at rest in point A or point B; Professor Aigler's mode of treatment is an effectual corrective, with its stress on the intermediate passage of the paper along the line AB. Certainly so far as the reviewer is concerned, the consequence has been to change uneasy boredom in surveying dead paper into lively interest in examining living business; and he believes that this change from the anatomical to the biological technique will appear correspondingly to students. While this is not the first casebook on negotiable instruments into which banking materials have been introduced, their use heretofore has been to a much more limited extent and in a relatively random and unintegrated fashion. At best, they have served to suggest certain of the doctrines peculiar to bankers' dealings with commercial paper; and that, as has been suggested already, is much the smaller part of what the instant treatment accomplishes.

The method of editing the cases chosen likewise contributes to impress one with the sense that the law of commercial paper is really one, and an important phase, of the rules applying to commercial intercourse. Ordinarily, from each case selected a sufficient portion has been reprinted to suggest the transaction out of which the controversy developed, including the more important background circumstances. Often and often the reviewer has shuddered, when examining casebooks, to behold the small scalplock of relevant legal discussion torn from the shrieking body of the case, usually accompanied by a grisly residue of the latter in the shape of a "condensed" statement of the facts. Limitations of space do of course forbid a complete reprint of any or even a majority of the included cases. Nevertheless, to strip the case down to its bare essentials is to deprive it of what in some respects is as important as its legal doctrine, namely, its utility in illustrating the legal consequences of some phase of human activity. Drastic elimination is *pro tanto* a negation of the case system of instruction, reducing the casebook to a padded and relatively inefficient textbook. Professor Aigler in nearly every case gives liberal hunks of what the parties did and how they did it. The book thus serves to a degree as a collection of case histories of business transactions and so to illuminate the student as to the modes of business dealing at the same time that it informs him as to the law.

Certain doctrines and issues receive much briefer consideration than has been accorded to them traditionally by casebook editors. Generally speaking, these condensations are with respect either to matters which are not peculiar to the law of commercial paper and so may be assumed to have been adequately developed in other courses, *e. g.* the question of consideration whose treatment is reduced to a short textual summary, and that of delivery, represented by only two cases, or those which while of considerable interest to the academically curious have no very great importance in commercial life, *e. g.* the question of the negotiability of instruments expressed to be payable in foreign money, which is dismissed with a footnote discussion.

Some such curtailment has been necessitated by the inclusion of the ampler materials on banking and by the policy of reprinting generously from the cases which are used. The gain, it is submitted, far outweighs

the cost particularly in view of the great skill manifested in the choice of matter to be excised. Indeed, as it is, the book is far too bulky to be covered in the time ordinarily allowed for the presentation of the subject, as the editor expressly admits in the preface. Even with his suggested omissions there is more than can be conveniently covered. Beyond them, of course, everyone will have to make his personal choice of what can be omitted with least sacrifice. The reviewer has solved this problem by the rather arbitrary determination to deal only with technical "commercial paper," thus leaving out the cases on corporate and municipal securities. Others may naturally prefer some other solution.

Since the casebook is so very good in its general scope and approach, it is the more to be regretted that it should be defective in some reasonably important matters of detail. It would, for instance, have been relatively easy to note parenthetically beside each case cited in the footnote the date of its decision so that the one using it could have been informed of whether it preceded or followed the adoption of the N. I. L. and also could have observed the sequence and trend of the decisions; but this has not been done. So, too, had the editor, in connection with the rather generous citation of law review material, included the title and author's name where the reference was to a leading article, he would have performed two useful services. Firstly, in putting the reader on notice that the citation was to a leading article rather than a note or comment, and, secondly, in informing him whether the cited material had already been examined, since it is so much easier to recall such matter by author and title than by citation. A somewhat similar objection may be made respecting the obscurity of the references to the N. I. L. It is true that the pertinent provisions of the Act are almost invariably mentioned in developing the various phases of the law. The reference, however, is either embodied in the text of the case or lurks in the footnotes and so, by the obscurity of its position, tends to elude discovery. It would seem that now, with the Act adopted throughout the country, it might well be spot-lighted. Had the editor adopted the device, so well employed by another excellent casebook in the field, of reprinting in black letter the text of the various sections from time to time where they were relevant, it certainly would have added to the convenience of using the casebook. Moreover, the reviewer has observed one or two instances of reference to a section generally where only one subdivision was involved; specification of the particular subdivision in such case would make for clarity.

No casebook, of course, is tailor made, except possibly from the standpoint of the editor. Every teacher reserves to himself the right to say, "If he had only put in a little more of this and left out some of that!" The reviewer, for instance, would like to have seen a somewhat fuller development of the warranties of indorsers and vendors. In the last analysis, a group of casebooks is like a neat row of Procrustian beds awaiting their guests; of those in the negotiable instruments section, that of Professor Aigler seems the most inviting and generally useful yet to appear.

ALBERT S. ABEL.†

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† Assistant Professor of Law, Washington University.