

BUSINESS LAW--A PART OF THE EDUCATIONAL PROCESS

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Colleagues and friends in the field of Business Law, welcome to the first Southern Regional Meeting of the American Business Law Association. My congratulations on your interest and endeavor, my sincere best wishes for a successful meeting, and my apologies for inability to get away to meet with you and personally enjoy your interest, friendliness, and hospitality.

The nobility and social contribution of law is present everywhere for it is the voice of mankind and the inspiration of civilization. In the field of business, law speaks with the equity and good conscience of the great Chancellors, with the exacting everyday meticulous effort of Lord Mansfield and the rest of the galaxy of Common Law judges, and in the modern growth through legislation and judicial and administrative decision. You who teach Business Law are an integral part of this entire process, participating in the growth of the law and in its interpretation and application for the benefit of those who follow in the business of society. You have just reason for pride, humility, and friendly interchange on the occasion of this meeting. Do meet with us in Detroit this December and share all this with us there.

If I were to suggest a theme, therefore, for your meeting it would be "Business Law--A Part of the Educational Process." In Hamlet a particularly challenging phrase reads:

"This above all: to thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man."

As Laertes, the son of Polonius, was about to depart upon a journey, Polonius instructed his son in broad principles and rules of great value to his son and to society in light of the nature of the journey. He hoped that his son understood the virtues and realities of life as embodied in those principles and rules, that they had become a permanent part of his son's wholesome character, and that his son would be true to that character. But apparently neither Polonius nor Laertes fully understood, or was able to apply, the greatest principle quoted above because the tragic deaths of Polonius and Laertes occurred under circumstances revealing a departure from that principle. Polonius died eavesdropping behind a curtain as a result of the inflamed mental tension of Hamlet in resentment against cowardice, and Laertes died in a duel seeking revenge for his sister's insanity and death without ascertaining the facts before pursuing a course of malicious self-help. In the background of tragedy upon tragedy, the gravedigger's realism is marked comedy and contrast. Tragedy and comedy became part of the educational process of learning by the audience viewing the play.

Today tragedy and comedy stalk the halls of institutions of higher learning amid the constant human effort to "educate" our youth. Just as Polonius assayed

the background, capabilities, and future journey of his son, so do institutions assay the background, capabilities, and future journey of the sons and daughters who enter their halls. Just as Polonius assumed to instruct and prepare his son for that journey, so do institutions through their faculties assume to instruct and prepare their sons and daughters for that journey. And like Laertes, some will be unable to be true to themselves because they have not learned to do so. But the number of young men and women who can be true to themselves in serving themselves and mankind for the best in life is determined in very large part by the effectiveness of the educational process to which they have been exposed and in which they have participated. By "education" is meant guided growth within the academic framework and environment established to achieve growth. Our concern here is with the carefully erected environment of institutions of higher learning. By "educational process" is meant academic activity to attain guided growth. This activity includes a careful appraisal of the students available for education, the establishment of educational objectives, instructors, and instruction. The course of study will be determined by these factors. Let us examine these factors briefly before ascertaining the place of Business Law as a part of this educational process.

Who are our students today? They are young men and women from every walk of life and from countries other than our own. Most of the men and some of the women have experienced, and apparently for some time may expect to experience, military training. ROTC units and instruction are part of the campus environment in many institutions; military reserve activities are found in our communities in which students participate. A large percentage of students work part time to finance their education. A very small percentage are married. Students from other countries are very selectively chosen for study here. There is a charged atmosphere of realism, fostered by the pressure of local, national, and international complex and frictional forces of a society which is in a convulsive struggle of pregnant, eruptive reaction. The nature of the forces, the issues involved, and the ultimate reaction constitute a dynamic part of the background against which guided growth is expected to occur and must occur. The challenge of these forces is an excellent crucible in which to mix the principles presently learned and taught with current realistic facts. In the midst of this turmoil, which I might add is one instance which cannot be ascribed to lawyers (!), stands the serious, wondering, confused student. Serious, because he made the decision to come for a higher education and hopes to accomplish it; wondering, because the responsibility and newness of a budding maturity and of a novel experience is overwhelming to him; and confused, because, while he has the courage and mental potential, he does not understand, nor does he have, the tools to grapple with these powerful forces throbbing to erupt and affect his life. This is our student.

What are our educational objectives in an institution of higher learning in view of this student and of current life? They remain, and should remain, unchanged--to teach students the art of living in its fullest and noblest sense. The student and the times may vary the emphasis, method, and technique, but not the purpose of producing more responsible and better members of society.

What of our instructors? They should have the stature of what we seek to produce in our students and they should excel in their profession of teaching.

May I suggest a pause at this critical moment to consider whether they do. Are they aware of the overall student result sought and are they keenly aware of their important, necessary status in the educational process? To what extent do they comprehend the purpose, depth, and breadth of their courses in terms of "earning a living" in the sense of earning the material bread to live and earning an appreciation of living as a part of society? Subjective analysis is good if one has the courage honestly to see, evaluate, and to correct. To a large extent the instructors of an institution collectively determine the courses to be included in the curriculum. The stature and ability of the instructor is the key point in the educational process.

Instruction varies with the individual instructor and with the subject matter. Good instruction requires sound methods and techniques. Every subject is a source of interest and student boredom is a reflection of poor instruction. Some subject matter has greater interest potential than others and, when fully exploited, becomes a dynamic course of study much sought by students. When the subject matter deals with the social forces which are shaping the material and spiritual destinies of men, and when it provides objective balance and reasoning in the analysis, development, and application of those forces, the opportunity for educational growth of the individual is limitless.

If this is a correct estimate of the purpose and function of the educational process in institutions of higher learning, then Business Law has an assured place in the curriculum. Business Law is concerned with that portion of the law affecting business relations. It is, therefore, a dominant factor in business education. Wherever a sound curriculum of business courses has been established, Business Law has been included. Slowly, recognition of the value of Business Law has been reflected in colleges and schools which are not concerned primarily with business, such as engineering and liberal arts, where Business Law courses either are included in the prescribed curricula or are given elective credit towards a baccalaureate degree. While much of this definitely growing academic appreciation of the value of Business Law is motivated by the asserted need of the business world for education in this field, nevertheless, it would not seem too presumptuous to predict that the budding courses in law in liberal arts colleges presage a belated academic awakening to the importance of law as a necessary part of the general educational process everywhere. Business has made its influence felt in the development of the law and Business Law will assert itself as a part of that law wherever law is taught. Our heritage of the Common Law system, the development of common law, equity, and the law merchant, and the development of American Law as a part of government in our politically organized society are not to be denied recognition as a part of the educational process of teaching our youth the achievements of mankind, the governmental processes under which they live, and the bases for justice under law.

Let us examine the place of Business Law in this educational process of guided growth through educational activity concerned with students, educational objectives, instructors, and instruction.

The number, temper, earnestness, and ability of students are a reflex of time and events. Today, military activity and inflation have left their mark on

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college enrollments. Most of the students know the value of the dollar and know the military limitations on deferred time for higher education. More and more property is coming into the hands of women and more and more women are engaging in business. To most of these women the concept of the legal significance of commercial transactions is distinctly novel and, as a result, young women as well as young men mirror the emphasis of their parents on understanding the legal significance of commercial transactions. Our youth is a fairly healthy segment of our society and mentally of good potentiality, although the moans and groans of instructors in institutions of higher learning evidence that this mental potentiality is not being exploited and disciplined to any great extent by the pre-university educational process, which is not taking advantage of its possibilities. The business world and society in general increasingly demand an understanding of the legal significance of commercial transactions. The subject of Business Law is of such a nature that it can satisfy the material demands of students and strengthen their capacity to assume responsibility as they journey through life. Students are interested in Business Law for its material and intellectually developing qualities. In the specialized business fields of accounting, finance, and marketing, to mention only a few, a knowledge of Business Law is a prime requisite; in accounting, it is a condition precedent to the attainment of the status of a Certified Public Accountant. In short, Business Law satisfies a student need.

Educational objectives vary with the level of educational activity and the type and location of educational institution. In institutions of higher learning the educational objective is to teach students the art of living in its fullest and noblest sense. Here Business Law has a potentiality and an affinity of purpose with the overall educational objective which is indeed a satisfaction and a responsibility. Justice is the mainspring of the law; without it there is unbridled brutality, anarchy, and civilized retrogression. Justice under law as observed and learned in classes in Business Law breeds a sense of dignity, compassion, material worth, challenge, and responsibility which make for reflective and practical maturity in learning how great a gift life really is. Business Law is in harmony with the objective of higher education.

The need for instructors in Business Law presents a difficult problem. There are too few lawyers who are interested in, and capable of, teaching Business Law. The acquisition of knowledge does not imply an ability to impart it, and the general financial sacrifice unjustifiably inherent in teaching seriously limits the market. Further, there still is the feeling that it is a step down for a lawyer to teach full-time in a college or school of business rather than to engage in the active practice of law. Much could be done to improve the market through an extension of the present program and activity of this Association. I hope this can be done, and soon, especially in the light of the sudden great increase in enrollment expected a few years hence with its concomitant demand for capable instructors in Business Law. My association in the field of Business Law has been with lawyers and, from what I can observe, those lawyers who are instructors in Business Law today are capable, earnest, and do a good job. They are desirable members of a faculty.

Instruction in Business Law in institutions of higher learning can be, and

generally is, outstanding. The subject matter is intensely practical, intellectually explosive, wide in scope, capable of ramification into any field of human activity, and very interesting to students. It is basic to all human endeavor, a picture of past and contemporary society with suggestive avenues into the future, a philosophy of government of men, and representative of society's conception of an ideal relationship among men. The source books of material practical worth and of student philosophical stimuli abound, old and new. I find that an increasing number of students are interested in classroom discussion of thoughts and quotations from great legal writings and cases. Recently, in my classes, I was very pleasantly surprised by the serious interest of students, their comprehension of selected subject matter, their participation in guided discussion, and the clarity and soundness of their reasoning when I referred to content from the following: "The Growth of the Law" and "The Nature of the Judicial Process" by Justice Benjamin N. Cardozo; "Justice According to Law" and "New Paths of the Law" by Dean Roscoe Pound; and some of the cases discussed under the title "The Supreme Court, 1952 Term" in the November 1953 issue of the Harvard Law Review. Try more of this, as time permits (!), and confirm your belief in the worth of our youth, the worth of the subject matter, and the worth of teaching Business Law. Research by the instructor takes much time, but it is deserving of the effort. As Roscoe Pound so well says, "Law must be stable and yet it cannot stand still." Good teaching requires continual research. Instruction in Business Law is of the standard desired by institutions of higher learning.

Polonius is ever with us in every walk of life. You will find him in all the thoroughfares of human traffic, including our academic classrooms. As instructors in Business Law, you have established the subject of Business Law as worthy of instruction and as a part of our educational process. Instruct well, that our trusting and worthy youth may depart upon their journeys and be true to themselves, and to you.

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