

## TWENTY-FIVE YEARS OF TEACHING BUSINESS LAW

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You will note that there is quite a difference between the subjects discussed by the previous speakers and the one given to me. The previous subjects have called for more scholarly treatment, while my topic will permit me to talk not on one specific subject alone, but on a variety of subjects. How different will be the events of my paper! While we have been listening to matters of general reasoning, I fear that my paper will be a little too specific, dealing with my own particular experiences a little too much. However, my intent is that even though I refer a good deal to my own particular experience, yet my auditors may form some generalizations of their own, and receive some profit. Whereas you have agreed with nearly everything which the previous speakers have said, you no doubt will be shaking your heads and disagreeing with me in some of the things I shall say. I am thinking particularly of the authors of Business Law texts in my audience, and there are quite a few of them.

I am reminded of a statement made by Artemis Quibble, one of Arthur Train's unforgettable characters. Artemis Quibble took a night law course somewhere but was unable to pass the state bar examinations. He believed that after so much effort spent on the study of law he ought to cash in anyway. So he had cards printed with his name and address and the descriptive word, "Counsellor." These were widely distributed, and as a result many people came to him for advice, legal and otherwise. One night a bellhop sent him a hurried call to come and draw up the Will of a dying man of wealth who had been staying at the hotel. Artemis states in his autobiography that on that eventful night there was conferred upon him the honor of drawing up a document that was to serve as a basis of litigation for the succeeding ten years. So I am reminded that this morning by using a few "poorly chosen" words I can throw this orderly meeting of thoughtful legal writers into an uproar of controversy, which I hope shall not be the result. With your trained controlled minds you will no doubt say, "Let him talk. He is at least entitled to his own opinion."

After being given this topic to discuss, I began to take inventory of myself and what I had done over the past 25 years. I asked myself whether I was satisfied with what I had achieved. Today, as 25 years ago, I am teaching at the University of Detroit and teaching Business Law with two other subjects thrown in for good measure - Real Estate Principles and General Principles of Insurance.

Today, I find myself teaching Business Law with even more enthusiasm than in 1930. In 1930 I was inclined more to treat teaching Business Law as a secondary matter, putting the main emphasis on the practice of law. I expected ultimately to break away from teaching Business Law. Those days of 1930 were dark days for the average lawyer in his practice. To be able to teach Business Law on the side was worth much to the lawyer just getting a good start. My office was in the Hammond Building just across from the City Hall in Detroit and within easy walking distance of the downtown campus of the University of Detroit located on Jefferson Avenue.

Today, on the McNichols Avenue campus of the University of Detroit about seven miles from the City Hall, it does not even enter my thoughts to treat Business Law as a sideline. It is a very serious business, especially with around 250 students in my classes. This year's teaching load is for one reason or another heavier than usual--this semester my schedule calls for 12 hours of Business Law and 2 of Real Estate Principles.

One reason why teaching Business Law at the University of Detroit today is a more serious business is that in the past 25 years the University has become a better accredited institution as far as many educational associations are concerned and has higher standards than before. In the 1930's the University had some great football teams, some of them being among the best in the country. But among the Detroit players often were ex-prizefighters and wrestlers who were in college only to play football and who spent very little time in the classroom. Likewise, some of the requirements for faculty scholarship were not as high as they are today. At the University of Detroit today, teaching is looked upon as a full-time job. Only the other day in a reorganization of our law school faculty, several Professors of Law who had been with the University for a number of years resigned because the new Dean required their entire efforts in teaching, completely separated from sideline law practice.

This sideline law practice aspect, I know, concerns some of you in my audience. As you face the future, this aspect will have to be faced by you in determining whether you will give your entire time to the practice of law or whether you will do as I have done--concentrate on a more effective presentation of legal principles to future businessmen. Another alternative of course is to prepare yourselves for teaching in the regular Law School.

Milton Dickerson hinted to me that a number of my audience would be younger men who would not only be glad to see what a man looked like who had taught Business Law for 25 years, but would be only too glad to ask him some questions about his long experience with such a subject. Therefore I have jotted down a few topics and my thoughts concerning them. Lack of time will not permit me to develop these topics, but I shall say enough to give my general position. When the questions from the audience are in order I may more fully develop my answers. The following are the topics over which there has been some controversy over the past 25 years.

1. The functional as against the conventional approach in the teaching of Business Law. I, personally, favor the conventional approach because the history of the functional approach since its inception in the 1920's has, in general, not borne out its advantages. I am referring to the work in particular of the illustrious Nathan Isaacs of the Graduate School of Business of Harvard University and the splendid contribution of Wm. H. Spencer of the School of Business of the University of Chicago. The study of a definite, concrete body of legal knowledge, characteristic of the conventional method, trains the student much better than study of the vague and scattered principles of law grouped according to business activity. When I read this paper in Michigan, someone in my audience asked me whether I had ever tried the functional approach--implying that I might be making a conjecture not based on experience. Yes, I told him, I had used Schaub & Isaacs' The Law in Business Problems and I remember certain cases in that book to this day.

2. The time that a good and effective general course in Business Law should cover. In my judgment, such a course should meet for 3 hours each week for 3 semesters and preferably in the Junior or Senior years. At present, the American Association of Collegiate Schools of Business requires just a course in Business Law, which might be for any number of hours or semesters. As for the year in which Business Law should be offered, much depends upon whether or not the particular institution belongs in the 2-plus-2 group or in the 4-year group. My own school belongs in the 4-year group and my remarks may be colored by that fact.

Some schools do not have a general Business Law course of 6 or 9 hours but offer a series of 2-hour courses developing such subjects as Contracts and Agency, Sales and Negotiable Instruments, Partnership and Corporations, Real Estate Law and others. These courses are usually fashioned after Law School courses dealing with the same subject matter. One Eastern school requires each student in the School of Business to take 6 two-hour courses in Business Law, each of these two-hour courses having its own text or case book or both, usually written by the professor in charge of Business Law in that institution. In such schools the professor frequently has the title of Professor of Law, not Professor of Business Law. In fact, the title, Professor of Law in the School of Business would not be out of place for most of us with our law degrees, our graduate degrees and our actual experience in practicing law.

As I recall, from my first attendance at an annual meeting of the American Business Law Association in Chicago in 1928, one of the main reasons for the founding of this Association was to give the Professor of Business Law a more dignified position in his university. The Law school was inclined to look upon him as a usurper and to ridicule what he was trying to do. Now, twenty-five years later, I believe the picture has changed, and few Law Schools are jealous of the Collegiate School of Business in its sincere attempt to impart important legal principles to the future businessman. Professors of Business Law have practically the same background and training as the Professors in the Law School, so that the students are not going to be misinformed in the matter of legal principles and will not try to be their own lawyers. Over the years, the members of this Association have made an impressive record of scholarship in the field of business law.

3. The objective test method of examinations for Business Law. Especially where the classes are large, this method is of great advantage. Because of the large territory to be covered in Business Law and because the student does not go so intensively into the reasons for the legal principles as do students in Law School, the objective test lends itself more to Business Law examinations than to those of the regular Law School, and as we face the huge enrollments of the near future, it will be more extensively used. This does not mean that the conventional Law School type of test may not be used occasionally along with the objective test. An occasional Law School type of test is a good thing, supplementing the other type.

4. The books to be used in my 3-semester course would be of the Anderson, Pomeroy and Kumpf type, accompanied by Anderson's Cases on Business Law, covering around 19 subjects instead of the conventional 7 or 8. In addition, the students would be required to brief a number of State and U.S. Supreme Court cases to be

selected by the professor, along with summaries of certain State and Federal statutes also selected by the professor. Students would be required to buy both text and case books, and this would not be too great an outlay of money, since three semesters are involved.

5. Sections of classes in Business Law should be limited strictly to about 35 students. The students will ask more questions and consequently learn more law. I say this in spite of what you heard Sheldon Tanner of Pennsylvania State University say yesterday. Ask Professor Lusk of Indiana about his experiences with large classes. Professor Dillavou of Illinois does his best to have small classes.

6. To be an effective teacher of Business Law, an instructor should have a law degree and should have had several years of experience in practicing law. Such a background will enable him to better answer the many questions that he will be asked during the years ahead. I could not help but notice the fine spirit of confidence that Russell Decker had in himself in his presentation yesterday. Only a lawyer with court experience could handle himself in that way.

7. One of the most important factors in the successful teaching of Business Law is the enthusiasm of the Professor. Not only must the teacher have a liking and ability for legal reasoning but he must delight in carrying over to his students the various steps in his legal reasoning. If, in certain instances, this process is more arduous, he feels rewarded when the faces of his students light up with comprehension of the point involved. He also should be interested in the progress of the slower minds in his class. I have found that the use of the workbook with the great mass of students has been very helpful, forcing them to a more detailed study of the text. This extra effort is spent on the workbook entirely outside of class periods by the student himself, answer books being made available to him that he may check his answers. So far, I have never made it a requirement that the students do the workbook, but have recommended its use whenever students were not doing well in their examinations. The results in better grades nearly always were in evidence. I am saying this in spite of the fact that when the workbook idea was first suggested to me I rebelled against it as being too elementary. However, since nearly all of our students in the School of Commerce at the University of Detroit are required to take Business Law, whether they like it or not, the usefulness of a workbook in maintaining a general "C" average has been very noticeable. I also develop the competitive instinct by posting an honor roll after each examination. This has produced good results for me.

Such methods, no doubt, seem rank heresy to some of you because you have been accustomed for so long to the conventional law school approach of a few questions and a detailed development of the answers to those questions. For more than 15 years prior to 1940, I used the conventional method with Bays' cases as a text. Through the various editions this was a truly wonderful book of the few-subjects type, covering contracts, agency and employment, bailments, sales of personal property, negotiable instruments, partnership and corporations--a total of seven subjects. Seven, compared with the 19 of Anderson, Pomeroy and Kumpf's

Business Law--namely, contracts, agency, employment, negotiable instruments, personal property, bailments, transportation, sales of personal property, insurance, suretyship, partnerships, corporations, real property, mortgages, leases, trusts, bankruptcy, torts and crimes.

While I am listing subjects covered by the different types of books, I might as well mention the subjects covered by Spencer and Gillam in their functional approach to Business Law in their Textbook of Law and Business, 1952 edition. These subjects are: The Economic Order, Law as an Agency of Social Control, Enforcement of Rights, Persons, Forms of Civil Liability, The Law of Agency, Private Property, The Law in Relation to the Market, The Law in Relation to Finance, The Law in Relation to Risk and Risk-bearing, The Law in Relation to Labor, The Law and the Form of the Business Unit--12 different subjects.

8. To be a successful teacher of Business Law on the college level, one should be a member of the American Business Law Association and should attend as many of the annual and sectional meetings as possible.

As I look back over the last 25 years, some of the chief benefits I have received for effective Business Law teaching have come from my attendance at the annual meetings of the American Business Law Association. There one rubs shoulders with the leading spirits in American Business Law. They are not only teachers of Business Law at leading universities, but are writers of texts and casebooks on Business Law. These men, and occasionally women, have interesting personalities and one receives a distinct benefit in the interchange of thoughts with them.

The following names of members of the Association who have influenced me by interchange of thought and personal contact over the years, come to mind:

Bays of Northwestern, noted for his scholarship and pioneering in Business Law--one of the original founders of the American Business Law Association.

Isaacs of Harvard, noted for his scholarship and his promotion of the functional method in Business Law; also a leader in the formative years of this association--one of the founders.

Lewis Mayers of the College of the City of New York, for his ability to write convincingly on legal subjects and his ability to act as a genial host to the American Business Law Association, especially in New York City in 1949. In New York, we members of the Business Law Association experienced a new sense of legal dignity as we met in the chambers of the lawyers of New York City and heard a distinguished and portly member of the English Parliament deliver his goodwill message at the famous George Washington Inn near the waterfront.

Babb of Boston University, who worked so tirelessly to establish a publication for the American Business Law Association, a project which did not seem to make headway until yesterday's notable announcement by Professor Gillam of the University of Washington.

Stone of Syracuse, noted for his far-reaching activity from California to New York and his thoroughness in textbook writing.

Kerr of Idaho, who used to forego his Christmas dinner with his family to attend the December meeting of the American Business Law Association. He, like Stone and Leonard Axe of the University of Kansas, were also Deans of Schools of Arts or Commerce and kept themselves busy by teaching and writing books on Business Law.

Tanner of Pennsylvania State, author of a special Business Law text for the State of Pennsylvania, an accomplished pianist and a forceful speaker as evidenced by yesterday's performance.

Reid of Pittsburgh, for his attempt to establish a distinct department of Business Law at the University of Pittsburgh, with as many different courses in Business Law as possible so that one could almost major in Business Law, at one time, at the University of Pittsburgh.

Teevan of Northwestern, with his likeable personality, a successor of Bays and one of the staunchest supporters of the Association.

Wolaver of Michigan and his firm determination as one of the co-founders of the American Business Law Association--a dominant personality, especially at one of the early meetings at the Stevens Hotel in Chicago in 1928.

Lavine of St. Johns University, noted for his story-telling ability and his combination of law practice with the teaching and writing of Business Law.

The Dykstras, Gerald and Lillian, for so long from Ohio University, but now of the University of Michigan, a marriage of heart and intellect if ever there was one.

Lusk of Indiana, always active in matters of the Association, especially where matters of organization and legal research are involved.

Dillavou of Illinois, a great teacher of Business Law, a potent factor in the doings of the American Business Law Association for at least the past 20 years to my own recollection--a man especially well informed in all matters of Business Law and highly capable of arguing any legal point at a moment's notice.

Milton Dickerson of Michigan State University, our capable new president, Joseph Frascona of the University of Colorado, our present gracious host and chief, Cornelius Gillam of the University of Washington, who has accomplished the seemingly impossible in the promotion of a journal, and Edward A. Smith of Syracuse University, all presently active in the American Business Law Association and well known for their excellent texts and casebooks on Business Law. One must not forget, also, the names of Stone of Dartmouth, Wesley Harter of Florida State University, our new vice-president, who has worked so tirelessly in promoting the idea of sectional meetings, especially in the South, Paul Roberts of Illinois, for his past years as Secretary of the Association, and many others.

These are just a few of the many fine personalities I could mention. There are many others, some of whom no doubt are present at this meeting. Lack of time prevents me from mentioning more.



In conclusion, I may say that the past 25 years have been epoch-making. Court decisions and statutory enactments during this time have revolutionized our lives. As we sit here today, the repercussions of the labor ~~movement~~ inaugurated by the passage of the National Labor Relations Act of 1935 and its important amendment, the Taft-Hartley Act, and the liberal decisions of the U. S. Supreme Court, especially in the matter of civil liberties, still are being felt. So great a change in the economic and governmental structure of our states and nation has occurred that one with a solid background of economics and law often wonders what will be the final end. However, through all this change, so far, I am glad that I have been a Professor of Business Law, Government and Economics in a growing university, located strategically in a large city, where, because I taught and studied such subjects, I could have my hand on the pulse of a changing order, which, let us hope, may result in a higher type of finished product economically, socially, and spiritually--a veritable Utopia, if you please.