

LEGAL ANALYSIS FOR MANAGERS

Joseph Lazar

Almost all of us here come from distinguished colleges and universities, and we have been steeped in the values and goals of the educational community. We are consciously aware of a major university goal: to realize and develop to an increasing degree the individual's potentialities, especially those of thinking and understanding. It is often stated that the student is to be taught to think and that an aim of the university is to develop the student's intellectual powers. In this vein, the school that teaches how a thing is done is classified as "technical," while the school that educates a man "to ask 'why' it is done" is called "educational."¹

Higher education in the United States has also been said to have as its central purpose the task of developing "wisdom for freemen in a democracy."² If higher education is "to develop wisdom for freemen in a democracy," then there must be conveyed an appreciation of the role of law as the basis for decent government and human freedom and dignity.

It is within the context of the democratic value system that American higher education develops. Indeed, the American university recognizes its obligation to enhance the values of our society. The concept of management as a "profession" has begun to take hold. Thus, even though the management concept itself is vague and still relatively shapeless and without common features or definition, the ancient and time-worn concept of "profession" strikes a familiar chord. For, like ministers, doctors, lawyers, or teachers, the concept of "professional" denotes social responsibility and ethical behavior based upon a moral sense. It is to be expected then, that a broad summary statement of business school objectives, derived from a comprehensive study of American Schools of Business, would state the following goals:

"(i) To provide the student with the requisite knowledge of the tools necessary for the profession of business management, and of the functions and principles of management.

(ii) To train in the ability to work effectively with people and to give some knowledge of the problems of human relationships at all levels.

1. Arthur Lehman Goodhart, 5 Journal of Legal Education 1 (1952).

2. Jesse S. Raphael, Law in the College Curriculum, 7 Journal of Legal Education 313 (1955), referring to Higher Education for American Democracy; A Report of the President's Commission on Higher Education (Vol. 1-6) (1947); Education for the Preservation of Democracy; A Report of the Thirteenth Educational Conference, New York City, Oct. 27, 29, 1948, American Council on Education Studies, Ser. 1, No. 35 (1949).

(iii) To give an understanding of the social purpose of industry; of the relationship between industry and other groups within the community; and of its relationship to the Government and the general public.

(iv) To develop certain abilities and qualities of character necessary for the practice of business administration, e.g., a capacity for exact analysis, and the ability to make effective decisions under pressure of time." 3

Of course, objectives like these for Schools of Administration and Business Management are not easily achieved. The vital need for working and achieving such objectives, in some measure, step by step, is painfully apparent by the facts of corporate and institutional life about us. The growth and extension of the corporation, private and public, and other large scale organizations such as the unions, presents to the individual a picture of such bigness and complexity as to leave him feeling relatively helpless to cope with or even to understand many of the problems besetting him. The survival and healthy functioning of our democratic institutions, including the business corporation, depend in part on the day-by-day progress of our schools in achieving, to a degree, the objectives stated.

A few additional facts of life are given in a survey such as that made in 1949. It covered 2,048 private organizations, and showed that 5,428 attorneys were employed as house counsel. 1,996 of the attorneys were employed by 231 industrial corporations having three or more attorneys in their respective law departments, 301 corporations employed two attorneys, and 769 corporations employed one. Insurance companies employed 895; banks, 547; title companies, 315; trade and other associations, 65. A somewhat similar survey made by this speaker in 1955 in the Los Angeles area suggests that there is a steady trend toward the employment of house counsel even by relatively small companies. This development of employing house counsel has been, undoubtedly, encouraged by the fact of the immediate availability of the services of an attorney who has a direct knowledge of the company's legal problems and background and is, therefore, in a position to practice "preventive" law. The fact that the attorney is in the status of an employee, however, makes it more difficult for him to give "distasteful" advice to his manager-supervisors and requires, on the part of the manager, an understanding of this problem so that maximum candor and benefits may be obtained from the "kept-lawyers."

It is an objective of the course in Legal Analysis for Managers to educate potential managers and administrators in the appropriate use of legal services so that the manager may use these legal services as

3. Education for Management, Report of a Visit to the U.S.A. in 1951 of a British Specialist Team on Education for Management, published by the Anglo-American Council on Productivity, November, 1951.

effectively as he uses the professional services of the engineer, the accountant, and other specialists.

Accordingly, it is important that the manager be able (1) to recognize legal problems; (2) to understand the issues to the point where he is able to assign them properly to inside or outside counsel; (3) to evaluate legal recommendations; and (4) to decide, on the basis of both legal and non-legal considerations, what action should be taken. Further, in this connection, it is important for the manager to acquire a sensitivity to legal cues helpful in warning him of probable illegal action; a knowledge of the semantics necessary for effective communication with his legal counsel; and a basis for evaluating advice of his legal counsel.

What has been stated so far, as we all know, is not new or original. Business law professors, to a considerable degree, have sought similar goals. Thus, Professors Robert E. Stone, Edward A. Smith, Richard A. Frank, and Joseph A. Romig, in their pathfinding Fundamentals of Business Law⁴ have declared that "A major purpose of studying (law) is to learn the rules so as to play one's part in life and business intelligently. Throughout this work, a conscious effort has been made to give the reasons for the rules; in part because learning the reasons makes it easier to understand them, and in part because it makes them easier to apply. It also gives one an awareness that when reason and sense require the handling of a situation in a certain way, then the rules may at any time be changed to accord with such sense, and activities should be carried on with this possibility in mind."

William H. Schramper, in his Law in the Application to Business⁵ states that his text material "has been written and the cases selected to place greater emphasis upon the preventive aspects of law which will acquaint the student with desirable business procedures and practices. It is of paramount importance to learn how to keep out of trouble."

Ronald A. Anderson, Dwight A. Pomeroy, and Walter Kumpf state that "the purpose of a course in business law is to develop an understanding of the fundamental principles of law that apply to common business transactions."⁶

A vivid description of an objective of business law teaching is given by A. Lincoln Lavine in his Modern Business Law.⁷ He says, "Just as a successful brain surgeon must have a sound familiarity with the functions of the entire human body, so the student of business law must understand the entire body of law by which our lives are governed."

4. The Foundation Press, Inc., Brooklyn, 1950.

5. Rinehart & Co., Inc., New York, 1952.

6. Business-Law, Southwestern Publishing Co., Cincinnati, 1952.

7. Prentice-Hall, New York, 1954.

More of the philosophy of business law as presented earlier in this paper is given by William H. Spencer and Cornelius W. Gillam in their scholarly Casebook of Law and Business.⁸ They say, "in general terms, the purpose of teaching law in a school of business is, or should be, to bring to the future businessman a certain awareness of social control. Whether he likes it or not, he must play the game according to the rules. He must understand that one of the conditions of carrying on business in our present economic order is that he submit himself and his business to the control of society. Law is one of the most important instrumentalities of social control, and it is for this reason that students preparing for business should be given instruction in it."

Observations by our profession on the purposes of business law teaching may be continued at length. Several additional statements may be noted, however. Franklin H. Cook in his Principles of Business and the Federal Law⁹ calls attention to "the important legal and economic principles that affect business in its relation with government." Joseph L. Frasca declares in his Business Law, that "the object of this book is to present the law to students as a dynamic factor in business life and to help students to comprehend the legal significance of business transactions in which they will become engaged."¹⁰ Essel R. Dillavou and Charles G. Howard, state it is their objective "acquaint the student of business with the legal principles that govern the conduct of business and to train him in their application."¹¹

Lastly, and without exhausting by any means the list of distinguished business law teachers, we have the simply put statement of Harold F. Lusk, in his Legal Aspects to Business.¹² "The objective of this book is to give the reader an understanding of the 'why' of our law and also to give him an understanding of some of the basic principles of law."

It would appear that the present business law courses have much in common with the stated objectives of the "Legal Analysis for Managers" course. The content of the Legal Analysis for Managers course falls into two general sections. Part I is designed to assist the student to grow in terms of acquiring tools of legal analysis and an understanding of his legal system. Part II is designed to give the student an opportunity to sharpen his skills in concrete application of legal principles to life situations.

-
8. McGraw-Hill Book Co., Inc., New York, 1953.
 9. Macmillan Co., New York, 1951.
 10. Irwin Publishing Company, Chicago, 1954.
 11. Principles of Business Law, Prentice-Hall, Inc., New York, 1948.
 12. Richard D. Irwin, Inc., Chicago, 1949.

Part I of the course covers the following five general areas:

1. The Manager-Legal Counsel Relationship (embracing the relationship between manager and outside counsel, and functions of the legal department);
2. Nature, Sources, and Relative Authority of Law (embracing: a) nature and purposes of law in classified and modern views, b) the Anglo-American order of legal authority--dealing with unwritten law, written law, constitutional, statutory and administrative law, c) the American Federal-State system (executive, legislative, judicial, quasi-judicial and administrative agencies), and d) legal materials and their use (primary and secondary authority);
3. The Nature of Legal Concepts--covering the general nature of words and concepts, and legal concepts (including the Hohfeldian legal relationships and illustrative legal abstractions, such as the concept "contract," "corporation," "agent");
4. The Nature of Evidence and Proof--covering the nature of a fact, the process of proof, the process of communication, analysis and application of illustrative laws of evidence, etc.;
5. Nature of the Judicial Process, covering policy-making by the judges, case analysis and use of precedents, and judicial draftsmanship. It may be noted that the sections on the Nature of Legal Concepts - language - and the Nature of Evidence and Proof, are essential tools of legal analysis, and are customarily not included in Business Law courses or textbooks.

Part II of the Legal Analysis for Managers Course covers the traditional legal categories of the law on contracts, agency, property, sales, negotiable instruments, partnerships, corporations, and trade regulation. In addition to assisting the student to gain a general view of these immense fields of law in their application to real life situations, fundamental principles and values in the areas of estoppel, unjust enrichment, individual consent and freedom, and social control and public policy are called to the student's attention to assist him in integrating and understanding the many fields of law covered. The emphasis here is on the why and the reason of the law. The difficulty inherent in accommodating conflicting values in the law is made an explicit exercise for the student, on a level of acute awareness, e.g., the values of stability and certainty in property and negotiable instruments versus the values of safeguarding the innocent and helpless against the machinations of the ever-present dishonest scoundrels.

The "Legal Analysis for Managers" course is not intended to give the student a technical mastery of the concrete and specific rules of law. The lawyer is available to the manager for this. But the lawyer's craft, his thinking and analytical powers, are no monopoly of the legal profession; nor are these intellectual powers mysterious or given by the gods. The student in the school of business, like the student in the school of law, has the native capacity to acquire skills of legal analysis. It must be recognized, of course, that the business administration student does not have the extensive training the law student obtains in this field and that differences in abilities are to be expected. In this connection, however, the Harvard Business School's

case method of instruction would seem to develop, for the manager-student, analytical thinking ability comparable to that of the law-student. The awesome responsibilities of the professional manager and administrator in business and government, in the atomic age of great social change ahead of us, require these capabilities. Beyond doubt, we will, all of us, attempt to meet this need.