

BUSINESS LAW AND TRAINING FOR BUSINESS¹

E. R. Dillavou

At the 1957 summer meeting of the American Business Law Association, Professor Joseph L. Frasca presented a paper in which he outlined his thinking on the problems proposed for discussion in this article. He began, where any such discussion must necessarily start, with a discussion of the nature and purpose of education. Only as one keeps constantly before him the ultimate end of formal education is he in a position to assess and evaluate the merits of a particular subject and its contribution to the life and business success of those engaged in its study. This is particularly true for one who has taught for many years in a given area and is now attempting to evaluate the work in that area.

Educational Goals

Many people, including educators and those engaged in other pursuits, have their personal philosophy concerning the objective of formal education. These opinions, often expressed in writing, differ somewhat in expression but usually have some common basic theme. After reviewing many statements, this writer concludes that from kindergarten to the postdoctoral study, the objective is the same--a two-pronged objective with each prong having a common branch which unites the two.

The first of these goals, attained through adding to his warehouse of useful knowledge and through offering practice in the use of essential skills, is so to sharpen the student's faculties and abilities as to make it possible for him to reach his maximum potential for service to society and, by the approach used, so stimulate and enthruse the student as to persuade him to make maximum use of his faculties and abilities for the common good. This is the goal which in professional training is often thought to be the more important.

The branch of this prong which should effectively unite it to our second prong is skill in the art of careful, courageous, imaginative, reflective, and unbiased reasoning tempered by sympathy and understanding. Life, as well as business, is a rapidly flowing stream of decision-making. To the extent that our decisions are wise, both life and business become successful. Students, therefore, should be introduced to courses so organized that native ability to reason may be cultivated in style and logic, and in which they are given opportunity to review decisions made by others, and of exercising their faculty of judgment in the solution of important problems. Blind, cold reasoning, uncontrolled by sympathy and understanding, often overlooks the common good; but right habits of thinking, of which warmth and goodwill are a part, lead to social progress. Sound reasoning of this kind is as essential to personal maturity as it is to business success. Thus, we reach the second prong of our objective which is to aid the student to attain a mature and satisfying philosophy of life, so welding together the twin arts of learning and noble living as to produce a rich and meaningful experience. Unfortunately, some fail to attain real maturity and so miss the happy life which the door of education should open to them. Education has responsibility for attainment of this second prong.

¹Many of the thoughts and some of the language in this article were set forth in a chapter in the American Business Education Association 1957 Yearbook, which dealt with education for business beyond the high school. Such use as has been made of that article is with the approval of the editors of the yearbook. The writer appreciates their cooperation.

Professor George Goble², in a letter discussing the educated man, made this statement:

"Recognizing his powers he develops dignity, integrity, and responsibility. Realizing his limitations he cultivates tolerance, humility, and reverence. . . . The education of the future therefore, must deal with man's attitude toward the unknowable. It must put in finer balance reason and faith."

Culture, spiritual perception, or maturity, by whatever name it is called, is one prong of our educational objective. Some courses contribute substantially more to one prong of our objective than to the other, but each, in some measure, should contribute to the total objective.

Required Courses

Success in the field of business, like success in life, is not dependent upon having had formal training in a particular college course, or, in fact, in having attended college. Consequently, the writer has some misgiving about requiring many courses of all students regardless of their particular field of interest. To justify its inclusion in a list of required courses, a particular course must contribute so effectively to our educational objective that it is more desirable for all students in each curriculum to take it rather than other courses found in the college catalog. If a course in business law is to be retained on the required list, it must make a greater contribution to a student's life and usefulness than courses in labor economics, personnel management, advanced economic theory, marketing research, insurance, and other valuable courses not now uniformly required of all students and with which it competes for the student's time.

With the background painted, albeit somewhat imperfectly, it is time to throw the business law slide on the screen so that it may be determined how well it merges into the setting.

Business Law - Useful Knowledge

The laws approved by organized society which influence one's business relations with one's fellow men, we are prone to call business law. A course in this area, as a minimum, normally includes a study of the law relating to contracts, sales, negotiable paper, agency, and business organizations. Law influences business activity at many other points, i.e., competitive practices, trusts and estates, security devices, real estate and insurance transactions, these topics being considered in optional advanced courses while the aforementioned courses are considered basic. At some institutions, the subject is taught almost exclusively by the case method--a study of decisions rendered and the opinions expressed in support of them. Examinations in these schools usually require the solution of case problems by the application of existing principles of law. Other schools combine text and case approach to cover a greater area and sometimes combine problem-solving with objective tests in their examinations. However, under either method of teaching, the approach is basically the problem review and solution approach.

Since colleges of business and commerce were first developed, a survey course, or a series of courses, in business law has been required of all students

²Letter written to Professor Britton in response to an inquiry concerning the objective of higher education.

of business. Almost all programs of business education require this today.³ Is this an inheritance or does it merit this distinction?

In medieval times, training for business was the result of apprenticeship, which practice, as said by Dean R. A. Stevenson:⁴

" . . . provided not only training in technical skills, it was also designed to give the necessary insight into the problems incident to the economic environment in which business transactions took place. The novice progressed to the status of master in his craft, partly by formal instruction and partly by intimate contact with the master under whom he was receiving training. In this manner he learned how to conduct a business in accordance with the established standards and rules of law that pertained to wages, discipline, conditions of work, quality of product, financing, and other matters that were essential to the successful conduct of a business."

This quotation suggests that an apprentice had to be familiar with the laws under which business operated. As it was then, so it is today. Business does not operate in a vacuum but in an organized society under which the economic environment has been crystalized by rules of law. Unless a participant has at least a workable knowledge of the rules by which the game is played, he is not likely to reach his true potential as a player, too often losing the benefit of plans well laid because of penalties assessed for a violation of the rules.

Almost every business transaction is founded upon a contract, and almost every business decision is implemented by one or a series of contracts. Therefore, information concerning the basic principles of law affecting the making and performing of contracts is advantageous to the businessman. He can work with assurance only as he understands those fundamentals required for an enforceable agreement. The true characteristics of an offer, its duration, the right to revoke it, and how it must be accepted, are considered as part of the study of law of contracts. Today, when business is advertising so extensively, an understanding of the distinction between preliminary negotiations used to induce a business offer and an actual offer is often decisive of important legal controversies. The Statute of Frauds determines those contracts which are unenforceable unless evidenced by a writing, and the Statute of Limitations determines how soon an action must be brought in order to enforce a right. Fraud and mistake play important roles in the enforceability of agreements which otherwise contain the proper ingredients of a contract. Information in all these areas, as well as others, is available in business law courses where contracts are discussed. Since contracts are so fundamental to business activity, a knowledge of the legal relationships involved would seem to be basic in training for business.

Extension of credit, resulting from loans or from the sale of merchandise or services on account, is evidenced by accounts receivable, negotiable instruments, or other forms of commercial paper. The businessman customarily turns these obligations into cash by transferring them to those willing to purchase.

³Taylor, Are Business Schools Meeting the Challenge?, 10 Collegiate News and Views 1.

⁴Stevenson, Dean R. A., paper entitled "History of Business Education," presented at a program commemorating Fifty Years of Education for Business at the University of Illinois.

The rights of the transferee and the liability of the transferor depend in large measure upon the type of contract they make and the nature of the claim transferred. Checks are used as the normal method of effecting a settlement of money obligations. The liability of the drawer, the duties of the holder, the obligation of the drawee bank, and the rights, if any, against endorsers are all matters studied under the law of negotiable paper. It is very important that the basic procedures essential to fasten liability on any one of the parties concerned be understood by those making use of credit instruments.

The ultimate goal of all business activity is the sale of goods or service to the consumer. At this point, in addition to the usual problems involved in contracts, there are additional ones relative to the transfer of ownership from seller to buyer, the express or implied warranties as to quality which accompany the sale, and the rights of an unpaid seller. In order to understand one's rights, or the need for and the nature of insurance required to protect one against loss in the event of injury resulting from defective merchandise or workmanship, an understanding of the law of sales is essential. This is particularly true of those engaged in the retail and wholesale business.

One who invests in a business venture needs some knowledge of the legal aspects of the various forms of business organization. Available to expectant businessmen are the individual proprietorship, the partnership, and the corporation. Each has its distinctive features, its advantages and disadvantages. Ability to control, personal liability to creditors, duration of the organization, division of profits, and tax liabilities all are dependent upon the form of organization selected. The rights, duties, and liabilities under each form of organization are given treatment under the subjects of agency, partnership, and corporations in the courses in business law.

Graduates of schools of business, in surveys made by the College of Commerce and Business Administration at the University of Illinois, usually place the courses in business law at or near the top of those subjects which they feel have been most beneficial to them. The writer feels that business law meets well the first prong of our objective. Now for a look at the branch of this prong which is common to, and unites it with, our second prong.

Training in Careful Thinking

Every business activity or transaction is the result of a decision by some one in the line of management. Some decisions are arrived at on the spur of the moment, while others are made only after extended and careful deliberation; but each decision made, whether large or small, has its bearing upon the success or failure of the enterprise concerned. Decisions determine the type of commodity or service with which the business deals, the form of organizational structure to be used, the method of financing to be undertaken, the kind of labor policy to be pursued, and the pricing policy to be employed. Business is a series of major and minor decisions implemented by economic activity. Sound, well-reasoned decisions mean a sound and successful business, whereas thoughtless and emotional decisions are the forerunner of business failure and bankruptcy. Careful, conscientious, and courageous thinking, through an imaginative examination of available facts, exclusion of irrelevant material and orderly evaluation of the various factors as they relate to each other, and the suppression of prejudices and prejudgments, and anti-social inclinations all are essential to constructive decision-making. The writer is aware of no area of study related to the field of business better calculated to sharpen logical thinking than the work in business law.

Business law, to a very high degree, is concerned with recorded court decisions. The student engaged in studying these opinions is urged to appraise them for their soundness in the light of what seems equitable and just. Every case deals with a business transaction or course of business conduct, and the court is engaged in an effort to determine the meaning of the business action at issue and is intent on applying correctly accepted principles of law to the situation. Opportunity is afforded the student to observe the thought processes of the court, to assess the value given by the judge to one factor over another, and to review the manner in which the issues are sharply focused by the various parties involved or are only dimly perceived. So from class period to class period, this procedure of reviewing decisions in one area or another continues throughout the course.

In addition to reviewing reported decisions, extensive use is made of hypothetical situations, often based on current cases, in which the student is asked to reach a decision. In oral discussions, as the student feels his way along, the instructor supports him, raises questions where he has disregarded pertinent facts or has misconceived the issues or the law involved, and hopes that the student will see his error and reach a satisfactory decision without undue aid on the instructor's part.

There is some question about how readily one can transfer sound thinking in one area or realm to another, but so far as business law as training for business is concerned, no such problem is involved. The course regularly deals with business, and business problems are continually under review by the courts. The policies, planning, and program of businessmen are constantly being reviewed by the students in the light of existing law. Business law, by training in the art and practice of decision-making where business decisions are required, eminently supplies the branch or fork which unites our two-prong objective.

In past decades, many leaders of big business have been selected from those trained for law, in a large measure because they were trained in the art of careful thinking. Today this source of leadership is being replaced, in a large part, by those having special training for business, which involves some legal background, which requires some training in sound thinking in many areas of business experience, and which demands some acquaintance with many business activities.

As in business, so it is in life; only by the use of careful thinking can we proximate true maturity or a satisfactory life experience.

Maturity of Judgment

The final objective of education as outlined is to assist the student in locating for himself a satisfying philosophy of life which is mature in character. Just how one attains such a philosophy, other than by careful thinking, is not entirely clear; but some of it must be derived from watching the lives of others, their aspirations, accomplishments, desires, frustrations and defeats, and their reaction to them. The study of business law has to do with people, their strivings, their ambitions, and their successes or failures. People seek power or wealth and make plans accordingly; people occasionally seek to advance personal interest at the expense of others; some seek to live in harmony with the law of the land, while others seek to evade and sabotage it. Observation of the approach of others to life's problems, their childishness, their understanding, their imagination, their alertness, or their lack of wisdom, should enable one to profit from their experience. The courts are filled with cases involving problems people have had to face. In every legal controversy there is usually a winner

and a loser; and justice does not always prevail for a particular person, because at times the law lags behind the best in morals and ethics.

Nevertheless, an understanding of the sources of our law, its nature, its growth to meet the needs of a dynamic society, its groping for justice in all areas of life, and of the part played by our judicial system in its development and enforcement adds much to our cultural background and contributes to our maturity.

As every student of education well knows, the contribution which a course makes to a student's ability and well-being is influenced profoundly by the one who teaches it. Whether or not the student's preparation for business, or the extent thereof, has been enhanced, turns in large measure on the background, training, and understanding of the instructor. However, this is no more true of a course in business law than of one in accounting, finance, economics, management, or marketing. Whether the objectives of sound education are attained or lost sight of depends on teacher and student alike. Good teaching is an essential in business law as it is elsewhere.

In conclusion, therefore, it may be said that business law contributes effectively to training for business by acquainting the student with those legal principles which establish the economic climate in which business operates; by offering experience in the field of decision-making, particularly in the area of business; and by assisting the student to reach a mature philosophy whereby he can enjoy solitude but be of the people, be a thinker and at the same time a doer in our economy, lose and not despair, be trustworthy though associates prove untrustworthy, and be flexible though determined. In other words, a study of business law should ably assist one in becoming a useful and happy citizen capable of rendering his optimum service to society.