

SURVEY OF PRACTICES IN BUSINESS LAW

Gertrude S. Mettel*

In the years following the adoption of the recommended core curriculum of the American Association of Collegiate Schools of Business there has been much discussion and a great deal of controversy over jurisdiction and the place of various courses in the curriculum. The proliferation of courses in the functional fields and jurisdictional authority between the economics and business departments have been but two of the major areas in which there has been a difference of opinion in theory and in practice. The status of business law in the core curriculum did not appear to be affected by these disputes. However, trends in curriculum studies and revisions give evidence of the impact of technology, increased government regulation, problems of 'communications', and public and personal relations of and in business. The recognition accorded new divisions in Industrial Relations, Personnel, Advertising, and the inclusion of the laws of business in these and courses in the functional fields may have an affect upon the status of business law in the curriculum of collegiate schools of business. Objective appraisal of the status of business law requires an awareness of the present practices in business law.

The survey of practices in business law was not too extensive or ambitious. Questionnaires were mailed to thirty members of the American Business Law Association or regionals. The twenty-seven replies represent twenty-seven colleges and universities located in various parts of the country. Two of the thirty questionnaires were returned "No Such Address" and a third was a duplication, thus accounting for all of the thirty mailed. The data reported herein was compiled from the twenty-seven replies to questionnaires returned and used. Any appraisal of the data reported should keep in mind the purposes of the survey.

PURPOSES OF THE SURVEY

The purposes of the survey were threefold: first, to ascertain the extent to which there is a lack of uniformity or diversity in course offerings and course content; second, to determine the degree of conformity or uniformity in course programs in the presence of the contention that there is a

* A.B., University of Wisconsin, 1929; J.D., Northwestern University, 1931; M.B.A., University of Chicago, 1939; Member of the Illinois Bar; Associate Professor of Business Law, Course Chairman, Roosevelt University of Chicago.

healthy and justifiable lack of uniformity; and third, to clarify and substantiate the presence or absence of an educationally sound philosophical justification for law in the curriculum on the basis of the practices reported.

Although statistical data alone cannot provide the answers for all the implications of the data reported from such a survey, it is anticipated that some tentative conclusions may be drawn and possible criteria established regarding both present and future objectives and practices in business law. As John Dewey once stated:

"...Let us admit the case of the conservative: if we once start thinking no one can guarantee where we will come out, except that many objects, ends, and institutions are doomed. Every thinker puts some portion of an apparently stable world in peril and no one can wholly predict what will emerge in its place."

PRACTICES - NUMBER AND KINDS OF COURSES

The questionnaire contained the following questions pertinent to a determination of the number and kinds of courses in business law offered by the various schools:

- A. How many courses do you offer in Business Law?
- B. Do you offer a one-semester Survey Course in Business Law?
- C. Do you offer a Law Review Course for Accountants?
- D. Is Real Estate Law (for Brokers) offered in the Business Law Division?
- E. Is Insurance Law offered in the Business Law Division?
- F. Do you offer a course in Government and Business or Social Control of Business?
- G. If so, is it a required course for all commerce majors?

SUMMARY OF DATA ON PRACTICES AND FINDINGS

The replies received from the twenty-seven colleges and universities reported a range of course offerings in Business Law of one to nine courses.

NUMBER OF COURSES	%	NUMBER OF SCHOOLS
1	11.0	3
2	22.0	6
3	33.0	9
4	11.0	3
5	14.9	4
7	3.7	1
9	3.7	1

Special course offerings were reported by most of the schools with more than three courses in the law of business. Six of the schools reported an offering of a one-semester Survey Course in Business Law; four offered a C.P.A. Law Review Course; ten reported an offering in Real Estate Law; and eleven an Insurance Law Course in the business law division. Fourteen of the schools reported a course in Government and Business or Social Control of Business. One school reported that such a course was taught under the title of Administrative Law. It should be noted that this course was not offered by the Business Law Division but by the political science or the economics departments of the institution.

The logical inference or conclusion at this point of inquiry into practices in Business Law is that the data appears to substantiate the conclusion that there is a lack of uniformity or diversity in course offerings. However, there is no evidence as to the reasons for the differences in the number of course offerings or in objectives (educational philosophy) underlying these practices.

PUBLISHING HOUSE SURVEY - DATA

Should there be any doubt as to the validity of the data herein reported, the compilation of statistics reported by a publishing house is herewith presented. The publishing house survey covered the catalogues of 982 colleges and universities.

"BUSINESS COURSES IN BUSINESS LAW"				ENROLLMENTS	
Number of Courses	Total	%	1000	1000-5000	over 5000
Semester 1	324	33	231	78	15
Semester 2	379	38	212	131	36
Semester 3	26	2.6	10	11	5
Semester 4	26	2.6	5	10	11
Special Courses					
Real Estate Law	40	4.1	2	20	18
Wills, Estates, Trusts	9			5	4
Partnerships	16	1.6	2	9	4
Corporations	17	1.7	3	8	6
Insurance Law	12	1.2	2	6	4
Sales	10	1.0	2	3	5
C.P.A. Law Review	13	1.3	3	7	3
Finance	2			1	1
Contract Law	22	2.2	3	14	5

The range of course offerings in Business Law in the institutions surveyed is as varied as those noted on the limited survey. Further, the current practice of breaking down the field into compartments is analagous to that in the functional divisions of the professional schools and requires evaluation and justification. Criteria for the evaluation of these practices may be found in the evidence of opinions on the substance of the law which we expect our students to know. This evidence is to be found in the number of courses required of the majors in the functional fields and the content of these required courses.

CRITERIA FOR EVALUATION OF PRACTICES

- H. How many Business Law Courses are required for majors in the field of Marketing, Finance, Business Administration, and Accounting?

The following is a summary of the data reported in the replies the foregoing question.

<u>Required Courses</u>	<u>Number of Schools</u>	<u>Majors</u>
1	13	Marketing
2	4	
1	5	Finance
2	12	
1	5	Business Administration
2	14	
1	3	Accounting
2	14	
3	5	

The maximum number of required courses in Business Law was two for majors in Marketing, Finance, and Business Administration and three for majors in Accounting. The significant implication of the data herein presented is that there is less diversity and more uniformity in what we offer our students in the law of business. Although eighteen of the schools offer one to three courses in business law, thirteen of the schools required only one semester and only five required their accounting majors to take three courses in business law. The five schools which offered a C.P.A. Law Course did not require the course of their accounting majors.

COURSE CONTENT

The content of the required courses provides further evidence of what we believe our students should know of the law of business and should prove of value as a criterion for the evaluation of present practices. Consideration must be given not only to subject matter included but also to the materials which are omitted or which receive only sparse treatment. The questionnaire included the following question:

In which semester of law do you present the following topics? Economic Background, Courts Procedures and Pleadings, Contracts, Agency, Partnerships, Corporations, Bailments, Pledges, Factors, Innkeepers, Common Carriers, Warehousemen, Sales and Conditional Sales, Suretyship and Guaranty, Negotiable Instruments, Insurance, Chattel Mortgages, Trusts, Deeds, Mortgages, Leases, Wills and Inheritance, Bankruptcy, Liens, Nuisances, State and Federal Regulations.

The content and sequence of topics covered according to the replies received are as follows: Twenty-six presented the institutional setting and background of the law, courts, procedures, pleadings, and the law of contracts in the first semester; eighteen included the law of agency in the first semester and five in the second semester offering. The law of sales and negotiable instruments were reported as offerings in the first and second semesters by five and eleven, and five and fifteen schools respectively.

Course Content	1st	Semester Sequence			Others
		2nd	3rd	4th	
Institutional Setting and Adjective Law	26				
Contracts	26				
Agency	18	5	1		
Partnerships	4	10	1	1	
Corporations	3	10	1	1	
Sales	5	11	2	3	
Negotiable Instruments	5	15	4	2	
Personal Property	4	11		3	
Real Property	2	4	3	7	
Insurance		2		2	
Suretyship		2		2	
Nuisances		2		2	
Bankruptcy	2	2		3	
Federal and State Regulations	3	2	5	3	

3

In order to ascertain the existence of a possible correlation between what we teach and what is included in the books in use, one of the survey questions referred to the book or books recommended for these courses. Four of the books noted were chosen at random and compared as to page coverage.

These four books showed the following page coverage:

<u>Subject</u>	<u>Page Coverage</u>
Institutional Setting and Adjective Law	1 - 10
Contract Law	150 - 280
Negotiable Instruments	116 - 161
Personal Property	89 - 100

Coverage of the law of Agency, Partnerships, and Corporations, ranged from 50 to 100; 50 to 67; and 60 to 120 pages respectively. There was evident a sparsity, omission or lack of emphasis on the law of security devices, trusts, torts, wills and inheritance, bankruptcy, and state or federal regulation of business. The following is a comparison of page coverage of materials in the four business law texts chosen at random:

<u>Content</u>	<u>Books</u>			
	#1	#2	#3	#4
Institutional Setting	10	8	10	10
Contracts	170	150	250	280
Agency	50	71	56	100
Partnerships	50	59	59	67
Corporations	71	120	61	85
Sales; Personal Property	113	103	73	77
Negotiable Instruments	120	116	131	150
Security Relations	7	10	10	14
Real Property	30	55	120	30
Bankruptcy		28	15	
Nuisances	5			
Trade and Labor Regulation	41			

There is no need to belabor the conclusion that there is an evident agreement on what our students should learn of the law of business.

Number of Course Offerings: eighteen of the twenty-seven had three or less;

Number of required courses: all but five required one two; and as to Content of courses required, the emphasis was upon Background, Institutional Setting, and the law of contracts, sales, negotiable instruments and business organizations.

Although sixteen included the law of real property in course content, the subject was presented in only six of the schools during the first or second semester. Most of the replies to the questionnaire noted agreement as to the need

for background materials on the institutional setting, the philosophy of law, and the nature of the legal order and the machinery through which the law functions. There was also an evident agreement on the need for an awareness and understanding of the economic and social setting of business and the common problems of business as a social and economic institution. However, the course in Public Regulation or Social Control of Business was not required of commerce students except in three schools. Eleven of the schools noted that the course was offered in the political science or the economics departments and not in the business law division. Is there any evident justification for the apparent conflict between pedagogy and philosophy? Perhaps an answer is to be found if inquiry is made into teaching aids, other than books in use, and teaching techniques.

Whether the book or books in use are viewed as a device for teaching or a limitation on the attainment of our objectives, it is essential that the methods used in presenting the subject be examined and evaluated.

TEACHING AIDS AND TECHNIQUES

The following is a summary of the replies to the questions dealing with techniques and aids in teaching.

<u>Techniques</u>	<u>Number of Schools</u>
Lecture Method	4
Case Method	7
Lecture and Case Method	24
Class Discussion	10
T.V. Closed Circuit	0
<u>Aids</u>	
Films and Visual Aids	10
Legal Forms	13
Blackboard	20
Trips to Courts Approved	6
Outside Speakers Approved	3
Paper Graders	14

Fourteen noted the use of paper graders. It may be inferred that written assignments are viewed as valuable teaching and learning devices. Perhaps in a humorous vein, many commented that the best teaching technique and aid is the personality of the teacher together with plenty of chalk and an eraser. These expressions of attitude and the data presented provide no objective evidence which would substantiate the effectiveness of the teaching techniques and aids used. It might be desirable to look beyond the statistical data for the reasons behind the differences and similarities in our practices. Prior commitments, nomenclature, adminis-

trative problems, special interests of faculty members, the calibre of the student body, or available teaching staff may be some of the reasons.

On the other hand, our attitudes may have some bearing upon our practices.

ATTITUDES AND PRACTICES

Many of the replies to the questionnaire contained additional comments which I have taken the liberty of grouping and reporting.

- Group I includes attitudes pertaining to a survey course.
- Group II includes attitudes regarding course content.
- Group III includes attitudes regarding teaching aids and techniques.
- Group IV includes attitudes regarding number of course offerings and requirements.

Group I

"The survey course covering contracts, agency, sales, and negotiable instruments, is definitely too broad."

"The survey course in business law should only touch upon many fields of law."

"The survey course includes a history of the law, the philosophy of law, and theories of punishment and torts."

"The survey course has an enrollment of approximately 70 each term; it is there that I am forced to use the lecture method alone."

Group II

"One course in business law should not cover the entire field of law and regulation of business."

"You cannot cover everything---better to cover a few well."

"I favor a less inclusive course that digs deeper into fewer subjects."

"We are not training our students to become lawyers."

"...I am quite sure there is no uniformity in our course content and perhaps there should not be, situations varying in the different situations."

Group III

"A good teacher is the best teaching technique."

"All I need is a blackboard and an eraser."

"An enthusiastic teacher is the best aid."

"The lecture and case method approach, with class discussion and participation would be desirable if classes were limited in size."

"Large enrollments force the teaching of large sections by the lecture method."

"I find the use of the case method exclusively is most effective."

The replies to questions related to the size of classes showed a marked difference in attitude and opinion as to what might be considered small, average, large, or burdensome class enrollments for courses in business law.

Group IV

"We now have only one course in business law and it is required of all commerce majors; it covers important fields but scantily."

"When I came into the school they had only two-three semester hour courses. A four-hour course will be offered in lieu of this but we will have to continue the old program also."

"The sequence and requirements was not original with me but a system which I inherited."

"We are unique in that the second semester can be taken without having had the first semester."

Attitudes and opinions are affected by the diversity in our educational programs, the student body, interests of academic and administrative personnel, and the philosophy and goals of the teacher. These attitudes and opinions play a significant part in the appraisal of any data and affect the usefulness of such data as a tool for the re-orientation of course offerings in line with our philosophy of the law.

If some method or technique was available for the inclusion of the materials deemed essential to the training and education of our students, to the attainment of our goals, there are many persons who would rely upon yet another reason or justification for present practices, namely 'time'. Resistance to change may be due simply to the fact that it involves change. Even though there be no demonstrable proof that such a method is available or that the ends sought could be wholly achieved, it is possible to approximate more closely the goals sought where there is evidence of a willingness to experiment with some other approach to the teaching of the law of business.

Whatever the orientation of course content in the offerings, required or elective, there is need for evaluation of the weaknesses and strengths, the existence or absence of a correlation between our philosophy and pedagogy in the light of the current educational needs of students and trends toward the so-called integrated curriculum.

EDUCATIONAL PHILOSOPHY OF LAW

Philosophy has been described as a study of wisdom. To the educator and lawyer falls the task of searching out and actively participating in the cooperative educative process of presenting the 'truths' regarding accepted precepts and rules of behavior. When practices fail to provide the intellectual challenge essential to the present and future needs of business students, pedagogy and philosophy are in conflict.

The third purpose of this survey was a search for evidence which would clarify and substantiate the presence or absence of an educationally sound philosophical justification for a place in the curriculum for business law. The practices surveyed and reported show a high degree of uniformity in our programs and course offerings of wide variation. Because of degree of uniformity in the midst of variance courses in law cannot be classified as traditional, functional, or vocational. What then is the function of business law in the curriculum?

Intelligent behavior in business requires coordination of the functional aspects of business. The processes of coordination require the ability to make decisions--not merely any decision but a sound decision. Sound decisions are those which discern human nature through its behavior and ability to grow; those which show intelligence and experience in use in our society; those which take cognizance of the history of the cultures of various social organizations; and, those which use the funded knowledge of mankind in guiding, directing, and channeling experiences continuously for intelligent development and creativeness.

Education for living as well as professional education for business is education for problem-solving and decision-making. The making of decisions is both a function and a process. It is an on-going activity and involves training in relation to everyday problems and business activities. In order to function effectively, education must serve as a guide for future conduct and be related to future actions based upon accepted standards of behavior, ethical, social, and legal.

Education for living as well as professional education for business involves training and development in an awareness of the problems common in our society and in those related to business functions. Education for business specifically involves training in and adaptation of devices available for the solution of problems, for the making of sound, logical, and intelligent decisions which affect policy formulation.

Education viewed generally or specifically requires comprehension of the underlying philosophy of the theory as well as the practices of the law, of the substance as well as the process. The place of law in the curriculum is to be found in its very substance and process. The nature of the subject matter of law deals with matters affecting the individual, groups, business, and other interests in our society. The study of law as a tool for the logical analysis of legal problems which confront the business man contains within it the goal of educators generally, and, of educators for business specifically. When the study of law is viewed as a tool, it, the tool, contains the substance and the processes of purposeful thought. Its substance is found in the factual situations requiring analysis, interpretation, comprehension, and decision; its processes are to be found in the adaptation of the tool, that is the means or method which enable individuals to select, clarify, and evaluate the issues and to render decision on the problems of particular institutions in the social and economic order. This process also invokes the testing of ideas and decisions by their consequences, and promotes the taking of overt steps in consonance with the needs of individuals in their relations with and to one another within the bounds of social controls.

The effective and efficient utilization of the tools or processes involved in reaching sound decisions makes possible the attainment of the goals, a coordination of philosophy and practices in the field of law of business.

Since all phases of the educative process involve an on-going activity, the conclusion of this paper serves as an introduction for any inquiry into the curriculum content and practices in the field of business law:

"...A curriculum which acknowledges social responsibilities of education must present situations where the problems are relevant to the problems of living together, and where observation and information are calculated to develop social insight and interest."

ADDENDUM

Educators recognize that the problems of living together are not always the same and that the social setting in which these problems arise is not static. Teachers of the law of business are aware of this fact and they deal with present situations and real problems which are relevant to specific business relations and which are of significance to the persons involved. Teachers of the law of business emphasize the need for observation, information, and social insight.

Courses in the law of business offer the student techniques in decision making affecting not only legal responsibility but also managerial policy in the functional fields and in non-market relations. They are problem-solving courses which purpose to develop the analytical, decision-making capacity of the students. These courses do not disregard the significance of the historical background and development of the forces and controls affecting the various interests in our social and economic order. The influence of development of the forces and controls affecting the various interests in our social and economic order. The influence of government, the general climate of public opinion, the problems of risk, are but a few of the forces and factors discussed. In business law courses, these forces and factors are not presented as some vaporous quantity found in a vacuum but as real problems which require social insight and intelligent decisions.

There is no dearth of information or data on the functional aspects of business organizations. The data constitutes the substance, the basis upon which sound decisions are reached, reviewed, and evaluated. These decisions form precedents, a background for an understanding of trends, the present status of value judgments on specific group or individual interests, and the possible future decisions on the legal aspects of managerial functions.

Courses in business law are problem-solving courses. They provide the means or tool for integration of the functional aspects of business through the process of making sound decisions. To the teacher of the law of business falls the task of providing the student with: 1) an understanding of the society which invokes and affects the development of legal standards of behavior affecting individuals and business; 2) a knowledge of the substance of these standards; and 3) a tool and the opportunity for its use and adaptation to his prime function in society--that of solving problems, of making decisions intelligently. If the student is furnished the necessary materials (content), properly organized and synthesized, and if the student is equipped with an adequate tool appropriate to this primary function and need in society, that of making intelligent decisions, then practices in business law are consonant with the objectives or philosophy of courses in business law.