

THE TYPE OF BUSINESS LAW COURSE IN THE MODERN SCHOOL OF BUSINESS ADMINISTRATION

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The Gordon and Pierson reports, as I shall refer to them, do more than merely suggest that our present business law curriculum is falling short of instilling in our prospective businessman the type of legal background which he will need during the next few decades. Their recommendation is that business law as presently and generally offered be dropped from the core curriculum though perhaps it could be retained in a modified form for those areas of specialization which have a need for it. I here add that the recommendations offered by these gentlemen are certainly clearer than their suggestions as to what should be substituted in lieu thereof. Each of us recognizes, I am sure, that agitation for change within our field is not new, though I am equally sure that many had hoped that "this old horse would never run another race". Be that as it may, the charges made against the business law curriculum are sufficiently serious to cause the reappraisal of our basic course, our position, and the future of each. One could interpret the present agitation as submitting to us but two alternatives: change or preside over our own dismemberment. This interpretation I do not take. I feel that we are now being asked, perhaps I should say compelled: First, to show that our traditional course meets the objectives of the modern school of business and thereby merits a place within the core curriculum; and failing to do this then, Secondly, change to such form, content, and method as shall meet such objectives. Failing in the first and ignoring the second is, I feel, an exercise in short sightedness which lawyers will not be prone to take. It then behooves us to ascertain if our traditional course has attained such objectives—has it, to paraphrase portions of the Reports, developed in the student a capacity for critical insight and appreciation of human values, and does it have the depth to train the intelligence and quicken the imagination, or is it merely an informational course to the exclusion of any analytical characteristics?

From our library I selected at random what appeared to be one of the earlier business law texts and found it to be the 1911 "Enlarged and Revised" Edition of one first published in 1893 and which had been duly revised during the intervening years. In the preface the author stated in effect that the book should contain *all* the principles of *all* the branches of the laws which regulate the common transactions of life, *and* by which *all* business might be safely conducted. A laudable objective, to be sure, and probably within the aims of the schools of com-

merce of that day from which our modern schools of business have evolved. Take away the section on Forms, however, and we find a table of contents which parallels in all major respects the table of contents in any of our present texts—fine as they may be. Necessarily one must assume that in using such a text he will, as an instructor, be compelled to expose the student to all the text information within the prescribed number of hours—generally six. Assuming this could be done, an assumption I certainly find outside my capabilities, the student would only be exposed to a vast array of rules which are more than likely promptly forgotten following final examination. To know such rules without an understanding of the reasoning behind them is perhaps worse than knowing none at all.

Time, corporations and the graduate schools have minimized the need for training the specialist within the undergraduate school of business. Present day needs were succinctly stated by Chief Justice Earl Warren: "There is", he said, "a crying need today for leadership by men who are finely poised, who have insight into the ills of society, and who have perspective and understanding of its problems. That leadership should not be entrusted to narrowly trained specialists. What our country now requires above all else is leaders of broad outlook and comprehensive points of view—men who are capable of making use of fragments of knowledge possessed by the specialists and who can coordinate these fragments and weld them into a working whole".¹ If this advice is heeded, would not our efforts be better directed towards instilling in the undergraduate student an appreciation of our field as a social phenomenon? I submit they would. We have the ability, as a result of our training, to show our undergraduates the process by which the rules are made; to show the interrelationships of law to society; to depart from the common assumption that the best way to set out subject matter is in unassociated fragments or parcels; to show how the law is related to the various major fields of study which are offered in our schools and to do so with imagination and depth. Thus we make the study of our basic course a meaningful experience to the student.²

Will these aims necessitate a departure from our traditional course? Most certainly they will. I submit that our present core curriculum course in business law together with the manner in which it is being taught has, like Belshazzar, been "weighed in the balances and found wanting".³

Assuming now that we do not take the exercise in shortsightedness to which I earlier referred we are compelled to make changes.

Any change inevitably poses problems, the most obvious are: (a) What should be the content of such a core course; (b) Where is there an available text with such content; and (c) Who should teach it? To criticize one's field without reason is reprehensible; to pose a problem within it without offering a solution is unforgivable. I have advanced reasons for change; now I submit for your consideration suggestions as to course content and text material.

First, we should separate our present two-term or six-semester-hour course

¹University of Illinois College of Law, Dedicatory Proceedings: The Law Building 137 (1956) as taken from Charles H. Russell, *Liberal Education and the Law*, 11 J. Legal Ed. 22 (1958).

²For an excellent discussion on the aims of education see Earl C. Kelley, *Education for What is Real* (1947).

³Dan. 5:27.

into two distinct courses, which I shall refer to as the "basic" and "advanced" courses. By what descriptive title these courses might be called is, I believe, immaterial, though I do agree with Professor Raphael that the descriptive term "business" is not now in the best of taste.⁴ Each of these courses should be three semester hours in length, though only the basic course should be required or contained in the core curriculum.

For the first or "basic" course, I would suggest the following:

1. *The Nature and Aim of the Law.* Here lies the opportunity to bridge the gap between the humanities (particularly philosophy), the behavioral sciences (particularly sociology), and the specialized studies most generally offered in our business curricula. Using law as the plank we bring to the student's perception the various fields of learning as being part of the whole rather than individual segments completely disjointed. Here one should expose the student to man's quest for knowledge of what is just and what is unjust. One could start with Aristotle and from there lead the student through the history and development of the idealistic approach as culminated in the Thomistic view, and then compare this with the realistic approach of Hobbes, Bentham, Austin, Gray and Holmes. A blending of the two would be reflected from a study of the thoughts of men such as Ehrlich, Brandeis and Pound. This section would focus the student's attention on the historical, philosophical and sociological background of the law. I would anticipate that this part should cover five weeks, with the last week being spent in orienting the student in our state and federal judicial systems.

2. *Contracts.* This cornerstone of modern business is essential in the basic course, and little could be added to Professor Frasca's plea for the inclusion of this topic in the basic curriculum.⁵ It would be suggested that the four weeks devoted to this topic, as I envisage the basic course, follow the fundamental approach taken in Part I; that is, an exposure to the evolution of contractual law from a historical as well as sociological view. I can foresee a survey from The Institutes of Justinian to the American Law Institute's Restatement of Contracts where, in a discussion of the latter, the instructor would bring forth those present-day basic principles of contracts, doing so with personal meaning to the student at the present, as well as showing the need for such knowledge as a businessman.

3. *Property.* The inclusion of property in the basic course needs no justification. As Bentham so succinctly stated, "Property and Law are born together, and die together. Before laws were made there was no property; take away laws and property ceases".⁶ Here the instructor may classify property, show its historical development and justification, and conclude with general laws of property, both real and personal, as they are applicable today. This section of our basic course would consume four weeks.

4. *Government Regulation of Business.* Two weeks could now be profitably spent giving the student an insight into the role of government in the regulation of business. Antitrust Legislation, Pricing Practices, Labor Legislation, Regulation

⁴Jesse S. Raphael, *The Plight of Business Law—and a Recommendation*, American Business Law Association Bulletin, Vol. 3, No. 1, May, 1958.

⁵Joseph L. Frasca, *Business Law in Business Education*, American Business Law Association Bulletin, Vol. 3, No. 1, May, 1958.

⁶Jeremy Bentham, *Theory of Legislation* 113, Translation from the French of Etienne Dumont by R. Hildreth (London, Trubner and Co., 1890).

of Transportation and Public Utilities, the Securities Act, and such of the other regulations the instructor could conveniently cover, should be discussed as well as the administration of such regulations.

5. *Torts*. An understanding of non-contract wrongs could, I feel, be an asset to the student. To today's citizen it is essential to have an understanding of the consequences to be suffered through a disturbance of another's right. Proper indoctrination of the student in this field of law could be accomplished by the instructor in the two weeks which should be allotted to it through an introduction to and expansion from the cases of *Palsgraf v. Long Island RR Co.*, 248 N.Y. 339, 162 N.E. 99 (1928) and *Rylands v. Fletcher*, L.R. 3 H.L. 330 (1868).⁷

6. *Family Law*. I feel this is a field of law which has been neglected in the business law curriculum. Perhaps this is so since at first the word "family" and "business" do not appear compatible. And if this is the reason, then the stronger should be the suggestion that the term "business" be deleted from our course description. I do not think the basic course is complete without a study of the relationship of law to perhaps the most enduring of all the social groups, a group which is, we well know, replete with legal problems. Are we not compelled to expose our students to the legal duties of parent and child, each to the other and perhaps in more detail than usually broached in our traditional study of contracts? What about adoptions? Legitimacy? Rights of Inheritance? As to the marriage relationship should we not discuss with the student social customs from exogamy to endogamy with the resulting "miscegenation" statutes? Divorce laws, separation and support agreements and statutes should likewise be covered. Further I feel that this is the proper place to discuss wills and administration of estates. It would be hoped that the remaining one week could be spent in this general area.

Perhaps the most difficult aspect of any major change in course curriculum is obtaining material for proper presentation of the new content in such form as will be readily accessible to the student. In our traditional course we are blessed with many excellent texts, and fortunately these will fulfill the needs of the "advanced" course I shall propose. I wish I could, at this point, say that the problem has been solved and name a text which would meet the requirements of the proposed basic course. Unfortunately I cannot, though one could reasonably be expected within the near future. In the interim may I recommend that we use that which is available and here I suggest for your perusal *Readings in Jurisprudence and Legal Philosophy*,⁸ an anthology by Morris R. Cohen and Felix S. Cohen, in which the materials are divided into four parts: Part I deals with fields of controversy, i.e. Property, Contract, Torts and Crimes; Part II explores general theories as to the nature of law and of its judicial and legislative development; Part III surveys legal philosophy at its three major levels—logic, ethics, and metaphysics; and Part IV deals with the ties that unite jurisprudence with the social sciences. The book, in view of the editors' intervention between original author and reader, could be referred to as more than an anthology and would, I believe, suffice as text material for that portion of the basic course dealing with

⁷See Bohlen, *The Rule in Rylands V. Fletcher*, 59 U. of Pa. L. Rev. 298 (1911) for a clarifying discussion of the rule.

⁸Morris R. Cohen and Felix S. Cohen, *Readings in Jurisprudence and Legal Philosophy*, (1951).

the Nature of the Law, Contracts, Property, and also as an adjunct to that section on Torts. For the instructor's use the works from which these excerpts are taken can be found in most of our libraries.

As to government regulations, or Part 4 of the basic course, I feel sure we are all familiar with those texts dealing with this topic, e.g. *Public Regulation of Business* by Dudley F. Pegrum,⁹ and *Government and Business* by Ronald A. Anderson.¹⁰ I do not suggest that the student be required to purchase more than one book for use in the course. But to the contrary, I recommend that the instructor permit the student to handle this section through the use of notes and library assignments, a practice which we do not use freely enough.

The section of the basic course on Torts could be taught with the use of mimeographed handouts of the two cases mentioned, together with selected readings from the Cohens' book or one of a similar nature.

Family Law, the last section of the basic course, would be handled in much the same way as the section on Government Regulations, and I would suggest to both student and instructor the reading of the applicable sections, if not all, of Max Radin's book, *The Law and You*, a Mentor paperback published by The New American Library, as well as *Law in a Changing Society* by W. Friedmann, published by Stevens & Sons Limited of London.

Our last problem raised by the basic course is the matter of who should teach it. If your experience has paralleled that at my school I rather imagine that the rapid increase in enrollment has necessitated the use of part-time personnel as instructors of business law, these usually drawn from the local Bar Association. It would be my suggestion that only the full-time members of the staff teach the basic course, in view of the additional preparation it will require. Thus the part-time instructors will be free to teach the advanced course, since it will be more familiar in view of their day-to-day experience.

The advanced course will cover, with the use of those texts we are now using in our traditional course, the following areas: Negotiable Instruments, Sales, Agency, Transportation, Business Structures and Secured Transactions (mortgages, pledges, conditional sales and the like). This subject matter would give to those students, particularly in accounting and finance, familiarity with the rules of law which they should have. It is hoped that the heads of those divisions of specialized study such as Accounting, Finance, Marketing and Management, would recognize that the advanced course will make its contribution to the overall education of the student in their areas and would recommend its selection as an elective.

In view of the deletion in the advanced course of those basic fields covered in the basic course, the basic course would be a prerequisite to the advanced. I would further suggest that the basic course be offered at the sophomore level and the advanced at the junior and senior level.

We are at the crossroads and in my opinion are faced with an important decision. Let us not, as I suggest our present course has been, be found wanting.

⁹Dudley F. Pegrum, *Public Regulation of Business* (1959).

¹⁰Ronald A. Anderson, *Government and Business* (1960).