

BUSINESS LAW AND MARKETING

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The business law teacher of the future will have to be able to understand both the legal and business problems confronting the business enterprise. So in substance wrote Professor Zwarenstejn in his letter explaining the purpose of this panel. To this rather moderate statement I would like to add an immoderate one of my own. If business law is indeed to engage in bridge building at a time when bridge builders are business school heroes and specialists are rapidly being classified as ancient relics of the trade school era, we must dissolve our platonic and bigamous marriage with accounting and with law-school law and embrace a new harem made up of all of the functional areas in the business curriculum. It is submitted that the articles by Dean Heysinger and Professor Votaw in the March issue of the *Bulletin* tend to support this thesis.

My specific assignment is to suggest some possible ways for better integrating the teaching of business law and the teaching of marketing. Let us approach the problem by suggesting answers to two questions.

- (1) What are the marketing teachers seeking to accomplish in their own area?
- (2) What, if anything, can we as teachers of business law do to help both marketing teachers and ourselves?

The marketing area, like the other functional and service areas of business, is undergoing much critical reappraisal. The Gordon and Pierson reports only served to accelerate the basic changes already taking place not only in the teaching of marketing but also in the practice of marketing by business management. The new post-Korean War marketing concept was fathered by technological advances that quickly transmuted sellers' markets to buyers' markets. It was mothered by increases in consumer product knowledge, consumer discretionary spending power, and consumer mobility.¹

To make a long story short, the "Sic 'Em" or "We made it, you peddle it" approach to marketing with the "ultimate consumer" visualized as an amorphous, faceless group is dead. Interred at the same funeral are the traditional marketing texts loaded with so-called basic principles and over-loaded with purely descriptive material.

The new marketing management concept is consumer-oriented. The stress is

¹E. Jerome McCarthy, *Basic Marketing* (1960) p. 108. For an analysis of these trends in the auto industry see Charles M. Hewitt, *The Development of Automobile Franchises*, Bureau of Business Research Bulletin 37, Indiana University (1960).

on market research and market segmentation. It is profit-oriented. Overall profitability to the firm as an integrated unit becomes the basic criterion for decision making. It stresses coordination and control to meet dynamic changing conditions.²

At the pedagogical level the emphasis is on analysis and the case-problem method. Marketing is integrated with management in that the material is addressed to the present or potential business executive.

It integrates with finance and accounting in that it is profit-oriented. It is integrated with economics and statistics in that it is demand- and consumer-oriented.

The fact is that save for the inclusion of a few specialized topics the new marketing management texts are very similar to the managerial economics books of the type initiated by Joel Dean.³ In other words the main functional areas and even such service areas as accounting and statistics appear to be moving closer together and in the same general direction.

I found little material in the recent marketing texts and casebooks, however, that integrates very gracefully with our traditional business law required courses. In fact the only legal material usually found in these books deals with the antitrust laws, fair trade laws, and regulatory statutes of various types. Yet we know that the law of contracts, sales, agency, and property provides the basic framework through which day-to-day marketing decisions must be made. This brings us to the second question:

What, if anything, can we as teachers of business law do to help both marketing teachers and ourselves?

Basically, it is suggested that the mountain must go to Mohammed. As teachers of business law we might consider some of the following steps.

(1) *We should arrange meetings with our marketing colleagues and try to understand their objectives.*

In some situations it may even be desirable for us to sit in on some of the introductory courses in the various functional areas. During the past year I sat in on various finance and marketing courses and acquired excellent ideas for the introduction of integrative material into my business law lectures. I now, for example, give lectures dealing with consumer orientation and with freedom of contract as economic, marketing, and legal concepts in our introductory business law course. The consumer orientation lecture is given at the beginning of the course as a part of the general introductory material. The freedom of contract lecture is given at the end of contracts.⁴

(2) *We must become better acquainted with the publications in other business areas.*

Area-spanning books such as Drucker's *The Concept of The Corporation*, Whyte's *The Organization Man*, and Berle's *The 20th Century Capitalist Revolution* give excellent background material for portraying the dynamic aspects of our

²See Fred W. Kniffen, *The Modern Concept of Marketing Management: Its Implications and Problems*, Bureau of Business Research, Bulletin 31, Indiana University (1958).

³Joel Dean, *Managerial Economics* (1951). For recent texts see McCarthy op. cit. and John A. Howard, *Marketing Management* (1957). For the integrative casebook approach see Harper W. Boyd, Richard M. Clewett and Ralph Westfall, *Cases In Marketing Strategy* (1958).

⁴The "macro" approach taken in the freedom of contract lecture may be found in Charles M. Hewitt, *Automobile Franchise Agreements* 207 (1956).

legal system and for integrating law with other areas. All of you know that many useful articles and features appear in the various journals. In the larger schools it may even be possible to assign specific functional areas to be the "integrative" responsibility of each business law department member.

(3) *We must publish more material of interest to people without law degrees.*

The nationally known professors of business in other areas frequently leave their specialty areas in order to publish articles in such publications as the *American Economic Review*, *The Journal of Finance*, *The Journal of Marketing*, and *Business Horizons*. My impression is that we have pretty largely restricted our writing and research to technical legal matters mainly written for ourselves or for a law journal. Although a few of our distinguished members have managed to do it, I believe it will be increasingly difficult in the future for teachers of business law to achieve prestige as business educators in this fashion.

The marketing area in particular is wide open for solid legal-based articles utilizing a broad integrative approach. I will not delineate the obvious but point out the potential articles in such marketing topics as new product policy, selection of distribution channels, and credit policy.

(4) *We must constantly seek to expand our teaching responsibilities.*

Two years ago at the Tri-State meeting in Bowling Green I argued that we should move in on the government-business area where possible. We have permitted this vital area to slip away from us largely by default. My impression is that many marketing professors would be glad to have anyone assume a large part of their responsibilities in regard to the teaching of the Robinson-Patman Act and other time-consuming technical legal areas. We should conscientiously conspire to relieve other departments of any legal parts of their courses. As I see it we would only be stealing back our own property and potential.

(5) *Lastly, I feel we should rejoin the other functional areas at an annual meeting.*

We could create committees to make contact with the other areas and have speakers from those areas address us on such subjects as "What Marketing Needs From Business Law," and "The Latest Trends in Marketing of Interest to Teachers of Business Law." We might even be invited to reciprocate at some of their sessions.

Although many of you may disagree with some of the things that I have said, I think we all can agree that basic changes are in the wind. By working together we can and must assure that this period of transition will provide new prestige and new opportunities for us all.