1923

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Britton, William E., "The Teaching of Law in Schools of Business" (1923). Articles by Maurer Faculty. 1711. https://www.repository.law.indiana.edu/facpub/1711

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The Teaching of Law in Schools of Business

By WILLIAM E. BRITTON

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Colleges of commerce and schools of business administration exist for the purpose of giving scientific training in the organization, operation, and administration of business enterprises. Such institutions seek to equip their students for successful careers in business. The inclusion of a particular course in any one of the various business curriculums is justified if, without sacrificing something of greater value, the study of the course offered will contribute substantially toward the attainment of the general object. While the study of law in schools of business administration is one of lesser importance, almost without exception it occupies a place in the curriculum of such institutions. Inquiries recently sent out brought replies from 98 universities and colleges which offer some work in law in their business curriculums. Whatever the ends sought to be accomplished by the study of law in schools of business may be, it is apparent that those who are now charged with the administration of such schools are generally agreed that some training in law is desirable.

The main object of a law course in a school of business is a practical one. The training there obtained by the business student ought to be reflected by the assets side of the balance sheet of the business with which in later years he will be associated. The ultimate gain in such study ought to enable the future business man to avoid a good deal of unnecessary litigation. It ought also to equip him with the means of making an intelligent selection of legal devices as his business problems arise. Two or three courses in law will never make a business man his own lawyer, but some study of the law will never make a business man his own lawyer, but some study of the law will aid him in deciding when it is reasonably safe to take a chance on a course of conduct without the aid of counsel. In a case where his judgment tells him that it is unsafe to take the chance, his acquaintance with the workings of legal principles ought to inform him that, on the whole, it is cheaper and safer to obtain a carefully drawn legal map before starting on a business journey than it is to employ a guide or a mechanic after getting lost or damaged en route. There are other worthy objects of law study in commerce schools, but they are subordinate to the practical one.

Should the law course or courses be
elective or required? Both policies now obtain. From the data available to the writer, the schools appear to be about equally divided. There is, perhaps, no great virtue in uniformity in this matter. The policy to be adopted in a particular school will, no doubt, in many cases be controlled by the local situation—the number of curriculums offered, the number of students, the number of instructors who can be had for this work, the specific objects of the school, and its general policy with respect to the elective system. In any event, the question can be satisfactorily answered only by those directly charged with the duties of administration of the particular school. It is altogether possible that in the same institution the law course may properly be required of students registered in certain curriculums and elective for other students. Where more than one course is offered, the first is sometimes required, and the additional courses made elective.

There is considerable variation in the number of hours of law work given in schools of business administration. They vary from one to three terms, and from one to four semesters' work. In the number of class periods per week the variation is from one to six. The following data are taken from the replies to inquiries sent to 98 schools.¹ For this purpose a semester is regarded as 15 weeks and a term as 10 weeks. A 3-hour course for two semesters, or for three terms, would then be 90 hours of classroom work. Thirty schools report 90 hours; 18 schools, 45 hours; 15 schools, 60 hours; 9 schools, 120 hours; 6 schools, 180 hours; 4 schools, 144 hours; 3 schools, 240 hours; 3 schools, 360 hours; 3 schools, 30 hours; 2 schools, 135 hours; 2 schools, 450 hours; 1 school, 640 hours. Where more than 120 hours is reported, usually more than one course is offered. It appears, therefore, that about one-third of these business schools offer work in law for 3 hours per week for a school year, or the equivalent. Approximately another one-third of the schools offer from one-third to one-half less than 90 hours of work, and of the remaining one-third of these schools, about one-half give about one-third more than 90 hours; the other one-half offering from three to five times this amount. There is no marked indication of intention on the part of those in charge of such work in these schools either to increase or decrease the amount of work now being given. It is altogether probable that a one semester course, or two quarters, totaling less than 90 hours of work, in law, is very much worth while; but it appears that the majority of schools are acting upon the assumption that 90 hours of work is the minimum. For that group of business students who expect to become certified public accountants, there is an additional reason for requiring 90 hours as a minimum.

With respect to prerequisites for admission, a few schools admit students in the freshman or sophomore years; but, from the information available from 30 schools, a majority of them require at least junior standing. In some cases certain specific commerce courses are prerequisites.

The subject-matter of the courses varies somewhat, but substantially all schools treat the so-called commercial courses: Contracts, agency, sales, negotiable instruments, partnership, and corporations. Even among schools which list these subjects, there is some indication that briefer references are made to such allied topics as bailments and carriers, suretyship, insurance, bankruptcy, and the like. Some schools, either by increasing the number of hours of work devoted to law study, or by decreasing the time spent on the commercial branches, are giving consideration, on a parity with commercial topics, to the tort and property fields, and to the subject of governmental regulation of business as worked out in legislation. Judging from existing policies, it is at this point where one of the more important problems connected with the teaching of law to business students has developed. Some schools have adopted the policy of limiting the student's study to the contract field in its general and special

¹ The writer is indebted to Mr. S. E. Turner for his careful compilation of much of the data relied upon by him in this paper.
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aspects, and to the study of the legal characteristics of the form of the business entity. Other schools give equal consideration to the tort and property subjects and to statutory regulations of business. For the former policy it may be urged that it is better to give the student a more thorough grounding in a few fundamental courses than it is to spend the same amount of time upon a greater number of equally fundamental topics. On the other hand, it is possible to urge that what a student loses by studying a greater number of subjects is compensated for by his more complete understanding of the entire field of the law generally. The solution of this problem in a particular institution will depend in great measure upon the amount of time which, as a practical matter, is available for this work. If a year's work, consisting of 3 hours per week, is the maximum which may be had, there is considerable doubt as to the desirability of attempting to open up the tort, property, and legislative fields, except in so far as such matters naturally drift into the daily classroom discussions. Even if 4 hours per week is available for law, it is believed that the contract field, in its general and special phases, and the law of business associations, are of sufficient importance to justify the spending of the entire time on these courses.

The question as to whether more than 4 hours work per week for one year in law should be offered is essentially a question of the relative value of this work, compared with other courses to be had in the school of business or in the college of arts and sciences. For the general business student, one who is not registered in any specialized business curriculum, it is doubtful whether his gain in this respect would offset his loss sustained by giving up other work in the school of commerce or the college of arts and sciences. But for the business student, who is registered in a specialized business curriculum, it is much easier to make out a case for his further law study. A student registered in the curriculum in insurance might well be offered an elective course in the law of insurance. The curriculum in public utilities might include a course in the law of public service companies. The curriculum in transportation might offer a course in interstate commerce law. A student enrolled in the curriculum of banking might be permitted to take work incorporating material selected from the law relating to securities, wills, the administration of trusts and the estates of decedents. The legal aspects of labor problems would furnish another specialized law course for those chiefly interested in this field. In other words, after a student has had some law work, regarded as more or less basic, there are two possible policies of expansion. Additional law courses, designed to introduce the student to a greater portion of the body of the law, having much the same content as that found in the law school curriculum, but in a more abbreviated form; or the business student, particularly one who is specializing, may do more intensive work in the law which peculiarly affects his business. Even here specialized law courses in the various specialized business curriculums are not equally important. Moreover, any proposal to increase the law work must compete with like proposals of expansion from other equally or more important departments. Finally, the question as to how much law should be given is certain to be affected by the character and aims of the particular school.

Where the school of commerce is a part of a university which also maintains a school of law, should the law courses be offered by the school of commerce or by the law school? This is largely a question of administration. In a few schools the courses are given by members of the law faculty, who also conduct courses in the professional law school curriculum. In most schools, however, the courses are given by members of the faculty of the school of commerce alone. Where the classes are large, there are especially strong reasons for placing this work under the supervision of the school in which the student is registered. As a general rule, a subject is given by one department alone. A student of engineering, desiring a course in economics, goes to the economics department for it. A business student, desiring a course in
political science, goes outside his college to the department of political science for this work. The problem of offering law courses to students in schools of commerce is only apparently analogous to the instances referred to. As a general rule, a student from one college, desiring to take work in another college, will find that the courses there organized, primarily for those in that college, are equally suitable for him. The professional law courses are not so conducted. The aims of the professional law course are sufficiently different from those involved in the teaching of law to business students as to make it undesirable, both from the teaching and the student standpoint, to have both groups of students in the same class. Where, however, but a portion of his time would be taken up, the number of business students being small, it is entirely possible for a member of the law faculty to assume charge of this work. In some instances this may prove to be the preferable policy. Instead of assigning complete charge of this work to a member of the law faculty, it is also possible for each member of the law school faculty to have charge of that portion of the special course for business students which constitute his work in the professional law school curriculum. The commercial law work would then be conducted alternately by several members of the teaching staff from the law school. There are obvious advantages resulting from this policy, but it becomes exceedingly difficult to maintain, if not unworkable, when the number of students increases to a point where several sections of the same course are made necessary. Where the class is sufficiently large to consume the entire time of one or more members of the teaching staff, it is perhaps preferable that such special course be administered in the college whose students enroll in it. Where this work is intrusted to a thoroughly competent and experienced man, there would seem to be no particular reason for the law school to be concerned about it. But in cases where an instructor recently graduated from the law school, and perhaps without experience in practice or teaching, is given supervision of this work, it would seem that better results are likely to be obtained if the law and commerce faculties treat this work as a joint problem.

The possibility and desirability of utilizing the resources of the law school presents a somewhat different question when additional law work is provided for business students registered in specialized business curriculums. Where there are relatively few students desiring particular specialized law school courses, such as the law of insurance or of interstate commerce, it is possible for them to enroll in the professional course. There are relatively few law school courses, however, which are of such a nature that both professional and nonprofessional law students may be combined in the same class. Even here there will be some difficulties, from the teaching standpoint and from the standpoint of both groups of students. Where the number of commerce students is small, these difficulties would not be insuperable. But where a business student, preparing to enter the trust department of a bank for example, desires some additional law work in trusts, wills, and the administration of estates, it would be impracticable, both as regards the subject-matter and the time involved, for him to take the professional courses in the law of trusts and wills. As a rule professional law courses will not be suitable for the needs of the commerce student. Though such courses, for the most part, must needs be specially organized, it may prove desirable, in certain instances, even though the principal law course for business students is conducted by a member of the commerce faculty, for this special work to be done in the law school.

The ideal teacher for this group of nonprofessional law students would be one who, in addition to his being a law school graduate, should have had some experience in the practice of law, and, perhaps more important still, he should have some knowledge of business, and particularly a knowledge of the subject-matter of the various courses with which the commerce student is chiefly concerned. The business student comes to his class in the law of corporations with considerable knowledge of the organiza-
tion, financing, and operation of business enterprises. He knows a good deal about business policies, and he wants to know whether the law will aid or endanger particular policies, and what devices he may adopt to further his aims. Throughout the entire law course there exists any number of opportunities for making points of contact between the law as such and business. If an instructor, by reason of his familiarity with the subject-matter of the courses offered in the school of business, is able to make these points of contact, the permanent values of the course are greatly increased. No doubt it is often impossible, or impracticable, for other reasons, to procure such an instructor; nevertheless, these considerations render it highly desirable that an instructor in charge of this work should familiarize himself as much as possible with business procedure and with the content of business administration courses.

While some schools employ text-books as the basis of study, the majority are committed to the policy of relying largely upon case material. It would appear that the case method of instruction has proved just as effective in the instruction of this group of nonprofessional law students as it has in the professional law school. There is manifested, however, a strong tendency to modify this method to suit the needs of this group of students. Less emphasis is thrown upon the historical development of legal doctrines than is customary in the professional law school. There is manifested, however, a strong tendency to modify this method to suit the needs of this group of students. Less emphasis is thrown upon the historical development of legal doctrines than is customary in the professional law school. Limitations of time prevent the study of the operation of a particular rule in connection with as many different combinations of facts as is possible in law schools, although this loss is strongly compensated for by the use of problems. Case material designed to bring out conflicts of authority, while less in extent, is used sufficiently to indicate that comparative study is deemed essential. The case method is further modified by the use of some text material along with the cases. In some instances this matter consists merely in the statement of legal rules and doctrines, which are developed in the cases following the text. This kind of use of text matter may well be questioned. Some text com-

ments carry the rule under discussion into analogous situations not developed in the cases. Such use of text statements is perhaps justifiable, and worth while, although the same end is likely to be attained with better results by the use of problems designed to search out these collateral aspects. Introductory statements, designed to indicate merely the nature of the problem presented in the cases immediately following the comment, and to stimulate an interest on the part of the student, are also used. As a rule the cases have been edited more extensively than is customary in the preparation of cases for professional law students. There is some variation as to the extent to which this cutting down of cases should be carried. This process should not be carried to the point where the case fails to present a concrete problem, and it is usually not so carried.

In the matter of the organization of materials there is also a general recognition of the fact that the problem here is different from that involved in the instruction of the professional law student. There are two general policies pursued. In the one, the general scheme of organization follows substantially the traditional lines developed in casebooks designed for professional law students. Even here there is some variation. After the selection of the major topics to be developed, it is possible to bring into them many topics from other fields of the law. Certain special types of contracts, such as that of the carrier and of the surety, are given subordinate treatment, after the general principles of the law of contract are considered. Many doctrines of equity may also be adverted to in connection with, and as they affect, the main subject under discussion. The other general plan of organization proceeds from an analysis of the functions of a business enterprise, and groups certain topics of the law together under business concepts, so as to disclose the law's effect upon the various functional processes of a business. Some excellent work has but recently been done along these lines. Whichever general policy is pursued, there exist strong reasons for making a careful study of the problems of organ-
izing the case material for the business student.

Teaching methods are substantially the same as those employed in law schools. There is the same necessity for requiring the student to abstract the cases assigned, to be able to state the precise point decided in a case, to generalize the results of a series of cases into a statement of a legal principle, to be able to reason by analogy and by deduction from generalizations. The work of the classroom should not, however, stop at this point. There exist the strongest of reasons for definitely relating the results of legal analysis and generalization to matters of business policy. For example, after considering a number of groups of facts relating to offer and acceptance, some of which are held to constitute offers and others reaching different results, it is well to shift the point of view sharply and call attention definitely to the fact that in conducting preliminary negotiations the selection of words is one of the distinct problems involved. The student, after noting the results in the cases, is then able to appreciate strongly the fact that before the facts become fixed it is within his power to reduce materially the possibilities of future litigation. Similar opportunities present themselves throughout the entire course. Problems prepared with the view of encouraging the student to make this shift in point of view are effective.

There is also some difference in the degree of emphasis which should be thrown upon different portions of the law. A professional law student is interested equally in all portions of a given subject, for he will occupy the double position of counsel to his clients before the facts become fixed, and also of an attorney in the actual trial of contested cases after the facts are beyond control. The business student, on the other hand, is interested largely in those parts of the law which will disclose to him something which will affect his choice of business policies. A business student has no interest, therefore, in such subjects as pleading, except in so far as it aids him in understanding something more vital.

His interest in all phases of a given subject are not equal. In bankruptcy, for example, it is worth while for him to know what are the operative facts upon which an adjudication may be had, what debts are provable, and what dischargeable; but he is not so greatly interested in ascertaining the exact powers of the trustee with respect to the bankrupt and the various groups of creditors. Here again his attention should be directed to the question of business policy. Assuming that it is possible to obtain an adjudication, under what circumstances will it be wise to take or to refrain from taking this step? These questions cannot be settled in the classroom to any great extent, but the existence of the problem may there be profitably emphasized. So, also, in negotiable instruments, there is greater reason for dwelling, with considerable detail, upon the rules with respect to the necessity of presentment, notice of dishonor, and protest than there is for going extensively into the various ramifications of the legal consequences of forgery. In other words, in the selection of courses and of topics within courses, it is important to emphasize those portions which will most directly aid the business student in the selection of wise business policies.

There is little indication that the business student, in his study of law, is required to do much outside reading. Here and there it will be found desirable, perhaps, for him to do some collateral reading; but it is believed that, as a rule, the casebook will furnish him all the material needed. The making of abstracts of cases, the preparation of summaries of topics, and the solution of various types of problems given to him are more likely to result in permanent value than to spend the same amount of time in extensive outside reading.

The teaching of law to business students is of growing importance. It has been found that in 14 schools the registration runs from 1 to 25; in 25 schools, from 26 to 50; in 12 schools, from 51 to 75; in 14 schools, from 76 to 100; in 9 schools, from 101 to 200; in 6 schools, from 201 to 300; in 4 schools from 301 to 500; in 3 schools from 501 to 1,000.
These figures will increase as schools of business administration develop, and the problems involved in the proper conduct of these courses will continue to merit the careful consideration of those interested in this phase of legal instruction and of those concerned with the broader problems of business education.

An Experiment with a New Application of the Principles of the Case Method

By RAY A. BROWN

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The late Dean Ames, of the Harvard Law School, in an address delivered at the University of Pennsylvania in 1901, quoted with approval the testimony of Chief Baron Kelly, of the English bench, delivered before the parliamentary commission of 1855 on the methods of training for the bar. The Chief Baron had said that, if he were to prescribe a method of legal training, it would be to study, as he himself had done, in the office of a barrister, where the students received for investigation and report the actual cases of the clients who came into the office, and, after this was done, discussed them with the barrister, learning his decision, and the reasons therefor. Dean Ames, after recognizing that this sort of legal instruction is no longer possible in the office of the busy present-day practitioner, continued: “One of my colleagues has said that if the lawyer’s office were conducted purely in the interest of the student, and if by some magician’s power the lawyer could command an unfailing supply of clients with all sorts of cases, and could so order the coming of these clients as one would arrange the topics of a scientific law book, we should have the law student’s paradise.” It was Dean Ames’ opinion that the closest approximation possible to what he styled this “dream of perfection” was the casebook system as employed in the law schools of this country. In view of the opinion of this great law teacher, it is with some natural hesitancy that the writer ventures to assert that an experiment tried by him at the University of South Dakota Law School during the spring term of 1922 is a closer approach to the ideal suggested by Dean Ames, and indicates a more interesting and effective method of instruction than the one commonly used at present.

Instead of assigning to a class so many cases in a casebook to digest and state at the lecture period, two or three hypothetical or moot cases, carefully prepared to involve the principles of the subject the instructor desired to inculcate, were given out in advance. The students in preparation investigated these cases, and formed a conclusion as to correct answer to the problem involved, and then, instead of the conventional statement and discussion of reported cases, in recitation stated and argued these moot cases in a manner similar to that of the attorney arguing his case before the court on demurrer, motion, or appeal. Contrary opinions usually developed, and a general discussion was finally concluded by the “opinion of the court,” given by the instructor, who presented his view of the case and of the law applicable thereto. The likeness of this method to that suggested by the Chief Baron and by Dean Ames’ anonymous colleague is apparent, but, before going into greater detail as to the experiment itself, it may be well to state briefly the principles that underlie the casebook method of instruction, and why a change in some particulars from present methods seems desirable.

First, it must be admitted that the aim...