Volume 47 | Issue 3 Article 5

April 1941

"The Syllabus Is the Law"--Another Word

Thomas P. Hardman
West Virginia University College of Law

West Virginia Law Quarterly

and The Bar

Published by the Faculty of the College of Law of West Virginia University, and issued in December, February, April and June of each academic year. Official publication of The West Virginia Bar Association.

Subscription price to individuals, not members of The West Virginia Bar Association, $2.00 per year. To those who are members of the Association the price is $1.00 per year and is included in their annual dues. Single copies, 50 cents.

"THE SYLLABUS IS THE LAW"—ANOTHER WORD*

In a recent decision of our Supreme Court of Appeals[1] the court wrote a syllabus which, not without significance, it is believed, contains only the following statement:

> "The owner of an automobile, maintained for a family purpose, permitted its use by his son; the son invited into the automobile two persons as his guests; one of them operated the automobile, and while doing so the other was injured. The declaration, in an action by the injured person against the owner, his son, and the guest driver, which alleges that the automobile was negligently operated 'at the direction and under the management, supervision and control' of the son states a case of legal liability for the injuries sustained as the result thereof, against the owner of the automobile, his son, and the guest operator."

* Former discussions of this same topic, to which the present note is only an appendix: *"The Law" — in West Virginia* (1940) 47 W. VA. L. Q. 23, and *"The Syllabus is the Law"* (1941) 47 W. VA. L. Q. 141.

[1] Eagon v. Woolard, 11 S. E. (2d) 257 (W. Va. 1940).

In the light of the widely-held belief that the syllabus is the law in West Virginia this syllabus is well worth a brief analysis and study, chiefly for the reason that this is only one of a number of similar syllabi that have appeared from time to time in our reports, particularly in more recent decisions.[2] To begin with, it is submitted that this statement (which incidentally the writer believes is an excellent syllabus) not only does not state the "law" of the case but does not state a proposition of law at all. Law, in the sense of the *ratio decidendi* of a case, in the sense of the sum total of the authoritative elements of a judicial decision, consists of a generalization or generalizations[3] which may be used as bases for future judicial and juristic reasoning. To be sure, law in this sense cannot always be articulated in full in the form of a rule, principle, or other precept element, for the common law is made up not only of precepts but also of other authoritative major-premise elements such as legal ideals,[4] *e. g.*, the once dominant ideal that "Competition is the life of trade", or its more or less unformulable present-day counterpart.[5] But law in this sense, what-

[2] See *e. g.*, the syllabus in Townshend v. Ward, 120 W. Va. 655, 200 S. E. 58 (1938), which contains only the following statement: "The fact that the aggregate amount of the deposits of a trustee in bankruptcy in a designated depository exceeds the penalty of the depository bond required by 11 U. S. C. A., section 101 (Sec. 61, Bankruptcy Act, 1898), does not make the excessive deposits trust funds."

[3] See POLLOCK, A FIRST BOOK OF JURISPRUDENCE (1896) 37: "Let us pass on, then, to consider what are the normal and necessary marks, in a civilised commonwealth, of justice administered according to law. They seem capable of being reduced to Generality, Equality, and Certainty. First, as to generality, the rule of justice is a rule for citizens as such."; Pound, *Justice According to Law* (1913) 13 COL. L. REV. 696, 705: "Administration of justice according to law means administration according to standards, more or less fixed, which individuals may ascertain in advance of controversy and by which all are reasonably assured of receiving like treatment. It means an impersonal, equal, certain administration of justice, so far as these may be secured by principles of decision of general application."

[4] See Pound, *The Ideal Element in American Judicial Decision* (1931) 45 HARV. L. REV. 136; Pound, *What is Law?* (1940) 47 W. VA. L. Q. 1.

[5] *Cf.* Hatcher, J., in Baltimore & Ohio R. R. v. State Road Comm., 104 W. Va. 183, 188, 139 S. E. 744 (1927): "That case [Charles River Bridge v. Warren Bridge, 11 Pet. 420] was decided in 1837. Then 'Competition is the life of trade' was accepted as a guiding maxim of economics. That maxim has long since been rejected so far as it applies to public utilities. Uncontrolled competition is now regarded as destructive of such utilities. In 1837 the state watched with indifference one public utility stifle another. Now the state controls its public utilities and as an incident to its regulatory power acknowledges a duty to protect them. As a part of that protection the state now guards against unnecessary duplication of public utilities. Consequently, the decision in the *Bridge* case is not applicable to cases like these, where regulated utilities are concerned." See Pound, *A Comparison of Ideals of Law* (1933) 47 HARV. L. REV. 1, especially at pages 16-17; Hardman, *The Changing Law of Competition in Public Service* (1927) 33 W. VA. L. Q. 219 and Hardman, *The*

ever its form, has as its essential characteristic the quality of generality;[6] it is basically a generalization or an aggregate of generalizations, and each generalization serves, in theory at least, after the manner of a major premise in a syllogism;[7] whereas the syllabus just set out does not contain anything in the nature of a principle or other major-premise element. It contains rather a minor premise (fact situation) and a conclusion, and the major premises (applicable generalizations—chiefly the family purpose doctrine) appear only in the opinion. *Ex facto—et ex opinione—jus oritur.*

THOMAS P. HARDMAN.

ON LEASING GAS FROM COAL SEAMS

It has often been said that there is a considerable mass of undeveloped law in the field of coal mining. Certainly this is true as to legal phases of horizontal stratification of land ownership:[1] the very readiness of courts to interpret mineral deeds as establishing subjacent fees leads to new regions of theoretical exploration. When those overlap, or when their boundaries are left up in the air,[2] the lawyer has the difficult and delicate task of adjusting property titles by using the traditional doctrines of the past.[3] And without going so far as to attribute to older common law precedents a value that does not belong to them, the relative rights of com-

Changing Law of Competition in Public Service — Another Word (1928) 34 W. VA. L. Q. 123; Hardman, *Public Utilities. I. The Quest for a Concept — Another Word* (1934) 40 W. VA. L. Q. 230.

[6] See note 3, *supra.*

[7] *Cf.* MORGAN AND MAGUIRE, CASES ON EVIDENCE (1934) 1001: "Under the common law system the court theoretically knows the law. It has at its command a major premise from which the correct conclusion, to be expressed in a judgment, inevitably follows as soon as the minor premise is ascertained."

To be sure, the judicial process involves more than the use of logic and the applicable major premise or premises, if any, for, as Holmes has put it: "The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." HOLMES, THE COMMON LAW (1881) 1. See also Holmes, J., in Lochner v. New York, 198 U. S. 45, 76, 25 S. Ct. 539, 49 L. Ed. 937 (1905).

---

[1] Note, *Horizontal Divisions of Land* (1862) 1 AM. L. REG. (N. S.) 577.

[2] In Hansen v. Hall, 167 Mich. 7, 132 N. W. 457 (1911), it was held there could be a fee simple in "undiscovered minerals". See Comment (1911) 10 MICH. L. REV. 143.

[3] SIR EDWARD COKE, in 4 INST. 109 (1644) felicitously phrased the common law technique: "Let us now peruse our ancient books, for out of the old fields must come the new corn."