June 1928

The Need for an Introductory Course in Law

Charles H. Kinnane
University of Wyoming Law School

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Legal Education Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol34/iss4/11

This Editorial Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
EDITORIAL NOTES

parties patently intended to make superior—the title retained for the security of the payment of the purchase money. The intent of the vendor to permit repairs to be made, and a consequent lien to attach to his interest, should have been manifested in the note contract, since, upon a transfer of the note, the transferee is vested with the rights of the conditional vendor. To announce a doctrine such as is contended for by the mechanic in this case would be to deprive a note which contains a reservation of title to personalty, of a no inconsiderable element of marketability. The transferee of such paper should not, we believe, take it subject to the risk of having his right embarrassed or lessened by such act of the vendee-maker, when the note contains nothing to put him on notice.”

This is one of the cases strongly relied on by the West Virginia Supreme Court of Appeals in Scott v. Mercer Garage & Auto Sales Company and, it will be noted, is a directly opposite holding to the Maryland case of Meyers v. Neely & Ensor Auto Company referred to above.

It is believed that the West Virginia Supreme Court of Appeals would require something like almost actual participation on the part of the conditional vendor or chattel mortgagee in the making of a contract with the repairman for repairs, before the court would allow priority to the repairman's common law lien over the lien of the conditional sales contract or chattel mortgage. —JOSEPH R. CURL.

THE NEED FOR AN INTRODUCTORY COURSE IN LAW.—In spite of the almost general acceptance of the requirements of the Association of American Law Schools, and of the American Bar Association as to two years of pre-legal work, it is submitted that the average beginning law student is not as well prepared as he might be for the undertaking of his professional studies. It is not proposed to go into the question of the advisability of requiring more than two years of pre-legal work, but rather to consider one opportunity for getting more out of the two years of pre-legal preparation at present generally required, than has been obtained heretofore.
Probably everyone who has studied law, and I would say certainly every teacher of law, is familiar with the period of helplessness and the sensation of insecurity and confusion experienced by great numbers of first year law students. The first year law student, who begins his study of the professional law courses has a tremendous gap to bridge if he is to orient himself and his studies in the scheme of legal education. In his previous non-professional training, he has studied in fields which are usually treated as quite remote from the field of law, and he has made use of a technique which is now used in practically none of the better Law Schools. Again, the time limitations which necessarily result from a two year general course in the Arts and Sciences are attended with some very serious disadvantages if such two years of pre-legal study are considered as preparing a student to undertake the study of professional courses in a professional school.

Reference might be made first of all to the limitations of the two year pre-legal course imposed by time alone. The student must almost always devote a substantial portion of his first year to a study of Rhetoric and English. Oftentimes it is desirable, even necessary, that he devote some of the time during his second year to the same subjects. Very frequently he must also devote a considerable period of his first two years' study to a foreign language or to the physical sciences. Additional inroads are often made upon his time by the requirements as to military, and physical training. Accordingly, much of his time cannot be devoted to subjects which might be more immediately useful to him, not in a cultural way, but as a preparation for his legal studies. And in the balance of the time available for the study of subjects more closely related to law, he cannot possibly hope to take more than the most elementary courses in logic and ethics, in economics, in government, in sociology, and in history. And very often, these courses are not given so as to emphasize their relation to law. The elementary course in economics may not lay a great deal of stress upon constitutional problems involved in labor disputes, for example, but rather it is the advanced and specialized course which deals with these problems. The beginning student in political science very often fails to appreciate the fact
that government is only one branch of the law. A subject, especially in the elementary courses, is more often treated as complete in itself and its relation to the field of the pre-law student’s future activities is not stressed or developed. And it is submitted that a correlation of such subjects, and a development of their bearing on law can be made profitable to the student, and that such profit is worthwhile, even if one does not believe that the requirement as to two years of pre-legal work is designed primarily to fit the student for the study of law. This correlation, hardly to be hoped for in the Arts and Sciences schools, is entirely possible under the supervision of the law schools.

The student’s inability to correlate his general studies is a considerable drawback to him since it leaves the subject of law standing unsupported and by itself.

Another cause of embarrassment and confusion, and in many cases, of very real distress to the student, is the difference in the technique used in his academic courses and in his law courses. Many of his introductory academic courses are given by the lecture method, and reliance is placed upon a great deal of assigned reading of a rather general nature, and upon an occasional quiz to see if the student is doing the reading. When, however, he begins his law studies and certain cases are given to him as the source materials from which he is to extract a knowledge of the law without having any idea as to the judicial processes, or as to the common law system of ex post facto judicial legislation, that results from our adherence to precedents, all too often the individual case is to him no more than an individual case instead of a specially chosen presentation of one or many aspects of a given problem of law. A student, being unfamiliar with our doctrine of precedents, has no reason to extract generalizations from the cases that are given him to read. Oftentimes it does not dawn on him that such generalizations are to be made until some considerable period after the beginning of his studies, when already a good deal of his time during the first year has been lost. This difficulty could be removed by an introductory course dealing, among other things, with the Anglo-American judicial process of law making.

His ignorance of legal language and terminology is a
further, and not infrequently, serious inconvenience to him. It is all very well to insist that the student acquire at the outset "the law dictionary habit," but it is submitted that even resort to a law dictionary has its deficiencies. Even advanced law students cannot readily use them to advantage in all cases, as numerous inquiries and discussions with teachers will testify, and the beginning law student, already harassed and frequently overburdened with his new difficulties, seldom has the time for an exhaustive examination into the matters which are not readily understood by the advanced student or the graduate, and which are hopeless gibberish to the beginning student. The remedy would seem to be an introductory course in law in which the student could be made familiar with the "rat, cat and dog" of this new language.

A particularly perplexing problem arises out of the student's ignorance of the fundamentals of procedure. Perhaps an extreme instance of the extent to which this ignorance may exist, even on the part of advanced students, is illustrated in the case of the law graduate who invariably commenced his actions in Justice of the Peace courts by attachment, having no idea that an action could be brought in any other way. And many an advanced student, who could pass a creditable examination as to the theory of attachment and execution liens, has quite probably not known that such liens arise out of proceedings, some of which are had before, and some of which are had after suit. When advanced students can make such blunders, the embarrassment and confusion of the beginning student can only be conjectured at, or remembered by those who were once themselves first year law students. An introductory course in law, which could deal with the generalities of procedure should have possibilities of distinct usefulness.

An ignorance of the common law forms of action can be an abiding source of irritation and embarrassment and confusion to the new law student. The particular source of trouble to him is very often not cleared up until he has had a course in pleading, and such courses are frequently not given until the second year. Meanwhile the student who thinks he is trying to learn substantive law is constantly confused because elements of procedure are intermingled,
apparently to him, without much "rhyme or reason." The student who is studying contracts frequently is at a loss to understand why it is that in some cases debt, covenant, or assumpsit, as the case may be, is the proper action and in other cases is not. While a student who is studying torts may have much difficulty in understanding just why it is that the man who has obviously been wronged may not be able to recover in an action of trespass where he may be able to recover in an action on the case. The whole common law system of actions is a closed book to him until he has progressed some considerable way in his law studies, when it would seem that a more rationalistic method would be to familiarize him with our formulary system at the outset, so that instead of wasting much valuable time on these matters, he may know from previous study as to the history of the development of our formulary procedure, just how irrational and haphazard the product of that development is. An introductory course in law could well include such matters in its content.

Another source of difficulty and confusion to the beginning law student is the relation of Law to Equity. Applying the obvious logic of the rule that "a house divided against itself cannot stand," he is uncomfortably disturbed when he learns that one court will give a judgment which another court, perhaps in the same jurisdiction, or even the same court at a chancery term, will prevent the judgment creditor from enforcing. This dissatisfaction with the unexplained relation of the two systems of law very frequently persists until the student is well into his course in Equity. Indeed, the writer has listened to rather bitter and acrimonious complaints that much that a student has learned in his first year must be unlearned in his second,—so at least, it seems to the student. All, or at least a great part, of this difficulty, confusion, and uncertainty might be saved the student if he were acquainted with the theory upon which the two systems of Law and Equity exist, in some introductory course designed to fit him to undertake the study of law.

Other matters that might well be dealt with in an introductory course to law are the history and development of legal institutions and theories, and the social aspects of law
as a going institution designed to govern and rule social contacts rather than as a system of arbitrary, self-sufficient rules and canons. The usual professional, undergraduate law course is designed to give a student a training in the law, and because of the limitations as to time, it is the exception rather than the rule to relate law to history, to theory, or to sociology. If it is assumed that the student is familiar with this relationship, in a great number of cases this assumption is entirely unjustified. If it is assumed that a student will dig these matters out for himself, the assumption again is frequently quite divorced from actuality. Indeed, it may be said that the student is very frequently unable to appreciate these relations even though he may make an effort to dig them out for himself, without assistance. All too many law students refrain for too long a time the idea that law, instead of being justifiable according to its functioning, is an end in itself, and that hoary precedents are to determine its ultimate content.

Again, in the usual under-graduate law course, absolutely no effort is made to go into the field of comparative law. The usual graduate of an American Law School has probably heard of a vague something that has been called "Civil Law," but he knows practically nothing about it. In an introductory course to law, it seems that some time might be profitably spent in tracing the development of legal systems and legal institutions other than our own. The value of such study has come to be recognized in that a course in Roman or Civil Law is generally given to graduate law students. The graduate law student, however, is comparatively rare, and there would seem to be no good reason for allowing the ordinary under-graduate to complete his studies without having some comprehension of the fact that the Common Law system has a great rival, more venerable, just as vigorous, and probably regulating the affairs and lives of many millions more people than the Common Law system does. There seems to be no excuse for allowing one to call himself a lawyer without being acquainted with such names as Gaius, Papinian, Paulus and Ulpian, or Justinian and Tribonian, or Theodosius, or Ravenna and Bologna, or Irnerius, Vacarius and Azo, or Alciat and Cujas, or Pothier, or Savigny and Von Ihering, to mention a few
celebrated names or places connected with the Civil Law system.

It is not proposed that the pre-law student be made an advanced student of sociology, economics, ethics, history, procedure, or comparative law in one course. To state such a proposition would reveal its absurdity. Nor is it proposed to require that he be an expert in these fields before he undertakes his law studies. However, it is the conviction of the writer that a student in a rather brief period of time may be made sufficiently familiar with the relation of these subjects to his own prospective professional studies, so that as one or the other of these matters crops up in the course of his law studies, he will have some foundation upon which to base independent study of some of these matters, or some information that will remove much of the difficulty which now besets him, particularly during the first year, but quite frequently throughout the greater part of the period devoted to a study of law.

For four years, a course has been given to pre-legal students at the University of Wyoming by a member of the law faculty, which has had for its aim the acquainting of the student with many of these matters which are the source of much trouble to him during his first year as a law student. The reactions of the students to this course have been almost uniformly favorable, and quite frequently enthusiastic. Repeatedly, students who have taken this course have volunteered statements to the effect that they felt that some knowledge of legal origins, processes and aims had been gained which they did not possess before, and that their previous studies, particularly in the social sciences have been much more closely related to the facts and actualities of the legal world they expect to live in for the rest of their lives. They feel that they have oriented law in the field of human knowledge and endeavor, and have a comfortable feeling that they know what they are to study, and that because of that knowledge they can do a better job of it. Students who have had the course do not seem to be disturbed by many of the things which cause acute difficulty to other students who have not taken it.

Although an experiment of four years' duration, in one school, is not sufficient to enable one to make a definite
pronouncement as to the value of such a course in all schools, the experience at the University of Wyoming has been such as to convince the writer that the experiment is decidedly worthwhile carrying on there.

There also seems to be a tendency in some other law schools to make an effort to bridge the gap between academic pre-law, and professional law studies. For example, at the University of Illinois and at Denver University, and perhaps at other schools, reading courses, either elective or required, have been given for a number of years. The University of North Carolina Law School has this year established a reading course on a number of general subjects, such as, legal history, legal analysis, legal sources, legal judicial processes, and social objects of the law. A somewhat different method of meeting what the writer considers to be the same problem has been adopted experimentally in the Law Schools of the State Universities of Utah and Ohio, where introductory lectures were this year given to first-year students. In the case of the College of Law at Ohio State University, this introductory material was given at the expense of suspending Freshmen classes for a short period. At the School of Law of the University of Utah, the lectures were given, but the writer is uninformed as to the amount of time that was devoted to them.

These attempts, some of them quite recent, to acquaint the student with fundamentals and generalities are, in the opinion of the writer, but the forerunner of other attempts to be made on a more ambitious scale, and more generally throughout the country in the near future. And the experience of the writer in giving such a course at the University of Wyoming, though the course is more extensive and formal than any known to be given elsewhere, is such as to convince him that certainly these efforts should not be abandoned until they have been given a thorough trial. Indeed, the writer feels that almost everything favorable can be said in favor of such a course, and that very little can be said against it. Such a course can be given for two semester hours' credit or the equivalent, and might very well be expanded into a course rewarded by double that amount of credit. The loss to the student by depriving him of some other pre-legal course is felt to be more than made up by
the value to him in correlating much of his previous study, and furnishing him with a foundation for much of his future work. Again, such a course would seem to be in entire harmony with the present tendency of giving what are sometimes called survey courses.

Obviously the course should be given by a law teacher, except perhaps in the case where a teacher of one or the other of the social sciences has had law training. On the whole, however, it is felt that if the course is taught by a law teacher, necessary emphasis will more likely be put upon the legal aspects of social, ethical, and historical data, which after all would seem to be the real object of the course.

—CHARLES H. KINNANE, Dean
University of Wyoming Law School.