

THE OBJECTIVES OF A COURSE IN BUSINESS LAW

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During the past several years, both before and after the very commendable efforts of the Ford Foundation and the Carnegie Corporation, persons inside and outside of colleges and universities, who have a genuine and intelligent interest in the future of higher education in America, have asked with increasing frequency: What courses should be made available to, and what courses should be required of, undergraduate students in the area of business? For the new hard look at business curricula in general, and the offerings in business law in particular, many factors are responsible. One of the most significant, shared by educators and the public generally, is the worthwhile desire to improve the quality of course content in a multitude of areas, and to eliminate courses that fail to measure up to the standard adopted. This could be stated in terms of a most natural desire to get the most and the best for the dollars that are spent for higher education. Another, and one that should not be passed over lightly, is the keen competition between subject-matter areas for students and staff, both quantitatively and qualitatively, and all that goes with the same. A liberal arts dean, stating his case in language worthy of an Eliot or a Butler, is far from being pleased with current trends in business education; by the vigor and frequency of his protest, both in season and out, he underscores the fact that the business school is a serious competitor of what he and his colleagues have to offer. Law school deans and professors, and even practicing lawyers, tend to be highly critical of business school offerings in the field of law, even though some of these professionals favor undergraduate courses in law in colleges of liberal arts. They appear to subscribe to the view that it would not be possible to design a law course for a business school that would be acceptable to them. This position is shared by many, including subject matter specialists in business schools, who do not have a vested interest in protecting the monopolistic position of law schools and lawyers. It would require more time and space than is available to list all protestants, and to properly identify and evaluate their interests in the matter. For the most part, intelligent and vigorous discussions of the role of business education in general, and business law in particular, serve the cause of higher education and are in the public interest. The basic requirement is for more light and less heat.

The volume and the intensity of the current discussion of the place of business law in the business school curriculum clearly and forcibly indicates that our present offerings have failed to serve the purpose for which they were intended, and that many of the courses now being taught will either be rewritten to meet current re-

quirements, or eliminated. Professors of business law, despite their inherent conservatism so characteristic of the legal profession, should be among the first to recognize this, and to take appropriate steps to meet the challenge. The fact that the American Association of Collegiate Schools of Business sanctioned business law in 1949 gives little assurance for the future; the AACSB approval of the Northwestern curriculum, which virtually eliminates business law as such, indicates that the position of this accrediting agency is rather flexible. In fact, it may be anticipated that AACSB may assume active leadership of the forces that are insisting on radical changes in business law courses. This leadership rightfully belongs to those engaged in the teaching of business law; if we continue to expend time and energy in the defense of outmoded courses, we will forfeit this leadership, and allow the overdue revisions and eliminations to be effected by our colleagues in other areas.

This paper is primarily concerned with the objectives of a one- or two-semester course in law, whatever it may be called in the catalogue, offered in collegiate schools of business administration, usually at the sophomore or junior level, and required of all undergraduate students. Beyond the scope of this paper, although in need of close scrutiny at this time, are (1) undergraduate courses in general law for liberal arts students; (2) specialized courses for groups outside the business school such as engineers, public administrators, and others; (3) specialized courses in the business school for majors in accounting, banking, insurance, production, and marketing; and (4) graduate-level instruction and research.

A brief statement of the reasons for the limitations stated above may be appropriate here. With reference to the undergraduate liberal arts course, there is evidence of considerable agreement with the position of Professor William Zeldermyer, and others, that it would be possible to design an undergraduate offering in law that would meet the needs of both liberal arts and business students; this matter is of little concern to us here, however, since there is no probability that business law professors will be asked to participate in the development of such a course. Groups outside of the business school interested in specialized law training should be encouraged either to staff their own courses or to solicit assistance from the law school; what they appear to want is far different from what the business school should have to offer. A very complex problem for the business school is what to do about specialized courses for accounting majors, et cetera, and graduate instruction and research. As long as business schools profess to train accountants, they are believed to be under an obligation to provide some professional legal training. The answer may be a series of credit or noncredit courses open only to accounting majors. As for specialized courses for business students majoring in some area other than accounting, the weight of the evidence appears to favor the elimination of these courses, respectable opinion to the contrary notwithstanding. In the area of graduate instruction and research, seminars in various phases of the legal aspects of business, as suggested by Professor Gillam, may serve a useful purpose. The demand for such instruction may vary from school to school and from year to year, and many schools might find it difficult to staff such a course. Opening undergraduate courses to graduate students, without materially redesigning the courses, is a glaring example of academic deception.

One important matter appears to require clarification here: In the act of getting ready to prepare this paper, I read, or reread, what all the experts have had to say on the subject, including a paper that I presented to the Detroit meeting of the Association a few years back. Portions of what I am trying to say now have been said better by others, including myself, on previous occasions. I am deeply indebted to such legal scholars and superior teachers as Dillavou, Frasca, Gillam, Lavine, Lusk, Raphael, Votaw, and many others, for portions of the views here presented, although I am not always in complete agreement with the views of my elders. In the preparation of this paper, I have not attempted to summarize every significant statement that has been made on the subject. My views are indubitably colored by the fact that, while I have been a professor of business law for more than fifteen years, my area of interest includes political science as well as law.

For the purpose of convenience in treatment, the principal objectives of a course in business law could be classified as (1) major and (2) minor. In the former, I would include these objectives:

1. To demonstrate the relationship between law and economic activity by developing in the student an awareness of legal principles involved in economic relationships and business transactions.
2. To develop in the student an understanding of the free enterprise system and the legal safeguards of the same.
3. To demonstrate clearly and forcibly the generally accepted, but not always documented, proposition that law is an expression of the public will; that a law is valid in the real sense only when it is an expression of the public will.
4. To develop in the student an appreciation of the significant role played by the judiciary in the protection of individual liberty and private property.
5. To develop in the student habits of analytical thinking and logical reasoning as a technique for decision-making.
6. To develop in the student acceptable attitudes and viewpoints with respect to business ethics and social responsibility.
7. To enrich and make more meaningful the study of the other social sciences.
8. To teach some substantive law.

As minor objectives of the business law course, I would include these:

1. To assist in the improvement of the student's reading skill.
2. To develop in the student an ability to prepare and present, either orally or in writing, an argument for or against a pre-selected proposition.

These objectives, stated simply and clearly, may not require extensive amplification or justification. A few comments, however, might be appropriate. With the free enterprise system, as we understand it, under rather severe attack in various parts of the world, and in some quarters in this country, it is submitted that the general business law course could perform a most useful service by helping the undergraduate student understand what our legal system contributes toward the preservation and maintenance of our economic system. Closely related is the role of the judiciary in the protection of individual liberty and private property. Our Federal and state courts have been under rather severe attack from lawyers and laymen alike during recent years; much of the attack has been politically motivated, and has not been in the public interest. No competent student of our legal institutions would seriously contend that our judges and courts are altogether without

fault in every instance, or deny to any citizen the right to comment freely and fully on all matters of public concern. Informed criticism is preferable to uninformed criticism. A thorough knowledge of the organization and operation of our judicial system would make it possible for the student to properly evaluate the work of our courts. And lastly, business ethics and social responsibility, in this day of payola, rigged quiz shows, and deceptive advertising, deserve consideration in the general course of business law.

Without seriously encroaching on the subject-area of other papers that will be presented at this meeting, I should like to discuss briefly some of the important features of a business law course that might achieve at least some of the objectives listed above. In the first place, such a course would be designed for the undergraduate who might be more interested in the environmental role of law in modern society than in a conventional "tool" course in business law where the emphasis is on highly technical statutory rules and court decisions, and where the course, following the traditional law-school pattern, is divided into neat little unrelated packages of contracts, agency, sales, negotiable instruments, et cetera. In the proposed course, the emphasis would be on both public and private law. Basic private law concepts of contracts and business organizations, as suggested by Professor Dow Votaw, would constitute the framework of the course. Classroom material would be designed to encourage the student to view the whole of the legal structure, and not to concentrate on individual segments; conventional and traditional textbooks and casebooks would give way to business-type cases especially prepared for this use. Concepts, and not rules, would be emphasized; the challenge would be to think, and not to memorize.

In order to implement the objectives listed above, some of our traditional concepts with reference to the nature, role, and function of business law in the business school curriculum will have to be abandoned; it is not anticipated that tradition, so firmly entrenched, can be bested without a long and bitter struggle. While law is an important tool of management, a course in business law should not be designed and offered as a "tool" or "service" course; if the discipline of law has any place in the business school curriculum, it should not be offered as an adjunct or prerequisite to accounting, marketing, production, or any other major subject area. A properly designed course in business law should be an end in itself; it should make a worthwhile contribution to the total educative process unrelated to any other subject area. In the next place, totally unrealistic and unacceptable is the concept that life is a game—or that business activity is a game—and that the rules under which the game is played are found in the law books; the student, it is argued, should pursue the study of business law in order to learn the rules. It is submitted that learning limited to the memorization of rules has little place in the business school curriculum. Equally unacceptable is the view that the business law professor is engaged in the business of training clients, or that "preventive" law—whatever that means—should be emphasized in the business school. The list of misconceptions could be extended from here to eternity, and few of them would be worthy of serious consideration. Rare is the business law professor who does not have one or more favorite cliches to describe the role of business law.

This pertinent question is often asked: If the proposal contained herein has any merit, why has it not been adopted by some of the leading business schools of the

country before now? Several answers to this question are available. Even at the risk of offending some individuals for whom I have great admiration, I propose to deal with this matter frankly. In the first place, not all of the leading professors of business law profess to see the need for radical changes and, among those who favor either revision or elimination, there is little agreement as to just what should be done. This can be documented by reviewing the articles on business law courses that have been published in the Bulletin of the Association during recent years. In the next place, many business law professors are not full-time staff members; as part-time staff members they seldom participate in faculty studies of the curriculum. Thirdly, many business law professors have a vested interest in the maintenance of the *status quo*. If they teach a service course, they may be hesitant to suggest a revision of the course for fear that their colleagues in other subject areas may decide to eliminate the offering. Others have written textbooks that are being used extensively, or they teach from a set of notes that they do not care to revise or abandon. It may not be without significance to note that textbook writers have always been very active in the affairs of this Association, and that many of the most significant papers have been prepared by distinguished scholars who are also the authors of textbooks; it goes without saying that the papers seldom recommend a course in business law for which the textbook in question could not be used. Let me hasten to say that I have no quarrel with the textbook writers; they are gentlemen and scholars of integrity, and they have made significant and lasting contributions to the cause. They have, also, stood in the way of progress.

I should like to summarize briefly some of the points that I have tried to make. Opposition to the conventional and traditional capsule law-school courses, now being offered in many business schools, is widespread. These discussions are in the public interest even though some of them tend to produce more heat than light. All of this underscores the fact that business law courses have failed to serve the purpose for which they were intended. The scope of this paper is limited to the general business law course, and much that has been said is not original. Our interest should be directed toward the designing of a course that will emphasize both public and private law, and give adequate attention to the basic concepts of contracts and business organizations. Concepts are more important than rules. For such a course, conventional textbooks and casebooks could not be used; business-type cases would be required. Business law offerings will either be revised by business law professors or by their colleagues in other subject-matter areas; leadership in this should be assumed by those engaged in the teaching of business law. In the profession, opposition to change comes principally from those who have a vested interest in the maintenance of the *status quo*.