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Conveyancing in the Law Department

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THERE was a time when the young man "studied law" in the private office of some successful practicing lawyer.

Much time was spent by the student in copying legal papers the real meaning of which was seldom understood and seldom explained. Fundamental legal principles were but little considered. Only under the most exceptional circumstances was this method educational. There was little, if any, systematic and orderly study of law as a science. That young men, after serving such an apprenticeship, ever became good lawyers was rather in spite of this manner of training them than because of it. As the variety of subjects dealt with by practicing lawyers multiplied, each lawyer became more and more a specialist, confining his attention to but few of these subjects. The partial view of legal principles obtained by the so-called students in his office became still more partial and restricted.

The professional school was seen to be a necessity and such schools were established. In some instances these schools simply grew from offices crowded with students, and at first law seems to have been taught in them in much the same way as it had been taught before in offices under the old method, or lack of method. After a while it was seen that the law school did its best work only when it occupied itself with teaching, in systematic courses, principles rather than practice.

The proper function of the professional school was seen to be to discipline the student in methods of reasoning rather than to train him to do things in detail. It was perceived that unless an orderly presentation of legal principles and theories was made to the student in the school he could not obtain an understanding of them elsewhere. And the truth must be emphasized that the important and chief work of the law school must be along this line. Any scheme that would make the study of principles secondary and that, as a concession to the demands for a so-called practical education, would tend to lessen in any degree the power to reason, cannot be dignified with the name of education. Any "practical" plan of teaching the doing of things is, in the long run, harmful in so far as it is not based, first on the reason for doing the thing at all, and secondly on the reason for doing the thing in one way rather than in another.

The recognition of what the true work of the law school should be, combined with the fact that the study of general principles demands about all the time that can well be spent by the average student in a school, has led to the view entertained by many that little, if any, attention should be

paid in a law school to practice. The youth cannot be taught to do all the particular things that he must do in later professional life; therefore, it is argued, the teaching of practice should not be attempted in the professional school.

But, on the other hand, it is said the student hopes to become a practicing lawyer. He expects to do specific things and not merely to speculate about great principles. He expects to be a man of action and to take his part in the daily affairs of life. Therefore, it is argued, he should be taught practice.

The contradiction between these views is more apparent than real. It is true that no one as a student can actually learn to do all the different things that he must do as a lawyer. Particulars and details—the facts of professional conduct—must, generally speaking, be learned as they arise; experience alone can teach them fully. But scientific principles can be studied in the laboratory as well as from books. By the actual doing of some particular things typical of other things, the principles underlying action in similar and dissimilar circumstances may be more truly seen than by reading directions as to what to do and what to avoid.

If a law school curriculum be restricted entirely to the study of principles and theories, the student must obtain his introduction to practice by work in a law office. If this introduction is obtained by entering a busy modern office, there is no one ready and willing to explain the reasons for doing things in the ways they are done. The law school graduate is told what to do and sometimes how to do it, but must generally find out for himself, and as best he may, why it is done. If his introduction to practice is obtained in his own office, he lacks even the advantages of being told what to do and how to do it; and why it is to be done in one way rather than another—the most important thing of all—is still largely a matter of chance discovery. Many a law school graduate has found that he cannot even fill in the blanks in an ordinary printed form without much unintelligent guessing on his part.

The course in conveyancing in the law department of the University of Michigan is intended to introduce the student to the art of applying legal principles to some of the affairs of life. It is not contemplated that the student will actually draw all papers that he must draw in practice. It is hoped, however, that methods of work can be indicated that will stand him in stead under varied conditions. A statement of facts is submitted involving, for example, questions such as occur in practice relating to the direct transfer of interests in property, real or personal, and he is asked to draw the instrument appropriate to this particular state of facts. The instrument required may be a deed of conveyance of his homestead by a married man, or it may be a mortgage of real property by a manufacturing corporation, or a chattel mortgage by a merchant. To assist the student in starting, general suggestions as to form are made and special references are given to precedents found in statutes, reported cases, and books of forms.

The instrument as drawn by him is examined and the matters of arrangement and expression are discussed. Instruments drawn by other students to conform to the facts submitted are compared with his and the reasons for resemblances and differences are pointed out. But the object of all this is not merely to get the student to copy some set form, nor merely to enable him to draw the same or a similar instrument under similar circumstances, though this may be in itself a valuable result of the work. The aim is rather to help him to be ready by the employment of independent thought to draw, not only this instrument, but some instrument of a different character and applicable

to a different state of facts. This aim it is hoped to attain, to some extent at least, by pointing out the important differences in effect produced by slightly different phrases in legal papers and by emphasizing the necessity of thoughtful care in expressing in language what one means in such a way that some one else may not be able to construe the language as meaning something quite different. The side-light thrown on the interpretation of documents is an important feature of such work.

The chief objections to "teaching practice" in law schools are that time is thus occupied which should be devoted to the study of principles; that such work is apt to degenerate into simply a mechanical copying of forms by the student; and that, at the best, it must be incomplete.

To guard against the dangers suggested by these objections, patient labor and constant watchfulness are required. As to the first objection it may be said that the writer believes, after an experience of six years in conducting this course, that the drawing of legal instruments may be made a useful means of teaching principles of law, when the work is approached and performed in the proper spirit by the student and teacher. By showing the different effects produced by slight variations in style or order of arrangement in drawing a deed of conveyance containing, for example, a supposed "condition subsequent," much of the law relating to conditions and covenants can be explained in a way better calculated to fix in the student's mind the principles relating to these subjects than by merely discussing decisions concerning them or learning definitions of them. To avoid the objection that such work is incomplete and partial, each instrument drawn is made, as far as possible, typical—in its parts or in its entirety —of a larger number. To prevent harmful effects from the merely mechanical copying of forms, the student is questioned as to his reasons for drawing the paper in the way he has drawn it.

Whether such work can be made beneficial to the student must depend, not merely on the labor and watchfulness of the teacher, but largely upon the appreciative coöperation of the student. This, however, is true of any work done in the law school, for as a student may mechanically copy a form, so he may mechanically commit to memory a definition or the argument of a learned judge. The possibility of imposing upon a teacher by submitting papers prepared with little thought, is one feature of such work that makes it difficult, especially with a large number of students, for the teacher to conduct such a course to his own satisfaction.

But, after all, when the harm to the student of pursuing such methods has been pointed out to him, as it should be, the responsibility for results injurious to himself must rest with him, and the law student is generally mature enough to appreciate this truth.

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