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SUGGESTIONS AS TO THE STUDY OF THE LAW.

BY FLOYD R. MECHEM.

I have been asked to make a few suggestions respecting the study of law. I realize, of course, that I am in no position to speak with authority upon the subject. I realize also that it is a subject upon which competent judges might give different opinions. It seems to me, however, that two or three points may be suggested with reference to which all might agree.

The body of our law is now very great and is growing at a rapid rate. It is composed partly of rules prescribed by legislative authority, but it is chiefly made up of that great mass of rules often spoken of as the unwritten law, evidenced, primarily, by the decisions of the courts, and found, to some extent re-stated and arranged, in treatises and text-books. This portion of our law develops with the greatest rapidity and the number of volumes now needed to contain it is surprisingly great. When, for example, Chief Justice Marshall, the centenary of whose elevation to the bench has just been celebrated, was admitted to the bar, there was not a single published volume of American reports. Now they number something like five thousand and are increasing at the rate of considerably more than one hundred every year. In addition to these are hundreds of English, Scotch, Irish and Colonial reports and these also are multiplying with almost equal rapidity.

I. In order to make any progress at all in the study of such a body of law as this, the first and most important requisite is to find some clear and reasonably satisfactory basis of classification. The mass of law is so great and is so rapidly expanding that any attempt at memorization of it must obviously be futile. A witty Englishman, many years ago, referred to the English law as "Chaos tempered only by Fisher's Digest." A digest, however, presupposes a theory of a digest, a basis of classification, without which the chaos must remain untempered. To the student, therefore, the mass of the law must seem so great and confusing as to baffle and repel him at the outset, unless he can discover some paths by which he may travel through it. Unfortunately an entirely satisfactory analysis of the law is far to seek. As to the very nature of the law itself the jurists disagree. No one seems to be able to frame even a satisfactory definition of it, while attempts at clear and accu-

rate classification have not been generally successful. It is, however, possible to roughly divide the subject into certain fields—for example, the field of Contract, the field of Tort, the field of Property, the field of Persons and Personal Relations, and, though the boundaries of these fields necessarily overlap each other more or less, a crude analysis is better than no analysis at all, and fortunately a crude analysis suffices for most practical purposes.

Guided by the best lights which he can find, however, and exercising the best judgment which he can bring to bear upon it, the first duty of the student must be, to classify and analyze.

II. Having parcelled out the mass into such fields as may be determined upon, the next requisite is to endeavor to ascertain the fundamental principles which underlie each field. Here again the secret is analysis. Take the field of contract, for example. One cannot commit to memory all the law of contract, but he can fix in his mind the few principles which underlie it and determine the order of its growth and development. In any contract, certain elements must be present. There must be competent parties; a lawful and possible subject-matter; mutual acts of agreement and manifestation of this agreement in some prescribed form. So in the field of Tort; whatever the specific wrong in a given case may be, certain essentials must be present. There must be a duty, imposed by law; that duty must be owing by the one party to the other; that duty must be violated, and from that violation there must naturally and proximately flow injury to the other. Whatever the form of the contract, whatever the nature of the tort, these fundamental ideas must present themselves; and the student who has thoroughly grasped the characteristics of contract and of tort in general, has gone far toward solving the problems which may arise with reference to contracts and torts in particular.

III. In the next place one must constantly bear in mind that law is pre-eminently a practical matter. It exists, not for its own sake, but only for the purpose of accomplishing a specific object, namely, the guidance and regulation of human conduct. The purpose is not chiefly to know the law, but to apply it. We must see it, therefore, in action. For this purpose we study "cases," which are simply the records of the application of principles of law to given states of fact. If a law is a general principle of conduct, it must work substantially similar results whenever applied to states of fact substantially alike. One cannot learn all the cases, but he can so closely observe some, that he may discover how, in actual operation, the abstract principle is applied to the concrete facts, and thence learn how it is likely to be applied in others. For this purpose he must learn to closely study facts, their relevancy, their chronological and logical order. He must learn to separate the wheat from the chaff, to distinguish between the real and the merely apparent resemblances.

The lawyer is a prophet, working upon an historical foundation. His problem is: From what has been done in other like cases, what is likely to be done in this? His success as a prophet must obviously increase with the range of his information, his power to dis-

tinguish the important facts from the unimportant, and his capacity to deduce the right results when his relevant facts are illumined by the principles of law.

In saying this I speak not at all concerning methods of instruction, but simply concerning methods of study. It does not seem to me essential that the student should attempt to remember large numbers of cases, but it does seem to me helpful that he should find the principle of law associated in his mind with some concrete instance of its application to existing facts. By this process the principle not only takes on more vital form, but it furnishes a starting point from which investigation may be pushed into the field suggested by the new facts.

To recapitulate, I would venture to suggest that the student endeavor—

I. To so analyze and classify his work that he may see, as far as possible, the true relation of each subject to the others.

II. To ascertain and make his own, not the mere language of the rules laid down, but the reason of the rule—the fundamental idea or principle which gave it birth.

III. To so associate each principle with some leading case in which it was applied that the principle itself shall be to him not a mere abstraction but a living force operating upon actual facts in such wise as to at once suggest the manner and the limit of its application.