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THE U.C.C. (SALES) AS AN INTRODUCTORY LAW SCHOOL COURSE

RONALD BENTON BROWN*

In the spring of 1979, Nova University Law Center inaugurated a provisional admissions program. Under this program, a group of students who did not otherwise qualify for admission to the first year class was granted the opportunity to take two courses during the summer to prove that they could succeed in law school. Those who succeeded would be admitted to the first year class and then, with the regularly admitted first year students, would begin to study Property I, Contracts I, Civil Procedure I, Torts I and Criminal Law.

It was necessary to pick two courses for this summer program which would be intellectually stimulating and challenging, and yet be understandable to students who had no background in the traditional first year courses. These courses should also be an appropriate introduction to the traditional first year courses and yet not detract from the first year courses these students would later take. Remedies and Commercial Transactions I (Sales) were chosen.

The Sales course covers Articles 2 and 6 of the Uniform Commercial Code in three semester hours. Articles 1, 10 and 11 are, of course, included as background to the entire code. Students normally take this course in their third semester of law school. At that point, the students have completed six semester hours of Contracts and six of Property. However, when I first taught Sales, it had been my observation that the common law background was more frequently a hindrance than a help to students grappling for the first time with the U.C.C. The students having learned common law contracts and property usually expended most of their energies trying to fit the separate sections of the U.C.C. into the framework of common law contracts rather than trying to accept the U.C.C. as one statute which: 1.) was a unified code; 2.) governed, if it applied to the facts; and 3.) must be interpreted according to the rules of statutory constructions.

In my earlier experience teaching Sales, I had used Murray's problem book.¹ I had decided that students using a U.C.C. casebook seemed to spend too much time reading about the code and far too little time actually reading the code itself. The problem method seemed best designed to remedy this deficiency and, in fact, had worked well.

At the time, I had hypothesized that, using Murray's problems or other noncasebook materials, it would be better to teach Sales before teaching

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¹ J. Murray, Jr., *Problems and Materials in Commercial Law* (1975).

contracts so that the students, having no other tools available, would be forced to rely on the U.C.C. itself to solve the problems. The student would be alerted to those areas which were not covered by the code and which, consequently, could only be understood by one who knew the common law. The necessity of studying both the U.C.C. and the common law of contracts and property would be emphasized. Also, the students, very early in their law school careers, would receive a much needed introduction to methods of statutory construction. After a typical first year spent reading only cases, students resist the concepts of statutory analysis and construction, preferring to search frantically for a case on point. With the expanding role of statutes in our legal system, there is a pressing need to produce lawyers capable of statutory as well as case analysis.

A problem book seemed even better suited for use with students who were studying the code as their first law school course. Their lack of experience in reading cases would not be a stumbling block and the emphasis on the case skills in their regular first year courses would not be made redundant. Use of the problems would enable the instructor to avoid the procedural questions which inevitably arise when studying cases.

I chose Murray's problems² for this introductory course because it was the only readily available problem book and it had limited reference to common law contracts. Those usually were limited to the suggestion that the student read a particular section in Murray's contracts text³ which explained how the U.C.C. differed from the common law. Also required was a copy of the U.C.C. with complete comments. Students were encouraged to read one of the available secondary sources.⁴

Classes began not unlike any other first year class. It took the students some time to become accustomed to the Socratic method. The professor's asking the questions rather than just lecturing was a new experience for most. Their efforts to supply the answers to the problems produced some discomfort, particularly during the early stages, but most of the class was soon responding well. Their frustration in dealing with the code itself was certainly no more than second year law students had experienced, and in fact, there generally seemed to be a lower level of anxiety in dealing with the code than there had been among the upperclassmen.

In many ways, it was easier to teach Sales to this class than it had been with the more advanced students. Some issues could not be fully discussed because the students did not have the necessary background. Consequently, the discussions were simply stopped with statements that

² Id.

³ J. Murray, Jr., *Murray on Contracts* (1974).

⁴ J. White and R. Summers, *Hornbook on the Uniform Commercial Code* (1972); R. Braucher and R. Riegert, *Introduction to Commercial Transactions* (1977); or B. Stone, *The Uniform Commercial Code in a Nutshell* (1975).

they would have to wait for a later course to learn about the concept.⁵ However, this occurs to some extent even when Sales is taught to second year students because some concepts are not covered in first year courses.⁶

All the terms of § 1-103⁷ were unknown to these students, but this proved to be beneficial. They were not tempted to begin every solution with the reference to § 1-103 and its recourse to the common law and equity because they had no idea what that might include. Rather, the code was the only source of a solution available to them; the possibility of an additional or alternate remedy under the common law would have to wait until a later term to be considered.

Some concepts did require explanation for a section to make any sense.⁸ This generally did not pose a substantial problem or result in a great time loss. The students seemed to grasp the concepts sufficiently after a brief explanation and discussion. An explanation of which courses in the curriculum would provide additional information about these concepts also seemed to alleviate their concern. They realized that they were not expected to fully understand the concept, but only how it related to the section of the code.

The Murray problem book⁹ does contain a few cases. These were not discussed in class. I felt that the time expended would not be worthwhile. These students would learn to read cases later and these cases were not necessary for an overall understanding of the code.

The Murray book¹⁰ does spend a great deal of time on warranties and the area of products liability. Our curriculum includes a course on "Products Liability" as well as some coverage of that topic in Torts. Consequently, the large amount of coverage in Sales would generally not seem justified. However, § 2-318 is a particularly good section to use to illustrate that the U.C.C. is only a proposed statute which a state legislature may change before adopting. This helped give the students the proper understanding of the roles of the various branches of government in the law making process. The warranties materials worked very successfully for these beginners.

In conclusion, the experiment of using the Sales course as an introduction to the study of law seems to have been a success. The students were

⁵ e.g., "title," U.C.C. § 2-401 would be covered in Property I; "consideration," U.C.C. § 2-209, would be covered in Contracts I; "proximate cause," U.C.C. § 2-715, would be covered in Torts I.

⁶ e.g., "insurable interest," U.C.C. § 2-501, is really covered only in an Insurance course although some first year Property courses may touch on it briefly; "burden of proof," U.C.C. § 2-607(4), is covered in Evidence.

⁷ U.C.C. § 1-103 ". . . the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, . . ."

⁸ e.g., "subrogation," U.C.C. § 2-510(3) and comments to that section; "insurable interest," U.C.C. § 2-501.

⁹ *Id.* at footnote 1.

¹⁰ *Id.*

clearly not overwhelmed by the material and seem to have mastered it. Moreover, they seemed able to relate to it far better than to such traditional introductory courses, as Property or Civil Procedure; each student has had the experience of buying goods while few have had dealings in real estate or with the courts. They did begin to learn to construct logical arguments, logical analysis, and how to evaluate an issue; they learned how to interpret a statute; and they did learn how to rely upon their own skills in a Socratic class.

Of course, this evaluation is entirely subjective. Even a careful follow-up of the progress of these students will do little to remove the subjectivity. There would be far too many variables to consider. However, I am convinced that Sales should be taught before common law contracts and as early as possible in a student's law career. Certainly some statutory course should be taught in the first year and this experience has demonstrated that Sales be successfully taught to beginning law students.