

Teaching Law — Making Lawyers

By Norberto J. Quisumbing *

In recent years, there has come to be drawn a distinction between teaching law and making lawyers. It is not denied that law has become complex and complex law can only be learned and taught today in the great modern law schools. But, it has also been said that the law graduate is usually not ready for the practice of law. Law was taught, but lawyers were not necessarily evolved out of the students.¹

Practitioners of law complained of the alleged unpreparedness and impractical knowledge of their young assistants fresh from law school. Even bar topnotchers were found to be disappointments. Certain law schools begin to advertise themselves as offering law in practical courses.

The law graduate of today stands indicted of being learned in the theory of law, qualified to teach it but not to practice it, useful only to himself but not to the community he is intended to serve. The indictment more properly stands against the law school from whence he comes.

Fault has been tried to be laid in the law curriculum. New "practical" subjects have been added. Practitioners have been invited to teach. But the indictment still stands.

The fault lies elsewhere.

The fault lies in the approach to the law adopted by the law professor—for the student. The student's approach is to the principle and then to its illustrative cases or the cases illustrating the principle. The lawyer's approach is to a case he receives. It is his task to look for the governing principle of law. While the student approaches the law through the principles, the lawyer approaches through a case.

It is true that, knowing the principles as gleaned from illustrative cases, the student should be able to know when the principles governs a set of facts and when it does not. But, it is also true that the approach

* Professor, College of Law, University of the Philippines.

¹ Similar observations made abroad. Lavriz Vold, *Legal Preparation Tested by Success in Practice*, 33 *Harvard L. Rev.* 168, 174-179; Sidney Port Singson, *continuing Education of the Bar*, 59 *Harvard L. Rev.* 694; Jerome Hall, *Plan for College Law Education*, 56 *Harvard L. Rev.* 245; *the Place of Skills in Legal Education*, 45 *Columbia L. Rev.* 345.

is different and the lawyer's approach is, at the very least, novel and unfamiliar to the law student.

If the fault lies here, the remedy is patent. Both approaches to the law should be employed in law schools. The student should be made to study principles and then their illustrative cases. At other times, he should be given problems consisting of sets of facts for study and required to solve the same by determining the governing principles. The broad expanse of law to be covered by the student during his school term cannot justify his continuous "spoon-feeding" He has faculties to be developed and trained.

Certainly, the introduction of the course on Trial Technique is a step in the correct direction. The professor handling it should however remember that the student should be made to discuss not only cases which have already been tried but also cases which will come up for trial. No hypothetical case can truly present the actual problems that face an advocate in court. To bring the realism of the courtroom to the classroom, the current actual cases should be preferred for discussion rather than those classic cases and trials. The many little circumstances of the case make out its true atmosphere. Being highly volatile, time effaces these minute details and the case becomes stale for discussion.

The remedy here proposed also calls for the revision of the method of teaching existing courses. In Legal Forms, little reliance should be given to form books. The principles of pleading and practice, as well as conveyancing, have been studied extensively and intensively by the students in other courses. The application of these principles and their application in the manner of lawyers, is the concern of Legal Forms. A form should not be given and then studied as to how it illustrates the principles of pleading and practice of conveyancing. The student should be given a problem consisting of a set of facts and then made to prepare the corresponding pleading or document. The correctness of the pleading or document would depend on the student's ability to realize that a certain principle of pleading and practice or conveyancing applies to the case. Nothing—except the facts of the case—should suggest to the students the applicable principle.

With respect to judicial pleadings, the following problems may be given:

1. A and B desire to sue for the collection of a ₱10,000 30 days promissory note signed by C, D and E jointly and severally. Because E is not in the country, A and B desire to sue C and D only. Prepare the necessary pleading, petition, motion, notice or paper.

The correct pleading requires a determination of whether or not E is an indispensable party.

2. Defendant C in the above case in turn desires to collect two promissory notes in the sum of ₱2,000 each signed by plaintiff A and a third promissory note for ₱3,000 signed by plaintiffs A and B jointly and severally. Prepare the necessary pleadings, petitions, motions, notices or papers.

The two causes of action for the collection of the two promissory notes in the sum of ₱2,000 each signed by plaintiff A may properly be joined in one counterclaim, but the third promissory note must be claimed by separate counterclaim against plaintiffs A and B. The principle of joinder of causes of action is here to be applied.

3. Defendant D claims to have signed the promissory note in favor of A and B only to accommodate C and F, the real beneficiaries of said note, who bound themselves to indemnify him in case he should be compelled to pay on said note. Prepare the necessary pleadings, petitions, motions, notices or papers.

An answer with cross-claim may be filed for defendant D.

4. Subsequently, E arrives. A and B want to sue C, D and E for the return of certain jewelry allegedly given to them to sell on commission and converted by them for their own use. A and B desire that no separate suit be filed, if possible. Prepare the necessary pleadings, petitions, motions, notices or papers.

An amended complaint can be filed to join E as a new defendant and to allege a second cause of action. E being a proper defendant to the original cause of action, the two causes of action can be joined in one complaint—it being remembered that a party may in one complaint state as many different causes of action as he may have against an opposing party subject to rules regarding venue and joinder of parties.

5. On January 5, 1940, A, a resident of 123 Juan Luna, Manila, executed a private instrument purporting to be a deed of sale of a parcel of land situated in Polo, Bulacan, covered by Transfer Certificate of Title No. 12345 of the province of Bulacan issued in his name, in favor of B, a resident of Manila, for the sum of ₱10,000.00 with right to repurchase the same for the same amount on or before December 31, 1943. It was further stipulated in the same instrument that A shall have the right to continue occupying the land in lease at a monthly rental of ₱100.00. A paid all rentals due but failed to repurchase the land within the period stipulated.

(a) B desires to institute an action in court to compel A to execute the necessary public instrument of sale so that he may register the same with the Register of Deeds, to declare the consolidation of his title to the land, to recover possession of said land and eject A therefrom, to recover rentals at the rate of ₱100.00 a month from the institution of the action to the date of the actual vacation of the land, costs of suit and for other reliefs the Court may deem just and equitable in the premises—having extrajudicially demanded the foregoing of A and the latter having refused to comply with the same. Prepare the necessary pleading, petition, motion, notice or paper.

The preparation of the correct pleading must involve the determination of the court with jurisdiction over the case, the proper venue, and comply with the rule on actionable documents.

(b) Prepare a notice of *lis pendens*.

(c) Before service of the answer, B desires to dismiss the action. Prepare the necessary pleading, petition, motion, notice or paper.

Distinction is here to be made between a notice of dismissal and a motion for dismissal of action as provided by rule 30 sections 1 and 2 of the Rules of Court.

(d) A alleges that there was a mistake in the writing, that the writing failed to express the true intent and agreement of the parties, that the true intent and agreement of the parties was not a sale with *pacto de retro* but a loan with security; that he merely received a loan of ₱10,000.00 to be paid on or before December 31, 1943 with 12% interest per annum payable monthly; that the actual market value of the land given as security is ₱30,000.00; that he continued and never lost possession of the land; and that on October 1, 1946 he tendered the sum of ₱10,000.00 to B in payment of the loan but the latter refused to receive the same without justifiable reason. A now desires to deposit the same in court by way of consignation. Prepare the necessary pleading, petition, motion, notice or paper.

The answer that must be filed for A should comply with the parole evidence rule and allege a counterclaim for the discharged of the obligation based on tender of payment and consignation.

(e) After service of the answer, B desires to dismiss the action. Prepare the necessary pleading, petition, motion, notice or paper.

Now, a motion for dismissal of action—rather than a notice of dismissal—is required.

(f) A failed to file any answer to the complaint within 15 days from the date of the service of summons on him. So that B can proceed to secure judgment, prepare the necessary pleading, petition, motion, notice or paper.

(g) A filed his answer. Issue having been joined, the case was set for trial by the Court. Before the day of trial, however, B told A that the trial had been postponed and asked the latter to meet him instead at another place to settle the case. Consequently, A did not appear at the trial the following day. B appeared and, without informing the Court of the representations made by him to A, presented his evidence. Judgment was rendered in favor of B.

(1) Within 30 days from notice of the judgment, A desires that the judgment be set aside. Prepare the necessary pleading, petition, motion, notice or paper.

A motion for new trial in this case requires affidavit of merits.

(2) Within 60 days after A learns of the judgment and not more than 6 months after such judgment was entered. A desires that the judgment be set aside. Prepare the necessary pleading, petition, motion, notice or paper.

(3) After 60 days from learning of the judgment or after more than 6 months from the entry of the judgment, has A any remedy against the judgment? If he has, what is the period of limitation for the taking of said remedy? Prepare the necessary pleading, petition, motion, notice or paper—if he has a remedy.

(h) After due trial in which both parties presented their respective evidences, judgment on the merits was rendered by the Court in favor of A and against B. The latter desires to bring the case to the Supreme Court for review. Prepare the necessary pleadings, petitions, motions, notices or papers.

With respect to conveyancing, the following problems may be given:

1. A wants a last will and testament drawn for him so that—he bequeathes to his surviving spouse and three legitimate children only so much as they are entitled to under the law, except that one of his said children shall receive ₱10,000 more than each of the others; he bequeathes to his acknowledged natural child a sum not less than ₱10,000 and to his good friend X as much as he possibly can give under the law. Prepare the same.

A correct will must involve the determination of the legitimes of each of the heirs.

2. A group of persons desire to organize a corporation with an authorized capital stock of ₱500,000 to engage in real estate business. They however, have only ₱1,000 fully paid on the capital. They also want a prohibition inserted in the bylaws against the transfer of stock without previous notice to the corporations. Prepare all documents necessary for incorporation.

Necessary to the preparation of the incorporation papers is the correct determination of the par value of stock and the number of shares to be authorized, as well as the legality of the prohibition desired.

3. A desires to sell all of his business and all of the fixtures and equipment used in and about said business to B. Prepare the necessary documents.

Compliance with the requirements of the Bulk Sales Law is called for.

This method of teaching Legal Forms has been employed by the writer for some three years. He found his students more interested in the course. They were elated by the feeling that they were playing the role of lawyers. The writer ventures to predict that, when the students get used to that feeling, then they have become lawyers in fact.

* † ~

The ends for which Government exists include whatever the collective action of men associated for the common good can do for the moral and material welfare of a community and the individual who compose it, helping them to obtain the maximum that life can afford of enjoyment and to suffer the minimum life may bring of sorrow.

BRYCE