

Series I.

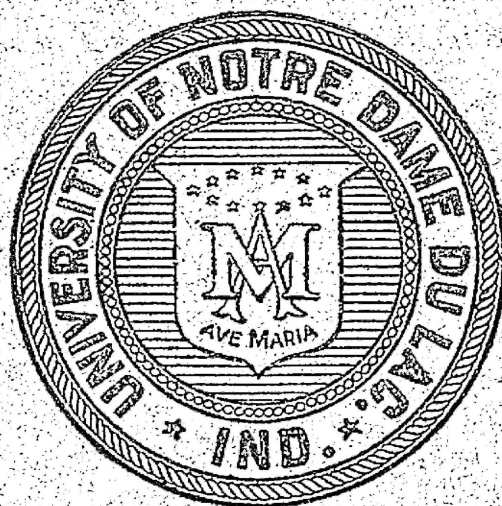
Number I.

BULLETIN

OF THE

University of Notre Dame

NOTRE DAME, INDIANA



LAW DEPARTMENT
1904-1905

PART THREE

PUBLISHED QUARTERLY AT NOTRE DAME
UNIVERSITY PRESS

JULY, 1905.

Application has been made for entry at the Post Office, Notre Dame, Indiana,
as second class matter.

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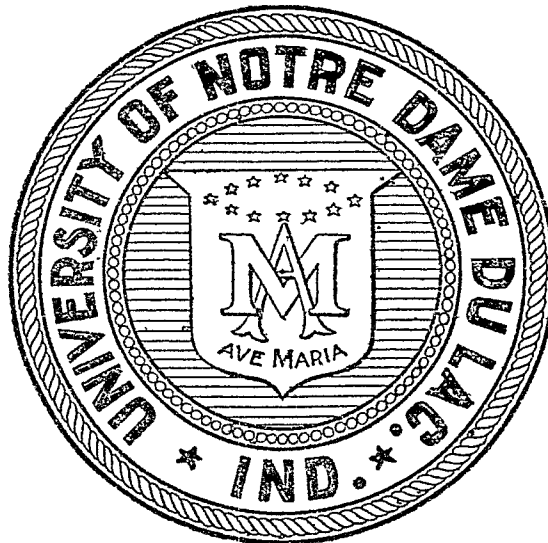
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LAW FACULTY.

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Law Department

of the

University of Notre Dame

The University of Notre Dame has earned a prominent place among the leading educational institutions of the country. It was incorporated sixty-two years ago, under the laws of Indiana. Its charter empowers it to teach all preparatory, collegiate and university branches, and to confer the degrees and honors appropriate to evidence their completion. These degrees represent as high a standard of educational equipment as those of any other American university.

The regular attendance of students numbers between 700 and 800. They are distributed among the several halls of the University, as St. Edward's, St. Joseph's, Carroll, Brownson, Corby, Sorin and Holy Cross. By this arrangement it has been found practicable to receive and instruct students of ages varying from early boyhood to thirty-five or forty years. The attendance is composed exclusively of males. Though conducted under Catholic auspices, yet there is no prohibition or restriction upon the matriculation and attendance of non-Catholics. These comprise at times a fifth or more of the student body. But the same general rules of discipline regarding respectful attention and proper

deportment at religious services are applicable alike to all.

THE GROUNDS

immediately tributary to the University comprise approximately 1,400 acres. They adjoin the corporate limits of South Bend on the north and extend almost to the Michigan boundary. South Bend is a well known and flourishing city. Its population is about 50,000. It is the seat of St. Joseph County, 87 miles from Chicago, and accessible by rail from all parts of the United States. The city of Niles, on the north, is only 10 miles distant, and a trolley line from it passes through the university grounds. In addition to the extensive area of land belonging to the University in its immediate vicinity, it owns and conducts in the neighboring township to the east a large farm, embracing in meadow, groves and cultivated fields, nearly 2,000 acres. From it come quite largely the milk, vegetables and other food supplies required by the students, thus assuring freshness and wholesomeness in their meat and drink.

The grounds at Notre Dame are famous for their beauty and attractiveness. The lakes, groves and distant river; the meadows and cultivated fields; the orchards and flower bedecked parks and gardens, combine to spread out before the appreciative vision a prospect singularly picturesque, beautiful and charming.

THE UNIVERSITY BUILDINGS.

The main and ancillary buildings of the University, including the various halls, telephone and express offices, a store and post-office, are about twenty in number. They are in the main of large size, and conform to the most approved architectural designs and sanitary requirements. Due measurably to this fact, as may be

presumed, the healthfulness of Notre Dame can justly be considered exceptional. But comparatively few of its inmates are compelled even in the most trying seasons to suspend work and have their names entered on the sick list. For such, however, there is an Infirmary on the premises, and medical services can there be secured, together with the care and nursing of highly qualified and devoted sisters.

The University is situated about two miles north of the business centre of South Bend, and almost a mile from its nearest suburb. It is impracticable, consequently, for students to board or have their lodgings in town. It would be too expensive and involve too great a loss of time to make trips daily between the University and South Bend. Moreover, it would be inconsistent with and subversive of

THE RULES OF DISCIPLINE

in force at Notre Dame—rules deemed essential to best results in educational work and the formation of sturdy and manly character. These rules contemplate not only close attention to school duties during the year, but also immunity from the distractions and temptations, amusements and social claims of city life. The regular period of the school year is too valuable to be lost to any marked extent in such trifles.

The University has long been noted for thoroughness in work and effectiveness in discipline, as tending to the utilization of time and the fixing of habits of diligence and punctuality. A sense of duty is involved in the maintenance of this reputation. Students are expected to be regular in attendance at class and diligent and prompt in discharging the duties devolving upon them. They are expected to take a practical view of educational work and to bear in mind that the few

years devoted to it must be depended upon to direct and influence all the subsequent years of their lives.

All students matriculated at Notre Dame, no matter for what course, stand primarily on the same footing. The halls to which they are assigned indicate in a general way their respective ages and educational standing, although the records of entry in the books of the University are the sources of original and controlling evidence in the matter. They reside during the academic year in comfortable quarters within the precincts of the University; share together food of the same kind in the refectories; have the same service at meals and in the use of light and heat, as well as in washing and mending; some sleep in dormitories and others in private rooms, according to their standing in scholarship and preliminary arrangements; study in common, each at his own desk, whether in the large study halls or private rooms, and meet for class-work in their respective recitation rooms, as called hourly by the signal bells. In short, they dwell together, meeting for recitation in class, for their meals in the refectories and for necessary recreation and healthful exercise in the great gymnasium or on the campus. Brought thus daily into close companionship, they become in time virtually the same as members of one great family, and a feeling of deep, unselfish and life-abiding friendship is often awakened among kindred spirits.

Everything needed can be had at the University, and seldom does occasion arise to visit the neighboring town. Visits to it are not favored. This is not alone in the interest of economy and for the avoidance of habits of extravagance and improvidence, but also to guard against loss of time and possible exposure to temptations. It is sought under the rules of discipline at Notre Dame to prohibit or avoid things manifestly

tending to undermine or make against the growth of moral worth and manly character. It is almost superfluous to state, consequently, that drunkenness or immorality is considered ground for expulsion, and that the use of intoxicating liquors is strictly prohibited.

The style of living at Notre Dame is simple and unostentatious. It is favorable to the formation of habits of thrift and frugality. Distinctions between the rich and the poor are discountenanced. No line of demarcation between them is ever knowingly permitted to be drawn. The highest standard of excellence is measured by scholarship and honorable deportment. Those crowned with the brightest laurels of the University are those who worthily attain to that laudable standard, irrespective of whether they be rich or poor.

This preliminary sketch may be deemed pertinent, if not indispensable, before proceeding to deal specifically with the

LAW DEPARTMENT,

for its students are inmates of the university, authorized to attend any of the collegiate or other classes, subject to the rules of discipline prescribed for collegiate students, and entitled to equal rights and privileges.

In 1869 the law course was established in a modest way as a separate curriculum during the presidency of the late Very Rev. William Corby, C. S. C. It was reorganized in 1884 by the late Rev. Thomas E. Walsh, C. S. C., who was then President of the University. The present Dean was called from Chicago, where he was actively engaged in the practice of law, and placed in charge of it. The need of making another start or beginning the work anew soon became manifest. Attention was first given to securing text-books and

reports sufficient to form the nucleus of a law library. In the following year began a gradual but steady increase in the number of students. Substantial improvements were made from time to time and new books added to the library, as circumstances seemed to warrant. Nevertheless, nothing was done in the way of exploitation, and for several years the course was not even advertised, as it was feared that in range of study and equipment it might seem presumptuous to invite comparison with older and larger institutions. It is well known that these are advertised mainly through the expressed good will and personal recommendations of their students and graduates, but Notre Dame lacked this advantage on account of the comparative paucity of such heralds and representatives. As time passed, however, these went forth in yearly increasing number and proved to be zealous missionaries in their praise of the work done in the law course. They found additional assurance of its thoroughness in the almost uniform success that attended them in examinations for admission to the bar in the various states in which they resided or to which they went for the purpose of establishing new domiciles. They observed with even greater confidence in their work of preparation that graduates of some of the most noted law schools failed in the same examinations. They were not unfrequently complimented by judges and members of the examination boards upon the accuracy and resourcefulness of their legal knowledge. The publicity of such facts, though slowly spreading, has served to attract here for the study of law a steadily increasing number of industrious and capable young men.

Under the influence largely of the American Bar Association, the period now commonly prescribed for

the study of law is three years. This reform was greatly needed, and it is gratifying that the response to the call for it has been so prompt and general. It means the elimination from the profession of persons unfitted to follow or engage in its practice. It means a higher standard of professional honor and efficiency. Notre Dame has sought to keep steady pace with the progress made in this direction. It aims to do its full share to elevate to the highest plane practicable the study and practice of the law. Considerations of public good and safety so demand, and it endeavors not to be second to any other institution in meeting the most exacting test of these salutary requirements. That its work in this respect has been followed by fruition is shown not only by the records of its students in examinations, but also by the fact that many of them enter successfully on the practice of the profession without previous probation or experience in the offices of other lawyers.

QUALIFICATIONS FOR ADMISSION.

In some law schools the requirements for matriculation are of an order so high as to be prohibitory upon the great mass of young men. Students are not received as candidates for diplomas unless previously graduated by some college of approved standing.

They must have received degrees evidencing the completion of some of the collegiate courses. Were this rule in general effect, all but a favored few would be shut out of the legal profession. The institutions in which it obtains may judge for themselves as to its operation. It may be assumed, however, that it has proved satisfactory to them, for otherwise it would probably have been modified or discontinued. In fact, it is hardly open to question that, generally speaking, a

student whose mind has been trained and disciplined by years of study in a college is better qualified to undertake the study of law, perceive its relations to human affairs, fathom its mysteries and solve its problems, than one who has not had that advantage. And yet a fair education and hard work, together with a bright mind, or natural endowments above the average, may enable the latter to do as well in the battle of life as his more favored brother, if not actually to outstrip him. The instances that might be cited in proof are so numerous as to leave the question no longer debatable. In view of this fact, not to mention a sense of duty in the matter, Notre Dame favors for its own guidance a rule more liberal than that which excludes all but college graduates from the study of law. It is not disposed to shut its doors in the face of honest worth and promising manhood, even though the general education of the applicant brings him only to the threshold of the collegiate courses. There are many capable and even gifted young men whose duties have been so onerous and means so circumscribed, on account possibly of absorbing cares and heavy expenses in providing for parents or brothers and sisters in periods of sickness and distress, that they could not devote the time nor make the outlay requisite for acquiring a collegiate education. Nevertheless, some of these are well educated along particular lines. They acquire necessarily a fair education in the line of their work or incidentally to it. This is true of those working in printing offices, commercial houses, trade establishments and offices of insurance, real estate and law firms, as well as of those who burned the midnight oil in study. It seems to be only fair and in consonance with a just sense of duty to allow credit for learning acquired in this way, and especially so when it appears to be equal in accuracy

and range to that acquired in the corresponding branches of an academic course. Such persons ought to be able to finish in a comparatively short time at Notre Dame studies of the preparatory or high school grade in which they may be deficient. They could then enter upon the study of law with happiest results, close attention and the requisite time being given to it.

It becomes pertinent here to indicate more specifically the standard of qualifications for the matriculation of law students at Notre Dame. It is this, to wit, graduation from any reputable high school or completion of the preparatory course at this University. This gives collegiate standing to the student. He is a freshman, so to speak, or entitled to rank as a first year's student in collegiate work. No persons of lower grade can be received as regular law students and candidates for degrees.

Students from other law schools are received at any time and allowed due credit for the work previously done. They must, however, attend class for at least one year in order to be entitled to the privileges and honors of graduation.

Lawyers who have been engaged in the practice of the profession or have only been admitted to the bar, as the case may be, are admitted to the Senior class and entitled to the degrees appropriate to their work and standing at graduation in the following June.

Special students are those who wish to receive instruction in the science of the law generally or in some of its branches without becoming candidates for degrees. No particular entry requirement is prescribed for them, aside from securing the consent of the Prefect of Studies and being of sufficient age and capacity to understand and profit by instruction in the law. The regular students who enter the law course as candidates

for degrees must be at least 18 years of age, but this rule is not necessarily applicable to those who pursue special studies. As an education can hardly be called complete without at least an elementary knowledge of the law, the number of special students ought steadily to increase. A knowledge of the law is the bulwark of liberty. All the relations of life are within the sphere of its power to destroy, modify or protect. It points out the safe path to follow in all human affairs. It warns men of and saves them from possibly great losses in the contracts incident to their business. It admonishes them of and guards against possibly heavy damages accruing from torts or negligence in the management of property or their personal conduct toward others. It accompanies and protects them in their travels on land and sea. Night and day it is over and around their homes and possessions, assuring them of safety in their absolute rights of life, liberty and property. Moreover, no other branch of study compares with it in disciplining the mind, directing the currents of thought, intensifying the powers of analysis and discrimination, and keeping the judgment in all the affairs of life within the boundaries of the practical—or what may be called common sense, which is the foundation of the law.

THE COURSE OF STUDY

at Notre Dame covers a period of three academic years. The academic year begins for all the courses early in September, and closes ordinarily before the 20th of June. There is no break in the regular order of work through the school year, except during the Christmas holidays, when a vacation of two weeks is allowed, in order that all who wish may visit their homes.

Students are required to be regular and prompt in class attendance. Absence is not excused unless in case of sickness. If continued for an unreasonable time it deprives the student of credit in the year for the time lost and entails forfeiture of the right to graduation, unless the lapse be satisfactorily repaired by subsequent study.

Lack of regularity or remissness in the discharge of duty is an intolerable evil, disturbing to earnest and industrious classmates and undoubtedly harmful to the delinquent himself, in that it prevents him from forming a clear and accurate conception in unbroken continuity of his prescribed work. Breaks and intervals in his knowledge of the law make as evidently against his thoroughness and proficiency as broken cogs make against the appearance and efficiency of wheels in machinery. Strictness in the matter rests not alone upon a conscientious sense of duty to the young men themselves, their parents, the legal profession and the public, but also to the University, so that its reputation of affording exceptional opportunities and facilities to become thorough, practical and proficient in the law may not be impaired or jeopardized.

There are three regular classes in the law course, which are distinguished respectively by their years of study, as First or Elementary, Second or Junior and Third or Senior. For example, after a year's work in the First Class its members are promoted to the Second; another year of study in this, and they are advanced to the Third, thus becoming Seniors. In the following June, or at the end of the third academic year, they are graduated, receiving the degree of LL. B. This marks the triumphant finish of the regular course in law. Realizing, however, that it is a life study, some of the more fortunate of the young men may find it

practicable to continue the work for another or fourth year. In such case they enter and become members of the Postgraduate Class, and receive on graduation a year later the degree of LL. M. Graduates are admitted to the bar on motion and presentation of their diplomas by the Supreme Court of Indiana.

Young men find it greatly to their advantage, circumstances permitting, to study law for the full four years at a university, where they are in an atmosphere stimulating and favorable to work; where wholesome emulation incites them to call into exercise their dormant energies and hidden powers; where they enter into the spirit not only of the law, but also of the different academic courses, acquiring a helpful knowledge of educational work on its broadest lines. Moreover, the day for studying law in an office or in private has passed. It seems now to be practically out of the question to acquire a connected and systematic knowledge of this great science in that obsolescent way. It must be remembered that in many states it is threefold more difficult to pass successfully an examination for admission to the bar now than it was when the old system prevailed. Indeed, one ought to acquire a more general, accurate and systematic knowledge of the law in three or four years in a properly equipped and well conducted law school than in twice that time under the old methods.

There are three regular recitations daily, comprising approximately four hours, for each and all the classes during the three or four years of study.

Special exercises likewise are announced from time to time, as in the actual preparation of pleadings, the examination of abstracts of title, the writing of deeds and leases, the making of wills and other instruments and the dispatch of such business as is customarily

transacted in well regulated law offices. The special work requires from one to two hours a day throughout the year and is not less imperative than are the regular recitations in the obligation of regularity and punctuality in attendance.

The subjects of study in the law course are covered by text-books, lectures and illustrative cases, as well as by theses and moot-court work. They are likewise searchingly reviewed in the daily quizzes. The regular recitations cover all branches of the law, as here indicated:

FIRST YEAR.

[Each subject 5 hours a week until finished.]

Kent's Commentaries (Abridged), Reed's Rules of Order, or Waples' Parliamentary Law, Natural Law and Legal Ethics.

Persons and Domestic Relations.

This branch of the law refers to natural persons and their varied relations with one another and the state, although it deals more specifically with the property interests and mutual rights and duties of husband and wife, parent and child, guardian and ward, master and servant. Natural persons and their relations to one another constitute primarily the foundation upon which rests the whole structure of the law. The better we know them through study and observation, the more clearly we perceive the needs incident to their progress and development and the more intelligently we prescribe the laws requisite for their protection—for the protection of life, personal security and private property. They preceded in their origin all positive laws and even the simplest form of government. They established society and formed the state. They enacted laws answering to the requirements of changing conditions in the line of their activities. They devised methods of co-operation, and with lapse of time created artificial persons or corporations. The impulses and motives that actuated and led them to pursue the course they followed are still in unabated force and effect, being essential to progress and development. In view of these facts, it is sought at Notre Dame to study the subject of natural persons as viewed in their domestic relations before or at least contemporaneously with their acts. These acts, whether in making and preserving the law or in violation of it, come within the sphere of the students' work at as early a date as practicable. When impracticable to enter upon this subject as an initial or early study, as in the case of students who become

enrolled after it has been formally treated, occasion is found from time to time to repeat or apply its most salient principles to known or described states of fact. This fully meets the requirements until the return of the time for its more formal treatment.

The Law of Contracts.

This is a fundamental and most important branch of the law. It comprises all transactions involving agreement, whether express or implied, in the commercial world or the affairs of daily life. In short, it is the basis of well-nigh all branches of the law not included in the range of torts and crimes. For example, all transactions in real estate, whether by sale, lease or gift, are necessarily founded upon contract. And so in respect to negotiations affecting personal property, whether by sale or bailment, and whether comprising a ship at sea, the merchandise on board, a drove of cattle, the products of the harvest or a spool of thread. So, too, regarding bills of exchange and promissory notes, suretyship and guaranty, bonds and mortgages, principal and agent, partnership and corporations, policies of insurance and powers of attorney, arbitration and award, the employment of skilled workers and common laborers—indeed, every relation of life involving agreement, as where the minds of persons under no legal disability meet with contractual purpose upon any lawful subject actually or potentially in being, and of sufficient moment not to fall as a consideration below the dignity and scope of the law. This is studied with exceptional thoroughness at Notre Dame. Among its chief subdivisions are offer and acceptance, agreement and obligation, the essential elements of contract, statute of frauds, quasi contract, illegality and public policy, moral obligation and reality of consent, misrepresentation and mistake, dependent and independent promises, impossibility of performance, conflict of laws, construction and waiver, conditions and warranties, assignment and discharge.

Torts or Private Wrongs.

A subject of exceptional interest and related in fundamental importance to contracts, but differing in being outside the pale of agreement and within the scope of obligation arising from injury or damages caused to others by negligent or wrongful acts independent of the will. The treatment of the subject includes a full outline of the substantive and adjective laws governing it, the line to be drawn in distinguishing torts from contracts and crimes, persons liable for torts, negligence and nuisance, libel and slander, wrongs affecting the family relations, wrongs affecting possession and property, remedies and damages. The law of torts differs from that of contracts in fixing its obligations independently of the will of the parties concerned. In contracts mind must meet mind in every essential particular touching time, place, subject-matter, consideration and legality. When the offer involving these elements is unequivocally and unqualifiedly accepted the contract is created and becomes a living force, binding upon both parties,

and no longer changeable at the will of either. This obligation arises from the contract, and should either fail to perform or fall short in performance it gives the other a right of action for the breach or deficiency. In tort, on the other hand, the parties may be entire strangers to each other and have no thought of entering into relations productive of liability. A person may by a negligent act incautiously injure an entire stranger in the street, as by driving a vehicle against him, and on so doing an obligation at once arises and binds him as firmly as by contract to the injured man to make amends in damages for the wrong done. Again, a person may by a negligent and wrongful oversight, as where he furnishes to a customer a defective vehicle that breaks down and causes injury, create an obligation binding upon him to repair so far as practicable by the payment of damages the injury thus caused. A railroad company may suffer its track to become defective or its employes careless in the performance of their duties, and a train may thus be derailed or a collision take place, injuring many passengers. In such case a like obligation would at once arise in law and bind it to make payment to them for the injuries thus sustained. Defective machinery or instrumentalities furnished by an employer for the use of his workmen in the industrial domain would charge him with liability for injuries caused by their defectiveness. In view of such illustrations, it will appear clear that, as a rule, a tortious act is independent of the will, although its commission is attended with an obligation in law to make amends by the payment of damages for the wrong done. Moreover, the parties to a contract must be of legal age, but as the will is not an element of tort, infants, insane and intoxicated persons may become guilty of and responsible for it. In many cases, indeed, the will may be directly opposed to the commission of the tortious act, but where carelessness or want of reasonable foresight nevertheless leads to it the obligation at once arises and binds the tortfeasor to make good the consequent loss. If the will were to enter into or inspire the wrongful act, it would change its character under ordinary circumstances, making it a crime instead of a tort. In short, add the will to wrongful act, and it becomes a crime; separate it from the crime, and a tort remains. This important subject is developed in all its bearings in the law course at Notre Dame.

Criminal Law or Public Wrongs.

This is usually the first law that men are compelled for their common protection to formulate and execute in the organization of society and formation of the state. The degenerate or vicious element is opposed to law and prone to attack the person and seize the property of him who has been industrious and provident. This condition precedes all positive law and is subsequently manifest in open opposition or schemes to evade its enforcement. In the system of study at Notre Dame the distinction between the common and the statutory law of crime is pointed out, as in the case of *mala in se* and *mala prohibita*. The growth of the criminal law for the protection of the individual and his property and the

security and promotion of the common welfare is shown with due reference to existing conditions and tendencies. Instruction on this subject includes the elements of crime, intention and will maliciously directed, murder and manslaughter, arson and burglary, robbery and larceny, treason and offences against the government.

Forensic Medicine or Medical Jurisprudence and Toxicology.

This is a very interesting and instructive study. It deals with the phenomena and signs of death, post-mortem examinations, personal identity, causes producing violent death, examination of blood stains, death from asphyxia, electricity, heat, cold, starvation, etc., feigned diseases, infanticide, idiocy, insanity, dementia, mania, paresis, poisons, mineral acids, vegetable and animal irritants, cerebral neurotics, malpractice and medical subjects generally in their relation to crime.

Property, Real and Personal.

This subject of exceptional interest is at the basis of our social fabric and civilization. It has the sanction of existing laws, and upon it rests the superstructure of governments and nations. In treating of it the origin of property is dwelt upon and made clear by many illustrations; personalty is viewed with reference to the matter of acquisition, rights of possession, mobility and rules of transfer, while realty is viewed in the aspects of its estates and feudal tenures, uses and trusts, statute of limitations, emblements, fixtures, powers, covenants, easements, deeds, mortgages, releases, statutory rules and the rights respectively of landlord and tenant.

SECOND YEAR.

[Each subject 5 hours a week until finished.]

Blackstone's Commentaries (Abridged).

Criminal Procedure.

This is the adjective branch of the criminal law and concerns itself with the penalties and remedies for its breach and the procedure for their enforcement, as conducted in court and carried into effect by the sheriff. It deals with the arrest of accused persons, preliminary examination, commitment or bail, office of grand jury, the indictment and pleadings, motions and evidence, trial and verdict, final proceedings and habeas corpus.

Corporations—Private and Public or Municipal.

The line of distinction between these two great classes of corporations is well marked, and they are treated separately. Under the system of study at Notre Dame, however, it is sought to con-

centrate the attention upon each branch of the law until it is finished and has taken deep root in the mind. It is considered more fruitful of satisfactory and abiding results to pursue this course than to follow that of some other institutions and deal with it at widely separated intervals, allowing other subjects to intervene and lead at times to confusion and loose habits of thinking. For much the same reason it is sought here to associate or bring them together when practicable, so that their mutuality of relation may be more readily understood and a clearer knowledge of them acquired. Hence, these two great classes of corporations are dealt with in consecutive order. As they are distinguished as artificial persons in law, it is deemed advisable to deal with them early in the second year, natural persons thus coming in the first. The subject of private corporations is more extensive than municipal, and it is developed at greater length. In brief, the subject of corporations includes their nature and creation, powers and liabilities, acts of promoters and officers, charters and management, ultra vires acts and dissolution, rights and remedies of creditors; also, nature and powers of public corporations, legislative control, municipal securities, liability on contracts and for torts, city ordinances and police courts.

Partnership,

Or the association of two or more persons for carrying on a business and dividing the profits between them. It is a very close and confidential relation, each member becoming the agent of the other within the usual or apparent scope of the business. The study of the subject comprises the several kinds of partnership, including joint stock companies, articles of agreement, essential elements of the relation, express and implied rights and liabilities, actions or suits between partners as well as between them and third persons, liabilities and grounds of dissolution.

Agency.

In the widening areas of commerce and increase of wealth throughout the world the law of agency has grown apace. In a broad sense the relation exists where one person authorizes another to act for him or in his stead. It involves the general principle *Qui facit per alium facit per se*—He who acts through another acts himself. In dealing with the subject it is necessary to study the means of creating the relation of principal and agent, distinction between agent and servant, creation of the agency by appointment, ratification, estoppel or necessity, delegation of authority to sub-agents, liability of principal for acts of agent, personal liability of agent for his acts, powers and liabilities of public agents, mutual duties and liabilities of principal and agent to each other, and termination of the relation.

Sales.

This important subdivision of the law of contracts is treated briefly under that head, but on account of the enormous increase of

trade and commerce throughout the world during the last century it has outgrown the modest compass of its former presentation, and several text-books are now devoted specially to it. In studying it the elements of contract must be considered primarily, and likewise the statute of frauds. The distinction between sale and barter or exchange is explained, likewise the need of acceptance as well as delivery in the transfer of things sold, the sale of chattels specific and not specific, the nature of and distinction between conditions and warranties, stoppage in transitu, rights of unpaid sellers against goods sold and transferred, effect of illegality, payment and performance of contract, and the like.

Bailments and Carriers.

This is a very practical branch of the law and necessarily in constant application throughout the country. Our law of bailments comes from that great world source of legal wisdom, the Civil or Roman law. The several kinds of bailments, excluding the mutuum, are as accurately and clearly classified in the Institutes of Justinian as in *Coggs vs. Bernard*, *Ld. Raym.* 909, or any of the recently published text-books. Indeed, we still use the Roman terms in designating them, as depositum, mandatum, commodatum, pignus and locatio. Whenever a person commits the care of or loans an article of property to another, or intrusts its use to him for hire or with a view to having it carried to some other place, a bailment is created, such person becoming a bailor and the recipient a bailee. Carriers comprise all who make a business of carrying goods and passengers for hire, whether they be railroad or steamboat companies, the owners of ships or city trucks, draymen or stage coach proprietors. They are liable as insurers of the goods delivered to them for transportation, and the same is true regarding the responsibility of innkeepers for the goods and effects of guests intrusted to their care as bailees. A few of the chief subdivisions are delivery and acceptance, distinction between bailment and sale, subjects of bailment, liability of bailee under special contract, degree of care necessary, denial of bailor's title estopped, a sale if ownership change to bailee, what may be pledged, interest of pledge assignable and subject to judicial sale, payment and redelivery, the hiring of services or chattels, rights and liabilities of warehousemen, forwarding merchants, wharfingers, safe deposit companies, agisters, factors, innkeepers and carriers.

Insurance—Fire, Life, Accident, Marine.

The origin of insurance is involved in obscurity, although the principle as applied to individual or private risks was evidently known in ancient times. At any rate it existed as a definite system as applied to shipping or maritime risks during the Middle Ages. Fire and life insurance came very slowly into use, and not earlier than the last century did it take definite shape under sanction of the law. Since then insurance companies of many kinds have been organized, and a person may now insure against loss or injury by accident, dishonesty or negligence on the part of employés

or others, nonpayment of rents or debts, bankruptcy or insolvency of debtors, failure of title in the purchase of land or chattels, damage to or death of live stock, destruction wrought by the elements in extraordinary storms, etc. It has usually been a lucrative business, and hence the steady increase in number of companies and subjects of risk. The chief subdivisions for study are representations, warranties, concealment, premium, formation of contract, policies of various kinds, subject-matter and insurable interest, double and reinsurance, agency, waiver and estoppel, assignment and change of interest or title, vacancy and repairs, notice and proof of loss, right to repair or rebuild, measure of damages, conditions affecting mortgages and subrogation.

Common Law Pleading and Practice.

This subject calls into exercise the student's power of attention, ability to compare and analyze, accuracy in the relation and sequence of thought, resourcefulness in finding and taking the correct initiative in the theory to be adopted, and skill in the logical development and establishment of the theory, plan and facts in the case. It is impossible to find a better system of logic and practice in close reasoning than is afforded by the study of common law pleadings. Moreover, these pleadings as developed through several hundred years of use and practice may be said to underlie the code and other forms of pleadings more recently adopted. Hence the common law system of pleading and practice is taken up primarily at Notre Dame. The subdivisions studied are here indicated in part: Courts and jurisdiction, capacities and disabilities of parties, threefold division of actions—real, personal and mixed—personal actions *ex contractu* or on contract, as *assumpsit*, debt, covenant and account; personal actions *ex delicto* or tort, as case, trespass, detinue, replevin and trover; the summons or *capias* to begin the action, and then the declaration, plea, replication, rejoinder, surrejoinder, rebutter and surrebutter; also, the demurrer, pleas in abatement or in bar and the several kinds of motions; likewise, *quo warranto*, *habeas corpus*, *scire facias*, garnishment, attachment and ejectment in the real, mixed and statutory actions and forms of procedure; arbitration and award, *certiorari*, prohibition and *mandamus*, trial and development of the facts under the evidence, instructions of the court and verdict of the jury, grounds of motion for a new trial, entry of judgment on the verdict if motion be refused, and then appeal on claim of error to the court of review or supreme court.

THIRD YEAR.

[Each subject 5 hours a week until finished.]

Robinson's Elements of American Jurisprudence.

Equity Pleading and Practice.

Pleading in courts of equity or chancery is less technical and complicated than at common law. It is marked by greater fulness and clearness of statement. We may divide equity pleadings into the bill, disclaimer, plea, answer and replication; also, the demurrer. The bill, answer and replication commonly set forth and join issue on the disputed facts and lead in importance. The bills are classified as original and not original. Again, they pray relief or do not pray relief. The original bills praying relief are those claiming rights of complainant in opposition to defendant, or the class of bills customarily in litigation; also, bills of interpleader and bills of certiorari. The original bills not praying relief are those to perpetuate testimony, de bene esse and for discovery. The bills not original comprise as a continuation of those just named the supplemental bill, the bill of revivor and the bill of revivor and supplement. The bills not original are regularly intended for purposes of cross litigation, or to controvert, suspend, reverse or carry into execution a decree of court. They are the cross-bill, the bill of review, bill to impeach a decree for fraud, bill to suspend or avoid execution of a decree, bill to carry a decree into execution, bill in nature of bill of review, bill in nature of bill of revivor, bill in nature of supplemental bill, and supplemental bill in nature of bill of review. The bill is said to contain nine parts, although seldom having more than five or six. They are the address, introduction, premises or stating part, confederating part, charging part, averment of jurisdiction, interrogating part, prayer for relief and prayer for process. It is shown in the course of instruction that no complainant can sue in equity unless the common law fails to afford adequate relief. If he seek damages he must sue in a common law court. Nor has equity anything to do with criminal matters. It has no jury trials. The chief subjects of litigation in equity are comprised under the general heads accident, fraud, mistake, specific performance, trusts, injunctions, the reforming of instruments and infringement of patents and copyright.

Code Pleading.

This system is followed, with statutory modifications, in three-fifths of the states. And in Great Britain it was adopted in the main under the Judicature Acts of 1873 and 1875. It had its origin in New York, ousting and taking the place of equity and common law pleadings. The commission to act in the matter began the work of codification under the Constitution of 1846. But it required several years to complete the codes of civil and criminal procedure. It was provided that there should afterward be no distinction between legal and equitable remedies and that the

common law forms of action should be abolished. The new method was shaped chiefly in accordance with equity procedure, for which it was substituted. One form of action was prescribed for all classes of cases, whether of a legal or equitable nature. The pleadings were greatly reduced in number and designated the complaint or petition, answer and reply; also, the demurrer. A rule was adopted requiring them to be concise and framed in language clear, intelligible and easily understood. The new method was regarded as a necessary reform in the interest of justice and widely adopted, especially in the new states. Since then, however, so many statutory revisions have been made and so many rulings of the courts leading to divergences have entered into it that it is now hardly less free from doubt, uncertainty and technicalities than the old system. At any rate, it appears to be easier to determine on the old lines whether one has a good cause of action. Moreover, the states that retained the common law pleadings show no disposition now to change to the code. And the same is true of the Federal courts. It is comparatively easy for a lawyer familiar with common law and equity pleadings to accommodate himself to the practice of a code State, but not so where a lawyer of the latter undertakes to practice under the old system, although the general principles are the same. At Notre Dame all the ordinary systems of pleading are taught, and a diligent student ought to be able readily to qualify himself for practice in any State.

Evidence.

This is an exceedingly important subject. It comprises the body of approved rules under which the relevant facts in issue on trial may be introduced and submitted for impartial consideration to the court or judge and jury. It is the means by which proof is established. It is virtually the same under the code, at common law, in equity and under the criminal law, as well as before arbitration boards and legislative bodies. Its fundamental propositions are conclusive. Its four chief canons are thus stated: 1st, the evidence must correspond to the allegations and be confined to the point in issue; 2d, it is sufficient if the substance only of the issue be proved; 3d, the burden of proving a proposition or issue lies on the party holding the affirmative; 4th, the best evidence of which the case in its nature is susceptible must always be produced. A thorough knowledge of evidence is a necessary equipment of a trial lawyer. It is made the subject of exhaustive study at Notre Dame and applied regularly in moot-court practice. Mention may be made of a few of the topics that, with their subdivisions, must be carefully studied in dealing with it; the grounds of belief, it is easier and more natural to be truthful than to lie, things judicially noticed, presumptions of law and of fact, substance of the issue and relevancy, *res gestae* and burden of proof, hearsay testimony, matters of public and general interest, dying declarations, declarations against interest, confessions and admissions, evidence excluded on grounds of public policy, testimony of witnesses, their capacity and impeachment, records and judicial writings, experts and handwriting.

Damages.

As litigation is conducted primarily in common law courts with a view to the recovery of damages, the subject may fittingly be taken up after pleadings. The ultimate aim from the service of the summons to the levy of the writ of execution is to secure redress for the wrong alleged. Some reasonable rule is necessarily sought as a means of estimating or measuring the damages to be awarded. But little difficulty is encountered where a note, debt or claim for a specific amount is involved, for here a case of liquidated damages, so to speak, is presented, and full compensation is readily decided upon as the proper remedy. Otherwise, however, where the damages are unliquidated, leaving the measure or true amount to be ascertained by a careful examination and analysis of the evidence. Among the chief subdivisions for study are the theory and nature of damages, definition and classification, lawful and unlawful conduct, nominal and compensatory damages, exemplary or punitive damages, commercial paper and interest, province of court and jury, damages for nondelivery, nonacceptance or conversion of goods, nonpayment and breach of warranty, refusal of carriers to transport goods, injury in transit, loss or delay, consequential damages, injuries to passengers, failure to carry to destination, actions for damages against telegraph companies, ordinary and cipher messages, breach of marriage promise, damages for death by wrongful act, damages for wrongs affecting real property, including waste and nuisance.

Bills, Notes and Checks, with Suretyship and Guaranty.

The term commercial paper is often used synonymously with the subject stated. It includes suretyship and guaranty in so many of its phases that the order of study indicated has been found satisfactory. Commercial paper enters so largely into business transactions throughout the world that a correct knowledge of it is indispensable. While great diversity exists in the laws bearing upon it, yet a movement looking to its codification was inaugurated in 1895, the American Bar Association taking the initiative in suggesting it. The British Bills of Exchange Act of 1882 served as model. Prompt action was taken in the matter and in 1897 as many as 15 States and the District of Columbia had agreed to the draft submitted to them. Their agreement resulted in the Negotiable Instruments Law. While in no respect radical, yet it reduces to clear terms and pithy paragraphs the principles of the law merchant. In States that have not yet adopted it the general law on the subject must be studied. So at Notre Dame, although the Negotiable Instruments Law receives due attention. The subdivisions of Bills, Notes and Checks include in brief, Indorsements—blank, full, qualified, conditional and restrictive; persons signing—drawer, maker, surety and guarantor; contractual liabilities—drawer, drawee, acceptor and indorsers; acceptor's estoppels—cannot deny existence of signature of drawer, capacity to draw and sufficiency of funds on hand to pay; indorser's estoppels—cannot deny genuineness or

validity of paper, good title or capacity of prior parties; conditions of liability of drawer and indorser—due presentment for acceptance, demand of payment, protest and notice of dishonor, but these steps excused by overruling circumstances, no funds in drawee's hands, or waiver of protest and notice; to constitute a bona fide holder—good faith, in hand before maturity, valuable consideration, taken in usual course of business and without notice of defects; defenses—incapacity of parties, illegal consideration and want of consent; certification of check makes bank principal debtor, discharges drawer and gives it the credit of cash. Suretyship signifies the obligation assumed by one who binds himself primarily with the principal for the performance of the undertaking or payment of the debt into which the principal enters, while a guaranty is an undertaking by a person that if the one primarily liable to perform a specified obligation fail to do so he will himself be answerable for the default.

Equity Jurisprudence.

This branch of study is highly important. Moreover, it is fascinating in the harmony and impressiveness of its principles. It comes to us from the Roman law. At an early day the common law was so harsh and inflexible in its rules that it often failed in justice or fell short of reaching many cases. It was anomalous and uncouth in many respects and adapted only to a rude state of society. The kings were frequently appealed to for the redress of wrong when the law failed to afford relief. Some were too young to act in person and others were warlike and comparatively illiterate. Under such circumstances, they were naturally averse to take unaided action upon the petitions submitted to them, and they called to their assistance ecclesiastics held in high respect and learned in the Roman law, the most advanced and perfect system of jurisprudence then known to mankind. The prelates thus chosen by the kings to represent and act for them on matters affecting conscience, right and justice were, invested successively with the dignity and title of lord high chancellor. The care of the great seal was intrusted to them, and they became "keepers of the king's conscience," so that they might act as conscientiously as he should in the light of their religious training and legal learning. They were also to act with some measure of royal grace and favor, as the terms of even present pleadings in equity clearly show. In this capacity 160 of them served in successive order prior to the reformation in the 16th century. In passing upon the petitions referred to the throne and submitted to them they applied the rules of the Roman law, as refined by philosophy, together with moral precepts from the Bible, aiming to redress wrongs and do justice where the common law failed to afford relief. And little by little the common law yielded and accommodated itself on many points to the principles of equity as thus elucidated and expounded. The statutes also followed equity in several particulars, superseding the common law. Thus equity grew steadily in favor and became permanently established as a part of our jurisprudence. Its principles are as distinctive under the code as where the common law system of

pleading obtains. It searches the conscience and follows fraud and injustice into all the ramifications of human affairs. But it cannot be invoked for aid where the common law is adequate to grant relief. It is only in cases where a proper remedy cannot be had at law that equity consents to take jurisdiction. It is now so well established even in Great Britain, notwithstanding Blackstone's animadversions, that the Judicature Act specifically provides that in case of conflict between its provisions and those of the common law the former shall prevail.

Wills, Executors and Administrators.

The word "will" signifies the disposition of property to take effect after the testator's death. The word testament has a like meaning in the Roman law and is accepted as the proper name in such case in the countries of continental Europe and South America, whose basic jurisprudence is derived from that source. The word "will" is more commonly used in the United States, Great Britain and its possessions, although "testament" is often used in referring to the disposition of personal property. When intended to convey a present estate, though possession be retained until after death, the instrument of conveyance is a deed; but when the interest specified is not to accrue until after death, the instrument thus disposing of it is a will. The right to devise and to bequeath property is governed wholly by statute. A will is ambulatory and may be modified or revoked at any time before death, but once title takes effect under a deed the grantor has no further power over it. An executor is a person named in the will to represent and follow the intention of the testator in giving effect to its terms. Not only must the will be probated in court, but he must qualify there also and receive letters testamentary before he can lawfully act. An administrator is one appointed by the court to administer and settle the estate of the deceased, as where he dies intestate or without leaving a will, or dies testate without naming an executor. Such personal representative acts in accordance with the provisions of the statute and advice of the court. The utility and practical nature of this extensive branch of the law may be regarded as self-evident, and hence it must be carefully and diligently and ought to be exhaustively studied.

Constitutional Law.

This is the organic or fundamental law of our country. The Federal Constitution contains seven articles and 15 amendments. It went into effect March 4, 1789, and was the first of written constitutions. Even to this day the British constitution is unwritten. The Federal Constitution is the instrument by virtue of which the National Government exists, possesses powers and exercises functions apart from the states. It was adopted by the people, acting through their states, and sustains comparison to a charter creating and conferring power upon a corporation. As it is a grant of power the government has no more authority to

act beyond its scope than a corporation would have to act and make contracts in excess of its franchises. Whatever the corporation might thus do would be *ultra vires* and there is no good reason why the same rule should not apply to the government, with the difference that the act of the corporation is an indefensible usurpation and violation of duty to the state, while the act of the government is a violation of law and duty to the people, not less than an invasion of their fundamental rights. It is a dangerous exercise of usurped power in either case and tends to the subversion of law and the destruction of constitutional government. The courts would have no alternative but to take substantially this view if only the express terms of the constitution or charter were in question, but the implied powers give rise to doubt and controversy. These are within the scope of the general provision that all powers necessary to carry into effect the express powers are implied and may be constitutionally exercised. Within that broad license, which without other qualifications is the danger point in our organic law, many of the most momentous acts in our history have been accomplished. Possibly most of the functions of government are exercised within the sphere of these powers. It must nevertheless be remembered that constitutional government ends at the point where these powers exceed the purposes and objects of the organic law. All powers not granted to the Federal Government by the constitution remain in the people, and the state constitution, which comes nearer to them in their local concerns, is a limitation upon the exercise of power by the legislature, and not a grant. Local self-government is an essential feature of our political system. The study of constitutional law is exceedingly interesting and instructive. Moreover, no lawyer can fairly be considered great in the profession without having a thorough knowledge of it. A student ought to learn the constitution by heart. It is sought at Notre Dame to have young men make an exceptionally thorough study of it.

International Law.

A knowledge of the law of nations is an indispensable part of a liberal education. Young men generally, as well as law students, ought to familiarize themselves with its principles. In the diplomatic service and journalism it is particularly aidful. It is not a difficult study. In harmony with the general principles of law and equity, it may be considered a growth in the same lines. Like the law of the land, it is conventional and customary, or written and unwritten. The former consists in treaties, compacts, conferences, the formal agreements of international congresses, etc. The latter embodies those usages which the continued habit of nations has sanctioned for their mutual interest and convenience. Customs lawful and innocent are binding on the nations that adopt them, while customs unjust and in violation of the natural and divine law have no binding force. International law has high and unselfish aims in the domain of conscience and justice. It is divided into two branches—public and private. The public branch refers to the law of nations in the broadest sense, or the rules of conduct governing

their intercourse with one another as sovereign and co-equal members of one great international family. Those that widely differ from them in civilizing influences and standards of morals are not received into the family of nations, and hence not treated as subjects of international law. The family of nations includes the countries of Europe and the colonies established by them throughout the world, now changed in some instances to sovereign and independent nations more populous and powerful than the mother country. The private branch comprises the local laws of different nations with respect each to its claim of exclusive sovereignty, control of persons and property within its borders and observance of good faith in the comity disposing it to apply the same rules of protection to the people and property of other countries when traveling or abiding within its jurisdiction that such countries observe in the treatment of its citizens and their property under like circumstances. The term conflict of laws instead of private international law, is generally applied to the class of cases coming under this head. Of these mention may be made illustratively of marriage and divorce, birth and legitimacy, contracts and their enforcement, bills and notes, pending suits and judgments, assignments by insolvents, conveyances and intestate estates, etc. Some of the subdivisions of public international law may also be mentioned to indicate more clearly the line of demarcation: The several kinds of unions of states, recognition of belligerency, effect of change of sovereignty upon public and private rights and obligations, fundamental rights and duties of states, modes of acquiring territorial property, rivers, lakes, bays, gulfs, straits and marginal waters, vessels of war and merchant vessels, public diplomatic agents, right of asylum and extradition, aliens and their exemption from military or naval duty, letters of marque, privateers and pirates, naturalization and allegiance, mediation, arbitration, and measures of restraint short of war, causes, pretexts and kinds of war, effects of war on persons and property, military occupation and postliminium, means of carrying on hostilities, enemy character and non-hostile relations, prisoners of war, peace and neutrality, contraband goods, visit and search, right of angary, blockade and ship's papers.

POSTGRADUATE YEAR.

[Each subject 4 hours a week until finished, and 10 hours weekly for review.]

The State and Federal Courts and their Respective Functions.

A study of courts, both of law and equity, is aidful to the acquisition of a practical knowledge of the more difficult subject of pleadings. Places lawfully established for the administration of justice, they are the temples of the law, and those licensed to serve in them should do so with due reverence and a solemn sense of responsibility. While thorough instruction is given in respect to the courts and methods of trial in Great Britain and on the

continent of Europe, yet our own judicial system, both State and Federal, is even more specifically described and explained, and no doubt or obscurity regarding it is permitted to linger in the mind. It is shown how the courts are divided into many branches, with distinctive names, when the volume of legal business is great and so demands, as in the larger cities, while a single court under one name may dispatch as many kinds of business where the volume is smaller and the jurisdictional area less populous. The State trial courts and the courts of review or supreme courts and their functions are fully described, while the Federal Supreme Court and subordinate tribunals, as circuit courts of appeal, circuit courts, district courts and even commissioners' courts, receive becoming attention and explanation. The procedure on appeal or writ of error to the Supreme Court, State and Federal, is likewise fully elucidated.

The Roman Law.

This great system is the basis of the laws of more than three-fourths of the civilized nations of the world. Its importance and practical utility can hardly be realized unless it be studied attentively, earnestly and analytically. Thus studied, it is discovered to be a rich mine of legal lore. Its principles seem to shed light on all the ways to which human energies are directed in the evolution of affairs. So striking is this fact that there need be no hesitation in stating that it would be almost as helpful to a beginner in the law to study the Institutes of Justinian as Blackstone's Commentaries. It may be said indeed that the Commentaries command much of their favor through adherence to the plan and use of the matter of the Institutes and Pandects. Following are the chief subdivisions comprised in the course of study at Notre Dame: Origin and growth of the Roman law, the *jus civile*, the XII Tables in substance, the Roman family and gens, patricians and plebeians, consular government, laws relating to contracts, succession, property, injuries, etc., jurisdiction of praetor, acquisition of property *ex jure gentium*, the imperial system, relation of the senate to the emperor, the praetor and jurists' responses, constitutions of the emperor, stoic theory of natural law as an element of jurisprudence, definitions and maxims, changes wrought in law and government through the influences of the oriental provinces, authority of the Christian clergy and relation of church to state, study of the Roman law throughout the civilized world, common and statutory law, public and private law, *jus personarum*—law of persons, *jus rerum*—law of things, obligations—*ex contractu* and *delicto*, *jus actionem*—law of actions or civil remedies and procedure.

The Law of Admiralty.

This law originated in the needs of commerce and the usages of merchants at a time so remote in antiquity as to be lost in obscurity. The shipping interests and commercial activities of peoples inhabiting the shores of the Mediterranean sea, such as

the Rhodians, Greeks, Egyptians, Phoenicians, Carthaginians and others were developed to a noteworthy extent at the very dawn of authentic history, and even when legend and history were so indiscriminately commingled that fiction and truth had about equal control of popular credence. Like other branches of the law, it has grown and is still growing in the line of its recognized principles and adapting itself to new or changed conditions throughout the world. In studying the subject the student deals with the nature and extent of its operation in the United States, cognizance of cases arising under it in the Federal courts, contracts and wages of seamen, torts and damages, employment of pilots, seaworthiness and deviation, barratry and illegal traffic, perils of the sea and proximate cause of loss, abandonment and valuation, subrogation of insurer, bottomry and respondentia, supplies and and repairs, necessities furnished in foreign ports, liens on foreign and domestic vessels, towage service and responsibility respectively of tug and tow in collisions, incidents of service and elements of compensation in salvage, contracts of affreightment and charter parties, bill of lading and its negotiability, harbors and docks, piers and bridges, doctrine of imputed and contributory negligence, rules as to lights and signals in fair and foul weather, colors and places of lights and duties of lookouts for the prevention of collisions, rules to be observed by steamers and sailing vessels in meeting and passing each other, wrecks and derelicts, damages for collision, vessels transferred by bill of sale as personal property, admiralty procedure similar to that of Roman law and quite simple, comprising the libel and process, defence and trial, evidence, decree and appellate procedure.

Mines, Mining and Water Rights.

This branch of the law demands the diligent and discriminating study of those who intend to reside in the Rocky Mountain and Pacific Coast States, although mining for coal, copper, iron, lead, zinc, etc., not to mention gold and silver, is carried on here and there in a majority of the States of the Union. In the far Western States, however, as well as in Mexico, the British Possessions and Alaska, it is an especially important, if not a leading branch of industry. In certain other parts of the world it has been carried on without material interruption for 20 or 30 centuries. The regalian ownership of minerals is generally recognized in monarchical countries, and title resides in the crown, which exacts a certain percentage of the ores mined or a compensatory tax. Under the laws of Athens 1-24 was taken by the government, while in the countries subject to Rome 1-10 had to be paid. In our own country however, the regalian right does not exist. The miners of California led in the adoption of the main principles of the mining laws of Spain and Mexico, which make the primary right of property depend upon discovery, location and development. All mineral lands of the United States are free and open to exploration and occupation, subject to the rules and customs of miners. In other words, the customs of miners constitute a part of the common law, as do the customs of merchants, but they yield to and are supplanted by

statutory enactments to the contrary. The range of study may best be indicated by the mention of some of the leading subdivisions: Whence we derive the mining laws, provisions of the civil and the common law on the subject, location and necessary annual work in establishing mining claims, notable differences between American and foreign mining laws, insufficiency of the act of 1866 and enactment and provisions of that of 1872, exclusion of Chinese, general outline of State statutes, miners' rules not judicially noticed and requiring proof, hydraulic and placer mining, petroleum and natural gas treated as mineral and part of the soil, locations on Indian reservations void, land in forest park reserves not deemed public, known mines and minerals excepted from agricultural patents, lode claims not to be over 1,500 feet in length and 600 feet in width, individual placer claims not to be over 20 acres and corporation or other such claims not to exceed 160 acres, tunnel claims and manner of locating them, water rights and kindred easements, mill sites must be used for mine or mill, percolating and underground waters distinguished, proceedings to validate claims and secure patents, legal forms under the mining laws.

Copyright, Patents and Trademarks.

This branch of the law, like the preceding subjects of mining and admiralty, is somewhat technical and out of the current of ordinary legal studies. The utility of these subjects depends largely upon the domicile of the learner. Mainly for that reason they are placed in the postgraduate year, so that the undergraduate students may be left free to devote their time to subjects coming more directly within the sphere of the general laws. Nevertheless, any of these studies may be taken up, in addition to those of the undergraduate years, by students who can spare the time to pursue them. While it is to be hoped that they may be taken in the regular order by postgraduates, yet they may be chosen optionally and followed to completion by any students who consider them necessary in preparing for practice. Postgraduates are, unfortunately, never numerous in the law schools of the country, and hence the subjects indicated are placed in the year in which they are least likely to be embarrassing. A copyright secured through the Librarian of Congress gives authors and publishers the exclusive right of printing, publishing and selling their literary compositions or books or multiplying copies of what they have written or printed. A patent protects the inventor of a new and useful article of improvement in the exclusive right for a certain period to make and vend the same. A trademark is a word, mark or device adopted by a manufacturer or vendor to distinguish his goods from others of the same kind. These matters are treated briefly, although perhaps fully enough for the ordinary student, under the head "Personal Property."

Trusts and Trustees.

This is an interesting and instructive topic. While dealt with in brief under the head of "Equity Jurisprudence," it is nevertheless

too important and practical to be thus summarily dismissed. A trustee holds a position of great responsibility and involving confidence in a high degree. His motives and acts in the discharge of the functions of his trust are impartially searched under the rules of equity by the trained conscience of the chancellor. The course of study comprises these subdivisions: Origin and classification of trusts, trustees and beneficiaries, trust property within and beyond the jurisdiction, trusts executed and executory, express and implied trusts, constructive and resulting trusts, nature and characteristics of trust estates, trusts from powers, trustees *ex maleficio*, acceptance or disclaimer and removal of trustees, perpetuities and accumulations, deposit and conversion of trust funds, investments and interest, choses in action and reduction to possession, rights of married women under statutes and separation deeds, trustees for married women and infants, trustees of freeholds and dry trusts, life tenant and remainderman, trustees for payment under will and their powers, assignments for creditors, trusts for charities, *cy pres* doctrine, trustees to sell, application of moneys received, rights and remedies of cestui que trust, laches and statute of limitations, compensation of trustee, pleadings, actions and costs, termination of trust.

Interpretation and Construction of Statutes.

This is a useful and practical branch of the law. It is almost as aidful to the lawyer in the deeper and more analytic lines of his work as the law of evidence is in jury trials. It furnishes a key to the interpretation or correct understanding of the statutes, gives emphasized significance to the wording of contracts and legal instruments, and makes it easier to construe the reported opinions of the courts, separating readily the dicta from the necessary substance. The rules of interpretation came substantially from the Roman law. They and the maxims were translated into English and embodied in our jurisprudence. Among the subdivisions treated under this head may be mentioned: Definition and object of interpretation, intent to be sought, office of the judiciary, retrospective operation avoided, mandatory and directory provisions, popular and technical meaning of words, *casus omissus* and equitable construction, strict and liberal construction, rejection of surplusage, presumption against unconstitutionality, general terms following special, express mention and implied exclusion, *reddendo singula singulis*, permissive, mandatory and directory statutes, adopted and re-enacted statutes, title, preamble and context of statutes, to be construed as a whole, admissibility of extrinsic aids, statutes in *pari materia*, contemporary construction and usage, construction with reference to the common law, statutes regulating procedure, construction of amendments and declaratory acts, the nature and force of precedents, construction of statutes of other States. Federal courts following State laws and decisions in State matters.

Statutes of State of Domicile and Federal Statutes.

It is out of the question to attempt to study the statutes in

general. On some subjects they harmonize in certain States or groups of States, while on others there is the widest discordance. No two States can be said to be exactly alike in their statutory enactments. Moreover, the statutes are constantly changing in accordance with the varying needs or legislative caprices of the different States. No lawyer or court takes voluntary cognizance of these changes. No court passes the boundaries of its own State in taking judicial notice of the statutes. And only its own public statutes and the Federal come within the rule. The public statutes of a neighboring State must be pleaded and proved as carefully as its own private statutes. The common law presumably exists in other States unless the contrary is shown. Neither student nor lawyer is required to go farther than the court in this regard. He is not bound to know the statutes of any State other than his own. To attempt to go farther would be useless, confusing and embarrassing. They are so diverse that it would be impracticable to undertake to deal with them before a class comprising students from different States. Hence the study of them is left under advice and supervision very largely of the students themselves. Each is urged to procure and have with him for study in the postgraduate year the statutes of his own State.

**Powers and Functions of Masters in-Chancery, Referees Sheriffs
Coroners, Justices of the Peace, United States Com-
missioners, Arbitrators and Receivers.**

The course of instruction at Notre Dame comprises a careful study of the official acts, powers and duties of public officers, such as those named. Law students ought to know the general nature of their duties and how they should qualify. It is not a difficult branch of study and ought not to be neglected.

MONTHLY THESES.

In addition to the regular order of exercises indicated in the preceding pages every student is required to write monthly a thesis of at least 15 pages of legal cap, or nine such theses each academic year. These theses must show not only originality and research, but also accuracy and creditable scholarship in composition. When finished month by month they must be submitted to the Faculty for examination and approval. Prior to Commencement in the following June they are returned to the writers. Thus the time and thought bestowed upon and the authorities cited in them can be made available in subsequent review, if not as guides in actual practice to pertinent cases in the reports.

The theses for the academic year 1903-4 deal with the subjects following :

1. Aliens and Naturalization Laws.
 2. Legal Status of Animals.
 3. Unincorporated or Fraternal Societies.
 4. Judicial and Ministerial Officers.
 5. Taxation and Assessments.
 6. Eminent Domain and Police Power.
 7. Conflict of Laws.
 8. Extraordinary Legal Remedies.
 9. Injunctions, Estoppel and Statute of Limitations.
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The topics selected for theses in the academic year 1904-5 comprise :

1. Law in Its Origin and Growth, Including Comparative Jurisprudence.
 2. The Maxims of Equity and their Application.
 3. The Study of Forms, with Examples in Pleadings, Contracts and Conveyancing.
 4. The Law of Notice and Waiver.
 5. Landlord and Tenant.
 6. Conditional Sales and Chattel Mortgages.
 7. Interstate Commerce.
 8. Banks and Banking.
 9. Bankruptcy and Insolvency.
-

The theses for the academic year 1905-6 will treat of these subjects :

1. Remedies Available without Legal Process.
2. Organization Respectively of the British and the American Courts.
3. Suretyship and Guaranty.
4. Set-off, Recoupment and Counterclaim.
5. Mines, Minerals and Watercourses.

6. Patents, Copyright and Trademarks.
7. Shipping and Admiralty Procedure.
7. Laws Applicable to Perpetuities and Accumulations.
- 9 Interpretation and Construction of Statutes.

It is sought to have students do as much original work as practicable, for such work tends not only to develop and energize the natural powers of the mind, but also to inspire self-confidence, adding alertness to initiative and forcefulness to action. Hence it is that thesis work enters so largely into the law curriculum at Notre Dame.

METHODS OF INSTRUCTION.

The forgoing outline of the subjects of study will enable prospective students to comprehend readily the wide range and exceptional thoroughness of the law curriculum.

On account of the peculiarly favorable location of the university for diligent and persevering work, it is possible for industrious students to do at least a fourth more in the year than is elsewhere attempted. The order of topics, however, is not arbitrary. It is directory rather than mandatory. There is really no definite beginning or ending of the law. It is a seamless whole, as strikingly remarked by a learned authority, and one may begin the study of it at any time and with any subject, and so may he terminate it. Yet it seems to be more logical and helpful to the memory to follow the order above indicated. But should it seem advisable at any time to change a subject from one year to another, such change may be made upon due notification at the pleasure of the Faculty.

Instruction is given, it may be repeated, by means

of text-books, the study of cases, lectures, quizzes in review, weekly answers in writing to the more difficult questions, monthly theses and moot-court work.

The lecture system, however, appears to be obsolete or obsolescent in most of our American law schools, while the use of text-books is coming more and more into favor. Indeed, under the rules for admission to the bar in some jurisdictions the applicant must have read a certain number of them before being deemed eligible even for examination.

Very few students are sufficiently familiar with phonography to follow a lecturer intelligently and commit legibly to paper what he says. Unless thus taken down the lecture and the authorities cited in it are soon forgotten. But to have it taken down in full by someone proficient in shorthand, type-written copies of it being subsequently multiplied and sold, would be contrary to the rules in force where lectures are given, and far more expensive than a text-book on the same subject. Owing to the general nature of the law, there can be but very little in a lecture that is not already to be found in some text-book or report, which is far the more useful and valuable.

The case system, or study of cases, is the favored method of instruction in several Eastern and some Western law schools. It calls undoubtedly for careful study and analytic reasoning, although not more so than the examination and choice of authorities in moot-court work. While retarding the progress of students to a greater extent than do text-books, implying thereby greater thoroughness, it fails nevertheless to present as clear, comprehensive and systematic a view of the law. Moreover, it is a costlier system, so far as books are concerned. The volumes of selected cases requisite for study bear no comparison in utility with text-books, as

viewed with reference to subsequent office furnishing and practice. There is, however, a due appreciation of the real merits of the case system at Notre Dame, and it is followed as far as practicable in certain lines.

Law students have from three to four recitations daily based upon the text-books, the books of selected cases, the questions answered in writing or the subjects dealt with in the lectures. From one to two hours additional must be devoted daily to office and library work, while four hours weekly are required for moot-court practice and exercises of the law debating society. While this society and the moot-court offer exceptional opportunity and strong incentive to acquire readiness in debate, fluency in speech and force in forensic oratory, yet much benefit may be derived from attending the regular classes in elocution and oratory.

When a subject is regularly begun in the law course it is studied and kept before the class, with recitations day by day at the same hour, until finished. It is believed that in this way the mind follows it more closely and that it is better understood than it would be if frequently interrupted by the intervention of other and dissimilar subjects.

UNIVERSITY COURTS.

All students are required to attend and participate in the exercises of the moot-court. Students of the first year are expected to serve on juries and as witnesses, while those of the second year assist the seniors and postgraduates in the conduct of trials. The court is fully organized, having a judge, clerk, state's attorney, sheriff, coroner and reporter. Pleadings are filed in the clerk's office, served and returned by the sheriff, brought to an issue with due formality by the attorneys, and the

trial proceeds under the rules of evidence before a member of the Faculty, acting as judge.

In addition to the moot-court, which corresponds to the ordinary circuit or trial court, there is a fully equipped court of equity, with its chancellor, clerk, master-in-chancery, bailiff and reporter.

There is likewise a justice's court. This comprises the justice of the peace, clerk and constable.

The Federal judicial system is also represented. The United States District Court, for example, has its district judge, clerk, district attorney, marshal and reporter.

The course of procedure in these courts follows as closely as practicable the actual procedure in the courts they represent. Practice is combined with theory in their work. The statements of facts in the cases to be tried are furnished by the Faculty. Students acquire in this way a knowledge of the customary procedure in the regular courts.

THE LAW LIBRARY.

There are undoubtedly in the country several law school libraries considerably larger than the library at Notre Dame, but it may well be questioned whether any of them shows more care in the choice of books, or is better adapted for the use of students. All the latest reports of State and Federal courts are on its shelves, and no difficulty is experienced at any time in finding the cases needed for reference, thesis writing and moot-court work. A great library, with a crowdingly large attendance of students—too many to be personally known by or have personal attention from the Faculty—may often be less available for use or accessible than a comparatively small one. It happens sometimes in such cases that 20 or more students are found vainly

scrambling at the same time to secure possession of a particular report or text-book. Such experience fortunately does not fall to the lot of the young men studying at Notre Dame. Not only all the latest reports, but likewise the leading text-books, are to be found on the library shelves.

The books may be read in the library or used in moot-court trials, but must not be carried to private rooms, nor hidden in desks. This rule is rigidly enforced by the librarian. It is intended for the advantage and to facilitate the work of the students in common, for all have a right to feel reasonably certain that when a book is needed it can be found in the library. To search desks or call at private rooms to inquire for it would involve unwarranted loss of time, not to mention its violation of a fundamental principle of law itself—equality in the sharing of a common right or privilege. The librarian is charged with the duty of taking care of the books, maintaining silence and good order and aiding the students in their possible quest for needed volumes in the library. The number of books on its shelves may be estimated at 3,500, but so carefully have they been selected that they may be said to surpass in practical utility many libraries twice as large. It adjoins the law lecture room. It is open practically all day and until 9:30 o'clock at night. The light and ventilation are excellent, and students find it a very wholesome and comfortable place in which to study.

In addition to the law library, the general library of the University is open likewise at all reasonable hours to law students. It contains about 35,000 volumes, together with the leading magazines and other current publications.

The library privileges are on a generous scale, and students are not specially charged for making proper

use of the books, although otherwise if a book be lost or injured through negligence.

BOOKS FOR RECITATION AND CLASS WORK.

The books used as the bases for recitation in class work are chosen to a considerable extent from the Horn-book series on account of their comparative cheapness and availability for reference and review. As a rule, however, they are narrower than the range of study. This has in reality a much wider sweep in lectures, quizzes, explanations and moot-court work. Of course, text-books of merit outside of that series, or from different publishing houses, are also used. In the study of principles, however, it is sought to enable students to grasp the key that unlocks the mysteries and tests the logic of all law books.

The books specially used by students for the purposes indicated are purchased by and belong to themselves. They are the exclusive property of the purchasers and kept in their own rooms. They may form the nuclei of libraries when the owners enter upon the practice of law. They may be purchased in the students' office at the lowest retail prices. The cost may be estimated at \$20 or \$25 a year.

TUITION, BOARD, LODGING AND EXPENSES.

As already stated, students of this University live within its precincts during the academic year. Some have private rooms and others lodge in dormitories. Those who have attained to or passed the second year of academic studies or their equivalent, whether in the law or some collegiate course, are entitled afterward to free rooms. Those below that grade lodge in the dormitories or pay \$50 a year extra for rooms, as they

choose. In other words, a preparatory or high school graduate ranks as a freshman. After one year's study, whether in the law or any other course, he attains to sophomore standing and becomes entitled to a free room. Should he insist, however, on having a room from the first, there would be an additional expense of \$50 for the freshman year.

The academic year is divided into two sessions, and the cost of tuition for these sessions, comprising nearly ten months, is \$100 payable in advance. But this division makes very little difference in fact, and the regular work of the University passes from one to the other without special feature or interruption. The cost of board, lodging, washing and mending of linens, etc., is \$300 payable in advance. Thus tuition, board lodging and all the customary necessities of student life amount to \$400 a year. (For fuller details see page 28 of the General Catalogue.)

The matriculation fee is paid but once, no matter how many years afterward the student attends. It amounts to \$10, and such also is the final or graduation charge. This is paid to the secretary prior to Commencement, which is the closing day of the school year—the day when the student is graduated and receives his diploma.

In this rural retreat a student seldom finds occasion to spend money, and his incidental expenses are exceptionally light. Considering the wholesome fare, comfortable quarters and excellent accommodations that he has, not less than his attractive surroundings, so inspiring and favorable for study, it can not fairly be questioned that his annual expenses at Notre Dame are quite moderate. For like accommodations, services and advantages in most other places the cost or outlay is said to be twice as great

Additional copies of this announcement and the general catalogue of the University will be forwarded to any address, free of charge, on application to

Very Rev. Andrew Morrissey, C. S. C., LL. D.,
President of the University,
Notre Dame, Indiana.

NAMES OF STUDENTS

Who Received the Degree of LL. B., June 15, 1905.

DURANT CHURCH,
Washington,
District of Columbia

EARL FRANCIS GRUBER,
Union City,
Indiana

FRANCIS JOSEPH LOUGHRAN,
Joliet,
Illinois

WILLIAM J. MAHONEY,
Brookfield,
Massachusetts

HENRY J. MCGLEW,
Notre Dame,
Indiana

DANIEL LIGUORI MURPHY,
Odell,
Illinois

JOHN JOSEPH O'CONNOR,
Delphi,
Indiana

EDWARD H. SCHWAB,
Loretto,
Pennsylvania

THOMAS JOSEPH WELCH,
Moline,
Illinois

CATALOGUE OF STUDENTS.

From September, 1904, to June, 1905.

Durant Church.....	Washington
Arthur Claire.....	South Dakota
Richard P. Clarke.....	Illinois
Terence B. Cosgrove.....	Illinois
James V. Cunningham.....	Illinois
Byrne M. Daly.....	Ohio
Raymond J. Daschbach.....	Pennsylvania
Richard W. Donovan.....	Illinois
Frank L. Dupen.....	Wisconsin
Michael L. Fansler.....	Indiana
Ralph Feig.....	Indiana
Oscar A. Fox.....	Indiana
Thomas J. Gannon.....	Massachusetts
Clayton C. Golden.....	Michigan
David J. Guthrie.....	Illinois
Francis J. Hanzel.....	Illinois
Thomas M. Harris.....	Illinois
Thomas F. Healy.....	Illinois
Edward W. Hill.....	Illinois
Roscoe P. Hurst.....	Illinois
Walter L. Joyce.....	Wisconsin
Francis J. Loughran.....	Illinois
Thomas D. Lyons.....	South Dakota
Daniel L. Madden.....	Illinois
Ralph C. Madden.....	Illinois
William J. Mahoney.....	Massachusetts
Patrick M. Malloy.....	Iowa
Frank A. McCarthy.....	Iowa
George J. McFadden.....	Iowa
Thomas Paul McGannon.....	New York

Henry J. McGlew.....	Indiana
Joseph W. McInerny.....	Indiana
Lawrence McNerny.....	Illinois
Daniel L. Murphy.....	Illinois
Albert J. Oberst.....	Kentucky
John J. O'Connor.....	Indiana
William E. Perce.....	Illinois
Guy G. Rennaker.....	Illinois
Stephen F. Riordan.....	Illinois
Edward H. Schwab.....	Pennsylvania
Francis J. Shaughnessy.....	Illinois
John W. Sheehan.....	Illinois
Thomas W. Sudheimer.....	Minnesota
Louis E. Wagner.....	Illinois
Thomas J. Welch.....	Illinois

PUBLICATIONS.

A large printing office is attached to the University, and several publications are issued from its press. Among these, not to mention catalogues, are the **THE AVE MARIA**, with a weekly circulation of 27,000, and **THE SCHOLASTIC**, or University weekly, with a circulation of 1,500. Law students are expected to write for and be contributors to its columns.

ST. MARY'S ACADEMY,

NOTRE DAME, INDIANA.

CONDUCTED BY THE SISTERS OF THE HOLY CROSS.

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The Notre Dame Scholastic

Is a 28-page paper devoted to the interests of the students and published by them every week during term time. The journal is in the hands of a student board of editors and students do all the writing for it. Work done for *The Scholastic* is regarded as supplementary to the theoretical work of the English courses; hence the character of the articles,—essays on literary subjects, biographical sketches, short stories, exercises in verse, book-reviews, etc. As contributors are expected to prepare their own copy for the press and to do their own proof-reading, they gain no small amount of practical experience.

Although *The Scholastic* is published chiefly for the sake of the students attending the University, their parents and all former students will see things of interest in its columns. Reports of the popular lecture course and of events happening at Notre Dame and other colleges, personal notices, athletic notes, reviews of the work done in the debating and other classes, find place in the paper and keep parents and others informed about matters that concern their children and friends.

The Scholastic will be sent to any address for \$1.50 per annum.

Address all communications to

The Notre Dame Scholastic,
Notre Dame, Indiana.

