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At the beginning of the 1980s, Frances Kahn Zemans and Victor G. Rosenblum published a study probing the connection between what lawyers learned in law school and what they used in practice.[1] The study contained many provocative findings about the low correlations between even basic substantive law school courses and the skills used by the practicing lawyer; no doubt it kindled the now-raging theory-practice debate in legal education circles.[2] With the publication of the MacCrate Report[3] in 1992, the pressure is on to teach students how the law really functions outside the law school building.

Within the Zemans and Rosenblum study was one finding that has escaped much attention. While lawyers reported low utilization of the substantive knowledge they had gained in law school, one substantive area stood out from the rest in being useful in the day-to-day life of the practitioner. It would certainly surprise few contracts professors that the subject was contracts. Contracts was reported helpful to the practice of law by 50.3 percent of the respondents; the next closest subject was property with 25.2 percent.[4] The authors observe:

> [I]t is perhaps surprising that only one course—contracts—is mentioned by a majority of the bar with the others cited by no more than one-fourth . . . . Of those who cite contacts as particularly helpful to their practice, 45 percent attribute its benefits to the fact that its content underlies most legal issues.[5]

Unfortunately, many law schools deliver this rich subject to first-year students in a required four-hour course during their first semester of law school.[6]

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1. The Making of a Public Profession (Chicago, 1981).
2. See generally Symposium: Legal Education, 91 Mich. L. Rev. 1921 (1993).
3. American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Chicago, 1992).
4. Zemans & Rosenblum, *supra* note 1, at 146 Table 6.8.
5. *Id.* at 146–47.
6. The two dominant first-year paradigms are the "traditional" approach, which offers several of the "big" first-year courses (always including Contracts) in two-semester, six-hour formats and the "modern" approach, which offers all the "big" subjects as four-hour courses during the first year.

While contracts is nearly the ideal subject with which to begin law study, the four-hour first-semester format leaves little time to cover the basics, much less allow students to consider either the subject's rich theoretical tensions or its practical applications.

To make matters worse, typical contracts casebooks are structured for the older six-hour offering, and teachers must patch together a four-hour basic course from the much larger range of casebook material. If the casebook contains cross-references or builds on earlier learning from the book's materials, those features can be lost in the patchwork.

The findings of Zemans and Rosenblum suggest a greater curricular emphasis on the subject of contracts. And the broader findings of that study as well as the thrust of the more recent MacCrate Report suggest a greater emphasis in the law school classroom on how real lawyers actually use the law to serve their clients.

A new set of contracts materials, *Contracts: Law in Action,* by Stewart Macaulay, John Kidwell, William Whitford, and Marc Galanter,[7] offers an unexpected way to do both these things at once. The commercial publication of the Wisconsin contracts materials ought to be big news among contracts teachers.[8] What might be overlooked by those considering the materials is that the authors have labored under the four-hour first-year format and have designed the materials for this type of curriculum. The materials can both augment the first-year offering and allow students to better understand the many uses to which contract law can be put in the world of business.

Both Volume I and Volume II extend legal realism by weaving substance and in-the-street application together. They draw heavily on the authors' (and others') wide-ranging empirical studies of the law as it reaches and is used by actual people. They broadly embrace the relational contract as a subject for study and consider the problems that relational contracts present for neoclassical contract theory. They develop many doctrines pervasively rather than discretely, requiring students to keep many balls in the air at once. But my intent is not to offer a comprehensive review of these books; rather my focus is on Volume II[9] and how it might be used as the backbone for an upper-level course, Advanced Contracts.[10]

7. Charlottesville, 1995.

8. The materials, in the development stages, have been available in Xerox form for many years. Many, besides the authors, had a hand in creating them. See Volume I at v. An early evaluation of Volume I is Jean Braucher, The Afterlife of Contract, 90 Nw. U. L. Rev. 49, 52–53, 75–86 (1995).

9. Volume I is a very unconventional set of materials. For example, students begin the course not with either a real or a hypothetical case but with a 33-page essay covering topics ranging from how law study is conducted, through different approaches to the classroom, to a history of contracts courses and different approaches to the subject matter. The authors also cover the formal doctrines of offer and acceptance and consideration through text, Volume I at 240–48, 303–13; they cover their *use* as lawyer tools pervasively throughout the materials.

10. The long-awaited commercial publication comes in two forms. One is the two-volume set, the successor to a desktop-published set used by the authors for Wisconsin's required four-hour contracts course and its elective three-hour advanced course (offered to second-semester first-year students and upper-level students). The other is an abridged one-volume book designed for those with the more traditional six-hour offering. What would not be obvious

My goal here is simply to suggest that teachers of four-hour contracts courses consider developing such an upper-class offering with these materials. The book is so different, provocative, and rich that it will deepen students' understanding and enjoyment of contracts at a theoretical level and, at the same time, develop their understanding of how the law of contracts actually works in business and other settings in the real world.

Why Upper-Level Contracts?

Why would one want to offer an advanced *contracts* course? Wouldn't it be redundant? Isn't the upper-level curriculum a time for UCC and other more specialized courses?

Many of the reasons for considering an upper-level contracts course are linked to the specifics of the materials to which I will turn shortly. There are, however, some preliminary points. To begin with, an advanced contracts course built on these materials will be broader than any UCC offering while giving students a substantial dose of Article 2 of the UCC. Within the materials is major emphasis on UCC innovations in contract formation[11] and on the statute's approach to default and remedy.[12] But while Advanced Contracts could satisfy a curricular need to expose students to Article 2, it would not be a sales course. The UCC material is fixed in a far broader context that explores how notions of reciprocity, materiality, and interpretation stretch across different kinds of contracts. These materials also expose students to deeper questions about how business people make and interpret agreements, how their transactions actually work, and how the remedies system operates when they don't work.

Second, while the treatment of the subject is far more sophisticated than the first-year offering, it is still *contracts,* and it might attract students to a business course (the advanced contracts course I describe is just that) in a way that other commercial courses would not. Once inside the course, the student will find familiar vocabulary and doctrine that will augment a deepening understanding. From the teacher's perspective, one can build directly on the knowledge both of contracts and of the legal system that these more mature and legally sophisticated students arrive with. And because it is not a first-semester first-year course, one can pay less attention to first-semester teaching objectives—case reading and analysis, issue formulation, and the like. The focus can be more directly on *contracts,* rather than contracts and all the other things students need to master as they begin law study.

The materials that make up Volume II offer the central reasons for considering an advanced contracts offering: these materials will enable students to develop a perspective on contracting—and the lawyer's role in contracting—

(perhaps even to the book's authors) is that Volume II is a stand-alone casebook that can support an advanced course built either on Volume I or on a four-hour first-year offering using other materials. The authors might consider renaming the book to make its ability to stand by itself more obvious.

11. E.g., Volume II at 101–20, 201–48.

12. E.g., *id.* at 457–595.

that is unattainable in the first year or, for that matter, in most upper-level courses.

Volume II focuses mostly on contracting within the business context. Most of the cases are business cases, and most contain complicated, interrelated contracts issues.[13] But it is the text, notes, and questions that make these materials so important pedagogically. Volume II (like Volume I) includes a large amount of material about the context within which contracting occurs. Providing this far wider context for contracting behavior allows students to develop perspective on the role of contract *law* in business contracting and to begin to understand how lawyers and clients actually use contract law to advance their objectives. It is this very different frame of reference that makes an advanced class using these materials so potentially attractive.

The Amalgam of Practice and Theory

The authors of *Contracts: Law in Action* believe that it is important to teach students how contract doctrine functions in a real world that includes scores of variables and substantial doses of irrationality. The law cannot operate without human intervention, and that intervention can be irrational, vindictive, ill-informed, or just plain stupid. People can operate in a way that law or theory would not predict because people are subject to pressures and temptations that theory may not recognize. In business settings, in particular, economics, judgment, personality, *and* law often combine to yield decisions that the law on its own would not produce. Lawyers understand that parts of legal problems are often interrelated, that legal doctrine is often interrelated within a subject (as might be the law of consideration and unconscionability), or across subjects (as might be negligence and contractual privity[14]). They also understand that client decisions are often based on a complex mix of law *and* variables outside the law. Lawyers need to understand this complexity; students must learn how to ask the right questions. The Wisconsin books aim at developing this kind of understanding of the subject.

The authors are well qualified to approach their subject this way. Stewart Macaulay is, perhaps, the first of the modern empiricists[15]—scholars who study the actual workings of the law in action and reflect on what that actual

13. Volume II differs from many other contracts casebooks in that it has a far smaller proportion of chestnuts which seem to students distant from the contemporary scene. The book is also more concentrated and, by raising many disparate issues at the same time, it shows students how legal doctrine is interrelated and used by real lawyers.

14. See, e.g., MacPherson v. Buick Motor Co., 111 N.E. 1050 (N.Y. 1916).

15. Macaulay is most commonly identified with the law and society movement of which he was a founder. While "empiricist" refers to those deploying similar methodology which attempts to consider law as part of a far larger system of human relationships, the newer name suggests hard-edged, scientific rigor while the older term may suggest the opposite. This may explain the recent ascent of "empiricist" in business law scholarship as a term to describe the kind of scholarship Macaulay and his school have been doing all along. See, e.g., Lynn M. LoPucki, The Unsecured Creditor's Bargain, 80 Va. L. Rev. 1887, 1890 n.9 (1994); see generally William J. Woodward, Jr., Empiricists and the Collapse of the Theory-Practice Dichotomy in the Large Classroom: A Review of LoPucki and Warren's *Secured Credit: A Systems Approach*, 74 Wash. U. L.Q. 419 (1996).

operation means both for legal theory and for legal practice.[16] The empiricists have extended legal realism from studying what courts do about disputes[17] to studying how people use the law in solving their problems. By extending the frame of reference beyond a closed set of legal materials and actors, empiricist researchers have exposed the role of such variables as business reputation and repeat business,[18] leverage,[19] and local culture[20] interacting with the law to yield outcomes.

As summaries or excerpts from this empirical research appear throughout the materials, the wide frame of reference becomes an integral part of both volumes of *Contracts: Law in Action,* connecting students much more directly to the actual uses of contracts in business and the roles of lawyers in that context. This will naturally help students learn what lawyers actually *do* with legal materials—and will narrow the gap between law school and practice.

Implications for "Coverage" and "Organization"

The different approach these authors take to their subject has major implications for coverage and organization. They have taken their views—that "law" is embedded within and inseparable from a far larger context—into the organization of the materials themselves. This means that they include a larger amount of "nontraditional" material than other casebooks. The authors also believe that many parts of the law of contracts are interrelated with one another and with the broader context. This means that topics are less doctrinally distinct and that several are often taken up at the same time. Understanding the authors' approach to coverage and organization requires a more detailed excursion into the materials themselves.

Volume II is designed to focus mostly on business contracts and on performance issues in contracting.[21] Most of the cases are complex business cases, and there is a strong emphasis on Article 2 of the Uniform Commercial

16. See, e.g., Macaulay, Non-Contractual Relations in Business: A Preliminary Study, 28 Am. Soc. Rev. 55 (1963); The Use and Non-Use of Contract in the Manufacturing Industry, Prac. Law., Nov. 1963, at 13 [hereinafter Macaulay, Use and Non-Use].

17. Karl N. Llewellyn, The Bramble Bush 12 (Dobbs Ferry, 1951) (*"What these officials do about disputes is, to my mind, the law itself."*).

18. Macaulay, Use and Non-Use, *supra* note 16; cf. Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc'y Rev. 95 (1974); Russell J. Weintraub, A Survey of Contract Practice and Policy, 1992 Wis. L. Rev. 1.

19. Cf. Arthur A. Leff, Injury, Ignorance and Spite—The Dynamics of Coercive Collection, 80 Yale L.J. 1 (1970); Galanter, *supra* note 18. While neither of these authors conducted extensive field work to support his analysis, by expanding the earlier frame of reference, they prompt the reader to think differently about the subject matter.

20. See Jean Braucher, Lawyers and Consumer Bankruptcy: One Code, Many Cultures, 67 Am. Bankr. L.J. 501 (1993); Teresa A. Sullivan et al., As We Forgive Our Debtors 246–52 (New York, 1989).

21. Volume II is designed for the University of Wisconsin contracts elective that follows the basic course using Volume I. Volume I acquaints students with the "traditional" meat of the first year but has a far greater emphasis on longer-term contracting and has remedies coverage (including restitution and various forms of promisee "cancellation") that is extensive and pervasive. Using Volume II after a first-year offering that used other materials probably means a greater chance for overlap (at least conceptually and, perhaps, in cases or doctrine)

Code.[22] There is also an emphasis on interpretation and the role interpretation plays in the framing and solving of contract disputes.

It is easy enough to describe the formal arrangement of the material. The book begins with contract formation, emphasizing mistake and the remedial options that come with avoiding contracts on account of mistake. It proceeds through incomplete planning (e.g., indefiniteness), interpretation, modification, performance and breach, and adjusting contracts on account of changed circumstances. But such a description conveys a far less integrated approach to coverage than what we find in these materials. Macaulay et al. deviate substantially from the norm in contracts materials by examining a given topic from many more perspectives than is usual in law school casebooks, and by presenting cases which, like real life, combine several issues in one problem. Thus, "coverage" of "a topic" can be far broader than the norm, and many topics are "covered" pervasively throughout the materials. This mirrors law practice much better than does the pigeonhole treatment of contract doctrine that characterizes (perhaps necessarily) many first-year contracts courses. This very different approach to organization and coverage virtually guarantees little redundancy, even if students have covered exactly the same topic in first-year Contracts.

Intensity of Coverage

Students will have seen many of the doctrines raised in Volume II, but they will not have covered them in such depth or been capable of doing so in their first semester of law school. An early—and obvious—example is the book's coverage of the mistaken bid in contracting, a classic problem covered by many contracts casebooks within their "offer and acceptance" topics.[23] The authors here start with an introduction which lays out the mistaken-bid

with the earlier materials and a somewhat less reliable student information base on which to build.

I offered a two-credit elective, Advanced Contracts, while visiting at the University of Pennsylvania Law School during fall 1995. Students in my class had used Robert E. Scott & Douglas L. Leslie, Contract Law and Theory, 2d ed. (Charlottesville, 1993), or John P. Dawson et al., Cases and Comment on Contracts, 6th ed. (Westbury, 1993). A couple of students noted some doctrinal redundancy in their evaluations of the course, but otherwise there was little evidence of repetitiveness. Because some of the students in my class had not had any contract remedies in the first-year offering, I began the course with a two-hour overview of remedies issues. I found a two-hour course to be too short to comfortably cover the whole book.

22. Article 2 of the UCC is sufficiently developed within the materials for one to use an advanced contracts course based on these materials as a broader substitute for a sales course. In so doing, one would lose UCC methodology and detail from the sales course but would gain breadth and context that may be lacking in the more technical sales offering.

23. See, e.g., Dawson et al., *supra* note 21, at 402–14 (precontractual obligation); Arthur Rosett, Contract Law and Its Application, 5th ed., 569 (Westbury, 1994) (duration of offers); Charles L. Knapp & Nathan M. Crystal, Problems in Contract Law, 3d ed., 231–44 (Boston, 1993) (limiting offeror's power to revoke); E. Allan Farnsworth & William F. Young, Cases and Materials on Contracts, 5th ed., 253 (Westbury, 1995) (precontractual liability).

The problem involves the subcontractor that submits a bid on which the prime contractor computes and submits its own bid. The prime is awarded the contract, but before it has formally accepted the subcontractor's bid, the subcontractor discovers a mistake and attempts to withdraw.

problem, summarizes some of the research that has considered it, and locates it within a larger context.[24] Then comes a text summary of the mailbox rule and its implications for mistaken offers, followed by a text summary of the traditional and UCC approaches to the firm offer, and summaries of the two classic cases on the subject, *James Baird Co. v. Gimbel Brothers, Inc.*[25] and *Drennan v. Star Paving Co.*[26] Then follows a summary of an early empirical study of bidding in the construction industry,[27] followed by an appellate case adopting a promissory estoppel theory to find for the prime contractor, and a series of questions and notes which concludes with strategies for representing the mistaken subcontractor who wants out.[28] These twenty-seven pages are the material for *one class.*

Obviously, one could not teach this much material in the same way one would teach a first-year class. Rather, the assignment provides, in essence, the background for a sophisticated class discussion of far deeper issues. What are the empirical assumptions these different courts make in coming to their judgments? How do the different judgments square with—and affect—actual bidding practice? How good is the litigation system in delivering appropriate facts on which judges make assumptions about business practices? What *should* the rule be in this situation? What assumptions underlie *our* judgments of the correct rule?

This mistaken-bid example is typical: the authors of Volume II take a problem, occasionally a familiar one, and examine it from multiple perspectives. In the process they repeatedly demonstrate that there are no pat solutions and that even the problems students saw in first-year Contracts are far

24. Included in the *two-page* introduction are references to Fuller's classic article on the reliance interest, the classical contract doctrine's answer that there is no relief for *unilateral* mistake, reference to business understanding which does not track the "moment of the making" approach of classical contract doctrine, the realities of a hectic bidding process and possibilities within bidding processes for kickbacks, and ethical responses to a mistake in the context of bidding. As to the latter:

> [W]e might ask as a matter of ethics whether a person who has made a promise based on a mistake should stand behind it. Would the good person back out if her lawyer told her that no legally binding agreement was made under the rules of contract law? Second, we might ask whether the ethical person would hold another to a contract once she discovers their agreement was based on the other's mistake? Third, we can ask whether legal rules should reflect whatever moral decisions we reach.

Volume II at 33–34.

25. 64 F.2d 344 (2d Cir. 1933) (Hand, J.) (holding that the subcontractor could withdraw because there had been no acceptance of the offer and the prime, being a sophisticated business person, was not entitled to rely on an unaccepted offer).

26. 333 P.2d 757 (Cal. 1958) (Traynor, J.) (adopting a promissory estoppel theory to reach a result contrary to that in *Baird).*

27. Paraphrased version of Note, Another Look at Construction Bidding and Contracts Formation, 53 Va. L. Rev. 1720 (1967), *in* Volume II at 41.

28. Their summary draws together many strategies, much as the lawyer faced with such a problem would. They summarize the strategies (with commentary): (1) attacking the firm offer rule (in Restatement § 87); (2) construing the bid; (3) using the rules of mistake and Restatement § 90 (against the prime); (4) trying to prove bid shopping and chopping; and (5) asserting the Statute of Frauds. Volume II at 56–60.

more complex and difficult than they once thought. Coverage of *any* contracts topic with this many variables at this level of sophistication is simply impossible during the first semester of law school. While a teacher might elect not to cover this particular topic during an advanced contracts course, a policy of avoiding redundancy would not require it.

Pervasive Coverage

The mistaken-bid material surfaces within a section titled "The Risk of Ambiguity or Misunderstanding." Other topics surface occasionally but don't get the focused coverage just described. A good example is the book's coverage of third-party beneficiaries.

The topic makes its debut in a note to *Enrico Farms, Inc. v. H. J. Heinz Co.*,[29] a case that formally begins the "Parol Evidence Rule, Misrepresentation, and Promissory Estoppel" unit.[30] The contracts formally involved were tomato sales contracts, but one of the claims was made by the harvester of the tomatoes, who would have nothing to harvest if the buyer didn't perform its contract to buy from the seller. The court identified the claim as a third-party beneficiary claim, but its characterization had little to do with the court's decision. The authors define the third-party beneficiary idea generally in a note and preview the topic as a coming attraction.[31] They return to the topic nearly 100 pages later in a classic case involving a subcontractor's attempted recovery against the prime contractor's surety.

The bond in *Jacobs Associates v. Argonaut Insurance Co.*[32] was structured so that it would *not* be payable if the contractor satisfied several conditions, one of which was "Pay all persons, firms and corporations who perform labor . . . ."[33] The case is formally presented as a case where the question is whether words in a suretyship contract ought to be interpreted as words of condition or words of promise running from surety to prime contractor. In *Jacobs,* the court interpreted the clause as promissory and permitted the

29. 629 F.2d 1304 (9th Cir. 1980).

30. Volume II at 337.

31. The explanation they give is representative of the direct approach the authors take when they describe contract law:

> You might have been puzzled by the fact that Palladino, the harvester, is apparently complaining about the breach of a promise that Contadina made to Pippo. The Court assumes, perhaps merely for the sake of argument in this case, that Palladino has a right to complain about Contadina's failure to keep its promise to Pippo. It is clear that since apparently Pippo has arranged for Palladino to harvest the Pippo tomatoes, Palladino has a financial interest in the harvesting of those tomatoes. Courts sometimes allow those who will benefit from a performance of a promise to sue for its enforcement. The rules governing just when non-parties can sue to enforce promises will be taken up in a later section. When we *do* take it up, you might come back to this case and reflect on whether it is a strong case for the acknowledgment of third-party rights.

Id. at 339.

32. 580 P.2d 529 (Or. 1978), *in* Volume II at 427.

33. Volume II at 427.

subcontractor to sue the surety directly on the bond. One cannot understand the interpretive moves made by the court without understanding the pressure that this setting creates to recognize the third-party beneficiary rights of the subcontractor. Notes following the case describe the law; classroom discussion can focus on interpretation, the dynamics of third-party beneficiary doctrine, or their interrelationship in this case.

This approach to organization—locating a case with multiple issues at a particular point but leaving the other issues in place—reinforces past learning and previews coming attractions throughout the course. Students see various doctrinal tools in multiple settings over the course of the semester and see those tools working with others in given cases. But beyond the pedagogical gains, the presence of multiple, diverse legal and nonlegal issues within single cases also models the way legal problems arise and are framed in real life. The approach contrasts sharply with the way those problems are pursued in most first-year classes.

Thematic Coverage

Many identifiable themes run through Volume II, but it is sometimes hard to know which of the themes were included by the authors and which are constructed by the reader. The pervasive approach to much of the doctrine and the authors' way of allowing the complexity of many of the cases to reach the student allow teachers (and students) to find and develop their own views of how (or whether) the parts of the whole fit together.

There is one strong authorial focus that I hesitate to call a "theme." As one might expect from scholars with an empiricist outlook, the focus is neither doctrinal nor theoretical. Rather, a situation recurs throughout the book in which the parties have attempted to structure their future and, through no apparent fault of either party, something unanticipated spoils their plans. Typically, the relationship has gone some way forward, generating some reliance losses on one side or the other. For this kind of situation, classical contract offers the remedial possibilities of full enforcement or full rescission, a Hobson's choice in the hardest of these cases. Certain questions recur: What doctrinal tools do lawyers use in litigating these cases? What interpretive or other moves do courts use in adjudicating these issues? What remedial options are available (and how does that availability interact with the first two questions)? What institutional limits does the litigation or legal system impose in fashioning creative solutions to these problems? And so on.

We first encounter a version of the paradigm situation with the mistake doctrines through *Raffles v. Wichelhaus*,[34] the famous Peerless Case. The problem reemerges in the mistaken-bid materials and returns full force in Chapter 6, "Adjusting to Changed Circumstances: Risks Assumed and Imposed."[35] This long last chapter, perhaps the richest in the book, exposes

34. 159 Eng. Rep. 375 (Ex. 1864), *in* Volume II at 21.

35. Volume II at 621–770.

students to an entire range of impossibility, commercial impracticability, and frustration of purpose cases from *Paradine v. Jane*[36] and *Taylor v. Caldwell*[37] through huge modern cases such as *Aluminum Co. of America v. Essex Group, Inc.*[38] and the *Westinghouse* litigation.[39] It contains material on the 1971 Lockheed bailout by the Nixon administration[40] and comparative materials about the unsatisfactory British experience with giving judges discretion to allocate losses.[41] As might be expected, the authors offer few solutions; rather, their offering to students and teacher is the assembly of a diverse sampling of fact situations, attempted solutions, opinion, and the like to equip the reader to understand the complexity of the problems. These materials, particularly those in Chapter 6, show students how deep the issues can go. That perception will reduce the chances that, as lawyers, they will stop short in analyzing the problems of their own clients.

* * * * *

The claim I've made here is a modest one: given the use that practitioners make of contracts in their practices, law schools ought to consider offering more contracts study. *Contracts: Law in Action,* Volume II, offers law schools an easy way to make an advanced course available to students. While the institution and the students will benefit from such an offering, perhaps the best rewards will come to the teacher of the course. That teacher will have the privilege of leading a sophisticated conversation with a group of motivated, smart students using reading materials sufficiently rich and open-ended to be unique in the literature. A teacher's own understanding and enjoyment of the subject will naturally flourish. This is what great teaching experiences are made of.

36. 82 Eng. Rep. (K.B. 1647), *in* Volume II at 623.

37. 122 Eng. Rep. 309 (K.B. 1863), *in* Volume II at 627.

38. 499 F. Supp. 53 (W.D. Pa. 1980), *in* Volume II at 702.

39. Florida Power & Light Co. v. Westinghouse Elec. Corp., 517 F. Supp. 440 (E.D. Va. 1981), *in* Volume II at 742.

40. Volume II at 693–702.

41. *Id.* at 646–50.