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USING GOOD STORIES TO TEACH THE LEGAL ENVIRONMENT

by

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It has become a kind of pedagogical principle that the lecture method has limited value as a teaching tool. In general, instructors are encouraged to use lectures in a limited way or to avoid them completely. Despite the ongoing criticism of lectures, lectures remain central to the teaching approach of most Business Law instructors and the authors are no exception in this regard. Certainly most instructors enjoy a lively exchange with students when that is available or can be promoted. Both the case method and the Socratic method are excellent; group projects and student classroom presentations are valuable, but if one observes what is actually being done in class one sees that many classroom presentations are lectures. "In the United States lecturing is the most common method when teaching adults. And so it is all over the world."[1] Since the lecture method continues to be the preferred pedagogical approach of many, perhaps most, instructors, the authors often have pondered why the improvement of lectures has not seemed to draw the attention of scholars as much as the criticism of the lecture approach has. It certainly seems that more attention has been paid to telling instructors not to lecture than to how to make lectures more interesting. The authors always enjoy presentations on pedagogy because despite the ever-present emphasis on research and publication in academia the teaching of students and the facilitation of their learning is still the most satisfying part of the job. With this background in mind, this article presents some teaching ideas. The following material is presented as collegial sharing of ideas. There is, of course, no suggestion that this is the way to teach the material in question, but the approaches described below have been found helpful by students and by the authors.

The theme of this paper is that good stories help to make good lectures because people remember good stories and learn from them. History is a series of stories. Feminists may argue that history as generally presented is predominantly "his story" which should be more gender balanced, but few would argue that much of history is based on stories. The most read book, the Bible, is replete with stories. Who is not familiar with the story of Noah and the Ark? People who know the story also know the basic message that the story conveys. "Stories have played an important role in our cultural history, identified as a component of every cultural group around the world. Today, they remain an integral part of everyday life. Stories teach a very primeval part of both the teller and the listener, connecting each to the other. Communicating via stories provides a rich context that captures and conveys information beyond the simple words used."[2]

Integration of good stories into lectures makes lectures more interesting. Students also enjoy stories in which the humanity of the parties is clear, i.e., they make mistakes, have problems, and all is not necessarily perfect. Hypotheticals in comparison are generally sanitized and one dimensional. Students are used
to telling stories and listening to stories. Simply put, they relate to them. Years after taking a course, students remark, "I still remember that story you told about..." If the story can be slightly humorous, that is definitely another positive, but this is not essential. The story is the thing which is remembered and the legal point which the story develops. Many of the stories will be short in duration and could conceivably be more appropriately called anecdotes, but the essential point is that stories, appropriate to the point(s) being developed, are an aid to student learning.

Stories can derive from virtually any source, e.g., newspapers, magazines, the presentations of other scholars, current events, etc. "Everyone encounters stories every day. The morning newspapers are full of stories of the events of the previous day. The evening news conveys some of the stories from earlier that day. Television shows, from situation comedies to dramas, tell stories. A trip to the theatre is a chance to see a story told on a big screen or on a stage." It is not difficult to collect short stories from these and other sources to illustrate points to students, e.g., who could avoid being aware of stories which lead to the passage of the Sarbanes-Oxley Act? The rise of Richard Grasso from the mailroom to the chairman of the New York Stock Exchange and the ultimate pay and severance package totaling millions pose interesting questions for students. If the reader found one of the stories contained in this paper to be worthwhile and wished to personalize it for classroom presentation, the reader could simply state, "A colleague at the North East Academy of Legal Studies in Business convention told this story" or "This story was contained in an article in the North East Journal of Legal Studies." Again, the point is that there is an abundance of sources for teaching stories.

A properly used and told story makes a legal point come alive for students and gives them something concrete with which to relate. In this regard, real life stories are superior to hypotheticals in that the student has the opportunity to see what has actually happened. Students especially enjoy fact-based stories from the instructor's life. The exact reason(s) for this are not completely clear, but stories from the instructor's life or experience are well received. Perhaps a story from the instructor's own experience bridges the gap between instructor and student. The instructor is now not just a person in charge of the class, but someone sharing part of his/her life experience with students. "It (the good lecture)...gives us a sense of the personal involvement of the lecturer in his or her topic." The instructor becomes more real in that the story illustrates that the instructor has been a participant in life. The instructor is discussing what has happened, or what is happening within the instructor's own experience. It is no longer just "Consider this or that." It is, this is what happened and what do you think of it? An additional benefit in story telling is that students often chime in and contribute related material from their own lives or from what they have heard elsewhere.

The authors wish to make two points before specific stories are discussed. First, although stories enhance lectures and the lecture method has beneficial features, the authors are not in favor of the non-stop, opening minute-to-closing minute type lecture which drones on endlessly and runs the risk of becoming a sort of soliloquy. Rather, the lecturer should always pause at certain times to be certain that students are absorbing material by asking students questions, inquiring for comments, and generally attempting to encourage students to take a more active role in the learning process. Second, the following material, indeed the entire paper, is a collaboration, but the stories are presented as told by one instructor since that
is the manner in which the stories would be taught in a classroom setting.

THE KINDERGARTEN COLLAGE AND SPECIFIC PERFORMANCE

The following story has been found useful in illustrating the concept of the proper application of the remedy of specific performance. When my daughter Jessica was in kindergarten, she was doing some art work in school and created a kind of collage of the Verrazano Narrows Bridge which is located in our neighborhood. She drew part of the collage and cut out parts of pictures which she pasted on. At some point, she brought it home to show her mother and me. We, of course, complimented the work, to encourage her. Apparently the teacher liked the work and submitted it to a district-wide competition and it won. It was displayed in a neighborhood bank for a short time with a ribbon indicating its winning status, and like the silly proud father one might see depicted on television, I would occasionally admire “the masterpiece” as I passed by the bank. Jessica was completely unimpressed by her success, but when the collage was ultimately returned to her to bring home, she said, “Here, Dad, this is for you. You can keep it. You like it so much.” I put it away and thought nothing further of it. I then found the collage perhaps twenty years later when cleaning out some items in the basement and the family enjoyed a little laugh about it because we are not an artistic family and neither Jessica nor anyone else in the family has ever created any other art works of consequence. This is all factual and I tell the students this, but I then ask them to suppose that a collector of children’s art had seen the collage in the bank and approached me to buy it shortly after my daughter gave it to me. The collector offers $100 and I accept the offer and I sign a quick contract accepting a $50 down payment. I agree to turn over the collage in two weeks because I want to give it suitable “refrigerator time.” But, I then begin to have regrets thinking it is crass and mercenary to sell the collage after my daughter has just given it to me. I offer to return the down payment and ask the collector to cancel the deal. The collector is adamant, so I now offer to pay him money to cancel our contract, but the dealer refuses and then sues me.

The point of the story is that the item is unique, it is impossible to value, there is not a ready replacement available on the market, and it is a perfect place for the remedy of specific performance. Accordingly, the court would likely order the collage turned over to the collector. Students invariably connect with the story, perhaps because they have drawn things which were then hung on their parents’ refrigerators, praised, etc. Importantly, the illustration of specific performance becomes clear in their minds.

SOMETIMES THE DAMAGES TAIL WAGS THE DOG

Students often have difficulty understanding the important practical role damages play in the decision of whether or not to begin a lawsuit. Perhaps influenced by announcements in the media of large awards for seemingly modest injuries and wrongs, students often naively conclude that all wrongs should be compensated by large awards. They have difficulty accepting the role of nominal damages or the fact that attorneys often have to tell clients that they have not been injured sufficiently despite the would-be defendant’s wrongdoing. For example, students struggle to accept the fact that a bank that pays a check in spite of the fact that the bank has received a valid stop payment order is not liable to the drawer unless the drawer proves that the drawer was not liable to the holder of the check, i.e., the bank is not liable simply for making a mistake which does not result in a loss to its depositor. It is instructive to remind students that mistakes are made all the
time, but only those which result in damages are compensable in lawsuits. Every attorney has, of course, had the experience of telling a client that he/she is correct on the law or on the liability portion, but that there are simply not enough damages to make a lawsuit worthwhile. Students are surprised to learn that absent special circumstances, such as a clause in a contract or statutory authorization, attorneys’ fees are not recoverable in a successful lawsuit. Similarly, the non-recovery of awards for emotional distress in contract cases also makes the proper calculation of the amount of damages that may be recovered a crucial decision in bringing the case.

A client approached the instructor and related that his stepdaughter, a nursing student in a college in upstate New York, had been severely injured in a toboggan accident when she struck a small stump or growth of some kind which was just on the outer portion of the run or slightly off it. The toboggan overturned and her mangled leg required three operations which caused her a great deal of pain and suffering. She lost a year of school to her recuperation. The client asked that a lawsuit be begun on her behalf alleging it was negligent to have the stump or growth on the toboggan run or closely adjacent to it. The client was advised to seek the advice of local counsel in the area where the accident occurred for logistical and practical reasons, but several attorneys in the area had already refused the case. They were, in his words, “turned off” by the fact that she had successfully negotiated the toboggan run once. The accident victim accompanied her stepfather to my office limping badly a year after the injury, still in great pain and needing at least one more operation on her leg.

The instructor referred her case to a top negligence firm in New York City where a friend was a partner. Some weeks later after her situation had been evaluated by the firm, my friend called to say that the firm could not represent her. He indicated that a great deal of time had passed since the accident and that they would have to send an investigator to the area at a substantial expense and that conditions on the toboggan run may have changed. My friend ended by saying, “You don’t know those farmers upstate. They are not like city juries. They’re so tight-fisted that even when you win, you get a crummy award. They don’t like New York City lawyers coming up and suing local residents either. The partners feel it’s just not worth the expense and effort.”

I understood the decision, but was disappointed because I hoped the young woman would be able to have her day in court. Reflecting on the matter for a couple of days, I called my friend back and asked him to take a second look at the matter focusing on the damages. My argument was that with the terrible damages she had suffered, the case was worth “a shot.” A winning award would have to be very substantial and therefore the firm’s contingent fee would be large. The firm sent an investigator to the site where he found the stump in question. The firm took the case spending several thousands of dollars in investigating the matter. Ultimately, the matter was settled for the then-substantial sum of $149,000.

It was clearly a situation in which the amount of damages sustained greatly influenced the decision to sue and serves as an illustration that students remember quite well. In discussing this case, it is generally wise to caution students that great damages do not necessarily equate with great recoveries. It is necessary to bring the two ingredients together – liability and damages. Finally, a good concluding remark is to remind students that they do not want to recover large judgments because that means that they have suffered substantial losses. Using business law and business sense to foresee and avoid problems is the greatest benefit one can obtain from a business
law course. Another point worth mentioning is that the case also reflects the value of the sometimes maligned contingent fee arrangement between attorney and client.

A TOTAL LOSS THAT TRULY BECAME A TOTAL LOSS

The following story helps students with the basic idea of a total loss as a fire insurance concept, but it also incorporates a number of other worthwhile business law concepts regarding the need for estate planning and the fact that clients and business may come from unexpected sources.

Carmine sold a home and financed the purchase in part by taking back a mortgage on the property. Since each monthly payment was part interest and part principal, the seller wished to know the breakdown of the payments. This took place before computers were popular and these items were readily available on the Internet. I obtained a schedule from a financial company once I knew the principal amount, the interest rate, and the length of time of the mortgage. Carmine asked how much my fee was, but I advised that I had really done no work and to accept it as a gift. I mentioned that the schedule had only cost $3. He professed amazement about not being charged, but I was even more amazed when my telephone began ringing with numerous referrals from Carmine. It seems that he was a member of a large family and also had many friends who were active in buying houses, businesses, etc. They would often begin, “Carmine said to give you a call.” I was, of course, delighted by this unexpected largesse.

One day about 3:00 a.m., I was awakened by telephone calls from insurance adjusters advising me that Carmine’s home had burned down. One even rang my doorbell around 6:30 a.m. soliciting me, despite the fact that it is illegal to solicit the creation of a fire insurance adjuster contract after 6 p.m. on the night of a fire. The next day I went to Carmine’s house and found him standing in a kind of Gone With the Wind tableau amidst the rubble completely covered with soot and dirt. The pungent smell of burnt, wet wood filled the air. There was, however, a shell of his house behind him. I expressed my regrets and Carmine indicated gratitude to God that his family had been unharmed. He indicated that it was then only a matter of money and asked for my help. I said that I of course would do whatever I could and left him looking for items of personal interest in the debris.

Teenagers had set the back porch of his house on fire hoping to burglarize the homes of neighbors who would necessarily come out to see the fire. They had been arrested and had confessed. The fire from the porch then burned the house from the ground floor going up through the center of the structure. There was a structure with extensive water damages and broken windows standing in the end which had been gutted by the fire as the fire went up through the center of the building.

The insurance company initially contended that the fire loss was not total. In television ads, one may be “in good hands” and “receiving a check that same day”, but such was not the case for Carmine. The teaching point concerns the rather straightforward definition of a total loss and how that may be determined and calculated. Certainly no business law instructor has difficulty explaining that principle, but presented in the context of Carmine’s story, the students internalize and personalize the concept. The company eventually relented and accepted that the home was a total loss and a settlement was arranged without retaining a fire insurance adjuster.
Carmine was a junior high school shop teacher who was quite handy with home improvements, and along with family and friends restored his home. It apparently turned out quite well, but two years later en route to a museum he died of a heart attack. Whether the attack was the result of stress caused by the fire, overexertion in renovating, or a congenital ailment, or a combination will remain a mystery.

Carmine’s widow began to call me telling me that Carmine had planned for the college education of his three teenage children. He had an “in trust for” or Totten trust bank account for each of the children. This financial arrangement was created to motivate each child by making it clear that funds were available for future studies. Unfortunately, Carmine never foresaw his early demise and this proved to be a very poor plan. The children who were now the owners of the accounts and without the guidance of their father, showed little interest in attending college and began to buy sports cars, take vacations, and spend extravagantly as soon as they gained access to the accounts. The widow requested some type of legal intervention to prevent this waste, but no legal remedy was available.

The story of Carmine incorporates a number of business law teaching points – the basic or literal concept of a total loss in a fire insurance setting, the fact that appropriate professional setting of fees may be vital to one seeking to build a client or customer base, and the need for all people to have an appropriate estate plan. The instructor might spend some time asking students what conclusions they draw from the story. The human elements remain with students who often later during the term ask how Carmine’s children turned out.

The deposited acceptance or “mail box” rule is a basic and simple contract principle concerning acceptance of an offer and the fact that an acceptance will generally be considered effective when properly sent to the offeror unless the offeror has indicated that the offer must be received to be effective. The following story concerning that rule has amused students.

As a young attorney, the instructor was involved with complicated litigation which was somewhat time sensitive. The instructor had worked as co-counsel with an older attorney from another firm who was the lead attorney on the matter. After years of preparation and on the eve of trial, a settlement was reached which was favorable to our client. The lead attorney forwarded the necessary paperwork to me for review and my signature and prepared everything for my signing, including the stamped envelope which in the lower left hand corner indicated, “Attention, Alexandria (last name of his secretary)”. I reviewed the matter promptly, signed off on the matter, placed the material in the stamped and addressed envelope, and mailed it. Unfortunately, the mail did not arrive. My co-counsel contacted me to ask why so much time had passed without me finalizing the matter and why the mailed communication had not arrived. I was informed that there was a real danger that the settlement would fall because of the delay. I interrupted a busy schedule and traveled a great distance the next day to his office where the papers were re-executed and the settlement was salvaged. To my surprise, there seemed to be some doubt on the part of my co-counsel as to whether I had actually mailed the papers. I found this intimation unsettling and insulting, but I decided that perhaps the pressure of this case or other matters had affected his judgment.

More than three months later, the original communication mailed by me was returned to me. The envelope was filthy and appeared as if it had been stepped on many times, there was a great deal of foreign writing on it and numerous postmarks,
The teaching point is that if the mailed response had been an acceptance of an offer sent in a timely manner the result would have been the formation of a contract despite the fact that the mail was not received. It serves as a good illustration of the dangers of the deposited acceptance rule for offerors. As a practical point, it is well to ask students why they would ever make an offer and not specify that acceptance would have to be received by a certain date to be effective. In addition, the development of e-mail and the fax machine make the mail box rule less compelling today, but the story remains worthwhile in that it presents somewhat amusing possibilities for those who do not take safeguards. The students enjoy looking at the copy of the tattered envelope.

**WILLS, ESTATES, AND PASSAGE OUTSIDE THE WILL**

Few topics rival estates as topics of interest to students. Students love to consider estate possibilities like the right of election of a surviving spouse, the per stirpes distribution of the estate to children who represent a deceased parent, the intestacy rules, and the ability of parents’ to disinherit children. The passage of items outside or irrespective of a will is also of interest to students.

The latter point is illustrated by the tale of Albert and Karen who were brother and sister. The two approached the instructor and asked for assistance in the probate of the will of their recently deceased father, a widower. The will was executed two years before the testator’s death, appointed them co-executors, and left the entire estate to them in equal shares. The witnesses were readily available to perform their duties and the deceased was said to have owned his home, several bankbooks with considerable sums, and had life insurance on his life. Albert and Karen seemed to legitimately grieve the passing of their father, and were anxious to move forward with the probate of the will.

The matter unfolded, however, in a very strange manner. Investigation of the title of the house revealed that it was owned in a joint tenancy with the right of survivorship with a brother of the testator. The joint tenancy and survivorship aspect were specified in a deed recorded by the father after the death of his wife. Regarding the bank books in question, one was “in trust for” the deceased’s brother and the second was “in trust for” Karen. The life insurance named a charity as the beneficiary.

Despite these unexpected findings, the beneficiaries named in the will, Karen and Albert, protested that the will left everything equally to them. They were, of course, dismayed to learn that the passage of title to the house, the proceeds of the insurance policy, and the bank accounts had not been part of the probate estate, were not affected by the will, and had, in fact, passed outside of it. The paradox as to why the deceased testator had written his will in the manner above described was unsolvable. Had the deceased acted out of ignorance thinking that the will would supersede the joint tenancy, the life insurance beneficiary designation, and “in trust for” provisions? Was the testator simply not thinking, and did the attorney who drafted the will caution the testator to adjust the beneficiaries of the insurance and bank account to reflect the testator’s wishes? A good discussion point for students is to lead them to the realization that one’s Last Will and Testament
is only a part of their estate plan and that those leaving property must take pains to insure that their entire disposition of property after their demise reflects their carefully considered intentions. It is instructive to ask students how they think the matter should have been set up by the testator, why they think the testator acted as he did and whether it might be concluded that the attorney who drafted the will was remiss in his/her duties. The story also may be used as a catalyst to lead to a discussion of Living Wills and durable powers of attorney.

CONCLUSION

One means of enriching lectures is to relate meaningful stories to the students, stories which are based on real life situations. Students seem to particularly enjoy stories in which the instructor has been a participant or stories from the instructor’s personal experience. “Just as a picture is said to be worth a thousand words, a story conveys so much more meaning than the simple words used to tell it. Members of the business community have an untapped capacity to receive such messages in story form. Both anecdotal evidence and existing research supports considering stories as a legitimate vehicle for communicating important messages.”

Meaningful stories can be obtained by an instructor from virtually any source. It may be effective to determine the point the instructor wishes to develop and to find a story that fits that situation. More likely the instructor will recall or think of a story from his/her experience to develop a point. Where the story is not one from the instructor’s experience, stories abound in the media to fit almost any situation.

ENDNOTES

1. DONALD S. BLIGH, What’s The Use of Lectures? 3 (2000).
3. Id. at 1831.
5. Note 2 at 1836.