Apportionment of Estates.

Significance of Dower.
Rules of Descent.
Newall's Chart.

By Karl Granville Baker, Litt.B., L.L.B.

Problems and Quizzes.
Questions and Answers.
Class Notes.

Christmas Number
This Building Furnished By

A. W. HASTINGS & CO.
WHOLESALE & RETAIL
DOORS — WINDOWS — BLINDS
Window and Door Frames, Weights, Cord, Etc.

134-142 FRIEND STREET
BOSTON

BARBER & CO.

Power, Heating and Ventilating
Contractors

173 BROADWAY
BOSTON, MASS.

NATIONAL ELECTRICAL INSTRUMENT CO.
Manufacturing Switchboards and Repairing, and Calibration of All
Kinds of Electrical Measuring Instruments

162 SIDNEY STREET
CAMBRIDGE, MASS.
ROBERT W. S. COX, '22, Pres.

Member of Master Plumber's Association

LOUIS BROWNING — Plumber

31 HIGH ST., BOSTON, MASS.
Tel. Main 7519
FORMERLY OF ROBERTS & BROWNING
SUFFOLK LAW SCHOOL REGISTER

Published by the
STUDENTS OF THE SUFFOLK LAW SCHOOL
45 Mt. Vernon St., Boston

Thirty Cents a Copy
Apportionment of Estates
Significance of Dower—Rules of Descent

By Karl Granville Baker, Litt. B., L. L. B.

It has been well said that man brings nothing into this world and that he can take nothing with him into the Great Beyond. In olden days property escheated to the State, after the death of the temporal owner. In 1540, under Henry Eighth, the justly famous Statute of Wills was passed, regulating the apportionment and distribution of estates of the deceased. From that date an intricate system of apportionment of estates of deceased persons has been built up; a superstructure the understanding of which necessitates continued application and study.

Students of the elusive subject of Real Property know that the laws of the State where the land lies govern the distribution of real estate, after the death of the testator or one who dies intestate; while personal property is distributed under the laws of the State where the owner last resided before his demise.

A consideration of the apportionment and distribution of estates of the deceased, confining ourselves generally to Massachusetts law, must always be made with the distinct understanding that "heirs" and "next of kin" are practically equivalent terms in this State.

RIGHTS OF SURVIVING SPOUSE.

Revised Laws, Ch. 140, paragraph 3, states, as to rights of a surviving husband or wife, that the surviving spouse gets one-third of all property left, real and personal, where there are children, the remainder going to the issue of the marriage. This right is subject to charges of administration, funeral expenses and debts, in the order named, as are the rights described in the two paragraphs which follow.

In case of similar circumstances to those stated above, but where the deceased left relatives, but no children or issue, the spouse surviving gets $5,000, and one-half of the real estate and personalty remaining over and above that amount. The next of kin gets what is left.

Suppose the deceased left no issue or kindred; the surviving husband or wife is then accorded the entire estate.

Revised Laws, Ch. 135, paragraph 16, states that if the deceased left a will the surviving spouse may, if not agreeable to the terms of the will, or its provisions, waive such provisions and ask for the same part of the estate to which the survivor would have attained in case the deceased had died intestate; this to be done within one year after the probate court allows the instrument.

The above is limited as follows: if the surviving spouse by thus waiving the last will and testament would secure more than the sum of $10,000, then he or she will get only the income on what remains above that amount; and if the deceased left no kindred, the survivor who waives the will gets only $5,000 outright and half the remaining realty and personalty, the balance going to the next of kin.
The right to waive the will is a right inherent in the surviving spouse and is cancelled if the survivor dies before so waiving; but a guardian has such right, acting for his minor or incapacitated charge.

If a court decree is entered that either party to the marriage contract has been deserted by the other, the party at fault cannot take advantage of this right of waiver. See R. L. Ch. 153, paragraph 36, and the Statutes of 1906, Ch. 129.

By a writing filed in the registry of probate a surviving husband or wife can, within a year after the bond of the executor or administrator is approved, claim curtesy or dower, as the case may be. But to do this, where there is a will, a waiver of the will must also be made.

SIGNIFICANCE OF DOWER.

Dower means that the widow, if granted same, gets a life estate in one-third of her dead husband's realty. Dower has the "first bite" in claims against the estate. The right of the widow to dower includes real estate which the husband transferred and in the deed to which the wife did not sign away her rights. This does not preclude the widow from getting what is due her by statute in the personality of the deceased, this being heretofore explained.

As to curtesy the law is less definitely defined in some details. If the marriage took place on or after January 1, 1902, the husband's right or curtesy is identical with the wife's right of dower, as stated in last paragraph. The right extends to any land which the wife had obtained since the date stated, even if the marriage was previous to such date. The husband surviving may, as we have seen is the case with the surviving wife, as to dower, claim his statutory rights in her personality.

In case the marriage took place before Jan. 1, 1902, the husband's curtesy in real estate previously acquired by his wife, if they had issue born alive, is a life estate in all his wife's realty; or, if no issue, a life estate in half his wife's real estate. Under this set of circumstances, however, if the husband so claims he cannot get his statutory rights in her personalty.

R. L. 153, paragraph 1.
Statutes of 1915, Ch. 134.

After the rights of surviving husband or wife have been settled, as above, the heirs, or next of kin, in this state take as follows as to realty and personalty not disposed of by will.

If there is issue, such children share equally, the issue of deceased children taking their parents' estate per stirpes, i.e., by right of representation. If all the issue are of the same degree of kinred they take per capita; i.e., "by the head," or equally. R. L. Ch. 133.

An example of the meaning of "per stirpes" and "per capita" is where A dies leaving two children, B and C. They would each take one-half. Suppose, however, B also dies, leaving two children, D and E. Then, as to A's property, C would take his one-half and D and E, one-quarter each, the last named two taking per stirpes, i.e., by right of representation. Suppose C dies, also leaving two children,
F and G. Then D, E, F, and G, grandchildren of A, would each take one-quarter of A's estate. This would be taking per capita.

RULES OF DESCENT.

The rules of descent among next of kin, where there is no issue, is that the property goes to the father and mother in equal shares; if one only is living then the whole to that one.

If there is no issue or father or mother living, brothers and sisters and their issue would take equally. If the brothers and sisters are all deceased and their issue are all the same degree of kindred they take per capita; if not all of the same degree, per stirpes.

Where there is neither issue, father, mother, brothers or sisters or their issue, the next of kin in equal degree take in equal shares.

Where collateral kindred (descended from same stock but in a different line, e.g., a nephew) in equal degree claim through different ancestors, he or she claiming through the nearest ancestor takes by priority, against the other.

If there is no kindred or surviving husband or wife the entire estate escheats to the State.

The manner in which degrees of kindred are computed has been a stumbling block to the law student from time immemorial. It is, after all, a mathematical proposition merely and is within every man's grasp who will put the time in to thoroughly understand it in the first place. The rule is, so far as the law of this state is concerned, to count from the deceased person back until a common ancestor is reached for him and for the person whose relationship is being figured out. Then count downward, i.e., in the direction of descendants to the one whose relationship is being considered.

To better understand this an example or two will suffice. Let A be the deceased person, B is his mother's aunt. Their nearest ancestor in common would then be A's great grandmother, C. Counting backward (in point of years) from A, the deceased, we have three steps: (1) his mother; (2) his grandmother; and (3) his great grandmother. Then from his great grandmother down to his great aunt (his mother's aunt) is another step, making (4). The great aunt is then of the fourth degree of kindred to A, the deceased.

As other examples it may be stated that a dead man's uncle or aunt would be of the third degree of kindred, being two steps backward to the common ancestor (grandmother or grandfather) and one step downward to the uncle or aunt from the common ancestor; a man's second cousin would be of the sixth degree, the steps being (1) father, (2) grandfather, (3) great grandfather and common ancestor, (4) great uncle; (5) father's cousin and (6) second cousin; and a man's cousin's son would be of the fifth degree, the steps being (1) father, (2) grandfather and common ancestor, (3) uncle, (4) cousin and (5) cousin's son.

NEWHALL'S CHART.

An illustrative chart, drawn up by Attorney Guy Newhall, A. B., L.L. B., of Lynn, printed in the recent book on "Settlement of Estates."

(Continued on Page 8)
The Extension Courses, inaugurated in October have already scored a considerable success. A number of outside lawyers have taken advantage of Mr. Dolan’s excellent course in Probate Court Practice as well as in Mr. Partridge’s “Examination of Land Titles.” In connection with the latter course, Suffolk Law School has had an unusual experience. Women have actually attended lectures. There is an interesting story in connection with this concession to the gentler sex. Shortly before the course in Land Titles began a lady called the Dean’s office by telephone and inquired if the course were open to any member of the Massachusetts Bar whether a graduate of Suffolk Law School or not. The Dean replied that it was. The lady thereupon declared that she was a member of the Bar and would like very much to attend since no other school gave such a course. This was a situation from which the Dean could not very gracefully recede so the lady came and brought with her friends of the same sex. These friends increased until there were over a dozen of them in class.

This led to another interesting situation. A delegation from the “co-ed” contingent called at the Dean’s office and informed him that they were so much interested in Mr. Partridge’s course in “Examination of Land Titles” that they would like very much to take Deeds, Mortgages and Easements as well. But here the Dean was on firm ground. He informed them that while the Extension Courses were open to everybody, the course referred to, was a regular course in the school and the school was not co-educational, hence it would be impossible for them to attend.

A rumor has been going the rounds to the effect that “Dick” Kaplan is contemplating entering the Hall of Fame. Where this rumor originated is hard to say but the fact remains that it is the common knowledge of all who are in on this rumor that he has decided that “single” life is a poor life. He evidently does not fear the H. C. L.

We wonder if a certain young lady whom he visited so often last year and, we suspect, he has visited many times this year, could be the cause of this rumor? We know that he has been looking quite sick, nor can we blame him, during the past few months. Is there a Sherlock in the school who will get on the trail and find out? Good bye, “Kap.” And he was such a nice boy. But married life isn’t so terrible, after all. (encouragement)

The Junior Class has set a good example for the other classes to follow. Their monthly meetings at the Quincy House, the establishment of a Quiz Club and their many other plans for the coming months, augur well for the success of the class. And, by the way, no little credit is due “Dan” for his part in this matter. He sure does make a fine president.

Where there’s a will there’s a chance for a lawyer to make some money.
The lawyer's brief is like the surgeon's knife,
Dissecting the whole inside of a question
And with it all the process of digestion.

—Byron.

The court does not render a man contented, but it prevents his being so elsewhere.

—La Bruiyere.

Who said Freshmen are brainless? They certainly showed the world they're there. And what a dance it was. And speaking of the Freshmen, they have at least one live wire, namely, 'Bob' Hunt.

Why is it that a certain robust Sophomore is constantly being joshed by his fellow members? Cannot a man seek a little slumber without being molested by his brutal classmates? Shame! we say, shame!

Did you attend the Freshman Class Dance? If not you missed the time of your life. Credit must be given the Freshman Dance Committee for the manner in which they conducted the affairs of the dance. Let's hope we will see another affair like this one. And we must not forget that quite a neat sum was realized for the benefit of our new building.

Who is the wild-eyed young man who has been running from classroom to classroom speaking to the classes, asking for news and pleading for ads? Of course we might venture a guess and say Mr. Kaplan. But he's delivering the goods.

'Stoo bad Fred Bartlett of the Junior Class couldn't win out in the last State election for Representative. He certainly deserved being elected. Don't give up, Freddie. Try again, and better luck next time.

Have you noticed how many uniformed men are attending the lectures? Ambition is the word.

List' Sophomores. Is Mr. York still telling 'em?
If any one desires to find out the meaning of ambition see Sam Harris of the Senior Class. He may not say much, but what he does say will mean a lot. If any man is ambitious, he's the man.

Patience, fellows. Only a few more weeks and we shall hold our lectures in our new building. Doesn't the very thought of this make you swell with pride. And the Dean made all this possible.

Charles S. O'Connor, Suffolk '13, has made such a creditable record on the Boston School Committee, that even the Republican newspapers are booming him for Mayor of Boston. Charles certainly has the politicians guessing.

Major Edwin L. Weiscopf, Suffolk '10, is undecided whether to resume his law practice or to continue in military life. Mr. Weiscopf is a very bright student and made a good record as a lawyer. His success in military life is unquestioned.
SING A SONG

By RICHARD S. KAPLAN

Tho’ you may feel blue through the whole day long,
Sing brother, sing, sing a song.
If you go through life thinking you don’t belong,
Forget it and sing, sing a song.
Then you’ll find there is always a laugh in your heart,
And a cheerful sensation that will not depart,
So hear me, my friend, now’s a good time to start,
And sing, brother, sing, sing a song.

If everything seems to be going dead wrong,
Sing brother, sing, sing a song.
If you feel you are weakening—nonsense—you’re strong;
Drop it and sing, sing a song.
Forget all your troubles and smile, brother, smile,
Throw all your troubles upon the trash pile,
You’ll find that life after all is worth while
If you sing, brother, sing, sing a song.

TO THE "REGISTER"

Good luck to the Boys on the "REGISTER" new,
May Success be as sure as the skies are blue,
From the Coast to Coast may she travel far
Undaunted and clear as the Northern Star.

When first she is published lets all give cheer,
Uphold School traditions, GIVE ENCOURAGEMENT clear,
Speak a word for these chaps who make it so,
Suffolk Law "Register," "Keep it aglow."

—Oliver Grant ’23.

(Continued from Page 5)

will further illuminate the matter. Attorney Newhall is a personal friend of the author of this monograph.

As a last word it may be stated that a posthumous child (one born after his father’s death though in being before the father’s demise) is treated, as to inheritance, as if alive at the death of the parent; that kindred of half blood take equally, if of same degree of kindred with those of the whole blood; that an adopted child inherits from natural parents and also from his adopting parents; and that an illegitimate child inherits from his mother or ancestors on her side but not from legitimate children of the mother or his mother’s collateral kindred.

If in this article the author has thrown light on a few of the intricate points of this especially technical branch of the law, he will consider that he has achieved his purpose.
PAYMENT OF BOND COUPONS

When the school bonds were issued last February, "The Cosmopolitan Trust Company or its successor" was named as the place of payment of coupons and bonds. Unfortunately, the Cosmopolitan Trust Company has been closed for several months and is not likely to reopen until after February 1, 1921. Coupons maturing at that time may, therefore, be redeemed at the school. Students who own bonds and desire to use the coupons in that way may turn them in for cash in connection with their tuition payment falling due on January 31, 1921.

THE FRESHMAN CLASS

Needless to say, we have the largest Freshman class in the history of the school. From my experience with them in class I find them of an unusually high type of intelligence. The first division is, of course, much larger than the second division. It is therefore much harder for an instructor to control it. The very good nature of the throng makes it harder to keep their thoughts in close contact with advance or review work. The second division is therefore likely to reap an advantage over the other by actually accomplishing more review work than the larger division.

Use and Abuse of the Library

I am very sorry to note that abuse of the library is distressingly evident this year. Men who take Massachusetts or United States Reports out of the library do so in violation of rules of the school, but to keep them amounts to a criminal offense. Unfortunately law schools in general suffer in this way, but this fact is worse than ordinary larceny for it deprives other men of access to the books in question and seriously injures the school by breaking up a valuable set of reports in a way that cannot be remedied. In our new building we shall have means of detection of such offenders. But notwithstanding this fact, I believe it is the duty of all students to report any observable misconduct of this nature.
What class can boast such an array of distinguished citizens as the Senior Class possesses? Let’s take a glance at some of them.

Mr. Henchy, the distinguished former Mayor of Woburn, and President of our class, is our most distinguished and honorable member, having succeeded in passing the bar examinations last June.

Charles J. Canavan, President of the Mail Clerks’ Association is another we can all feel proud of. But tell us, Charlie, how do you do it? We mean mix your mail with the study of law? Charles certainly ought to be up in Legal Ethics. N’est pas?

Prof. Downes, in addition to being an exceptionally successful instructor, certainly can appreciate a good joke.

Ah ha! He’s here. Who? Why Jim Foley of South Boston, a daily passenger on the Deer Island Boat (in an official capacity). No wonder he’s up on Criminal Law.

Space will not permit us to mention all of our great men but—we have them.

Why does Louie Glixman remain silent these days? Really, old bean, something tells us he’s in on a great secret. Let us in on it, will you Louie?

Up on your toes, Fellows. The Mid-years are almost here. Only a few days more and then—what?

It’s up to you to get wise and begin plugging. We are all on our last lap so that it behooves us to get busy, leave shows alone, pay less attention to your wives’ shopping and plug away at law.

Welcome Freshmen! The Senior Class is glad to welcome you all as fellow students, but we as a whole, beg one favor, “please don’t become too familiar with your immediate superiors, the honored Sophs, as we know from past experience what it will lead to.”

One of the first things that a lawyer learns upon entering the practice of law, is that “where there’s a will there’s a host of relatives.”

Lest you forget Mr. Gallagher is our class editor. Help him make the Senior column a success. Contribute your bit and then don’t fail to read the column.

The members of the Senior Class might take a tip from the Junior class and follow in their footsteps. We hear the Juniors have established a “regular” Quiz Club which will aid in a great measure the members of the class. How about it fellows?

A number of the members of the Senior Class are busily engaged in preparing for the next Bar Examination to be held on Saturday, Jan. 8, 1921.
Mr. Leo Wyman, who succeeded Mr. Duffey as instructor in Massachusetts Practice & Pleading is making a hit with the members of the class, by the manner in which he is handling a subject that to the majority of the class is very difficult.

Read your problems, before you proceed to answer them. "Our bitterest remorse is not for our sins, but for our stupidities."

It is the duty of EVERY STUDENT of Suffolk Law School to conduct himself at all times in a manner that will reflect credit on our school and uphold the dignity of the profession to which we aspire. The public are prone to judge the profession by the acts of the individual. Uncle Charley, in Rhymes & Reason in the "War Cry"—quotes the following:

"Beware of law and lawyers: lose and get away. The longer you let lawyers fight the more you have to pay. It’s best to let them have your coat and save your pocket-book: the other fellow gets the bait, but you will miss the hook."

Some of the members of the Senior Class persist in talking and whispering, during the lecture period. This is a source of great annoyance to the class as it prevents proper concentration and tends to distract the attention of the class. — TALK IS CHEAP, UNTIL SOMEONE SUES FOR SLAIBAND.

Useless:
Use the word "jumping-jack" in a sentence.

Senseless:
Mother yelled to her son, "The bath is ready. Jump in Jack."

ALUMNI NOTES

John D. Smith of the class of 1920 has just concluded a very interesting campaign for Mayor of the City of Quincy. In a field of four he came very close to first place. John will doubtless have better luck next time.

John J. Heffernan of Brighton, Suffolk ’18, (to distinguish him from John J. Heffernan, Framingham, of the same class) has broken into the political arena this year and conducted himself like a veteran. After having defeated his Democratic opponent in the primaries, the latter ran against him on the Republican ticket, but in spite of the Republican landslide, John was one of the few Democrats to be elected to the House this year.

George W. Ayer, Suffolk ’15, has for business reasons been obliged to discontinue his course in Partnership at the school. Thomas F. Duffy of the Faculty has been assigned to the course.

William McCarthy, Suffolk ’15, despite his sixty odd years, went to France during the war as a K. of C. secretary and returned loaded with honors. He has been at the K. of C. headquarters since his return and from last accounts he has not yet resumed his law practice.

WELL KNOWN SAYINGS:
"Are there any questions gentlemen? — ?"
Gem from recent Wills & Probate Quiz:
"The burden of proving the validity of a will is upon the testator."

From an answer to Evidence Problem.
"There was no error in the proceedings in my mind."
Comment of Problem Department: "There was error in the proceedings of the court, however."

What's that? You don't know the meaning of reiterate? That's easy. Ask Kerrigan. He has lately been delving into the intricacies of Webster's Dictionary.

The Junior Class is there, after all. We ought to continue showing the rest of the school how a class should run itself. There's no doubt but that the other classes will soon follow our lead and establish quiz clubs.

The Junior Class leads. Other classes follow.

The King is dead! Long live the King!
Our worthy and congenial instructor, Mr. Thompson has left us. But his many little witticisms, his quaint manner of expressing his opinion on any question raised by the class and his willingness, nay, eagerness to admit that he wasn't the king-pin of all lawyers, endeared him to the hearts of every member of this class.
Who's next?

He stopped! His face turned ashen! Great beads of perspiration slowly dripped from his noble, legal brow! He frowned—he scowled—ah—what's that? He smiles—yes—he smiles. And gradually a look of great joy over-spreads the handsome countenance. It's true—thank goodness—it's true. And as this thought strikes him, Bartlett, who has discovered all members of the first division to be present, slowly folds his attendance sheets and turns to his book on Evidence.

The fellows sitting in the left-hand corner of the room have taken for their motto, "Silence is Golden."

Competition is rife between John V. Mahoney and Jimmie Dignan, the pride of the second division. When the oral quizzes are in progress they continually try to outclass each other in their answers, and when the seemingly impossibility of failure presents itself to one or the other, the superior one for the night gives the inferior (?) the ha! ha!

One thing puzzles us very much. Is Mr. Douglas, our learned instructor, a friend of that famous club member, I. M. Married?

Did we hear someone nominate McDevitt for Lord Mayor of Ireland?
Merry Christmas and Happy New Year—and last but not least, a clean-up on the Mid-Years.

Remember, men of the Sophomore Class, we have clever men among us, as the speaker said one night. We admit it and offer no apologies whatever—but, at the same time, a few contributions to this "colyumn" would be very acceptable from the aforesaid clever men.

As for that question put by a member of this class to Mr. McLean on the manure problem in the quiz of November 18th, the following is respectfully submitted. In order to determine the amount passing as real property and the amount passing as personal property—where all of the manure had not been produced on the farm—some of it being the result of purchased grain—it is suggested that the jury take an average-sized cow of good pedigree and feed her two bushels of the same kind of grain each day for a week—checking up carefully the weight of by-products—in this way ascertaining the ratio of manure to grain consumed. As the individual is compelled to keep an accurate record of his purchases of grain, in order to make out his income tax return, the answer is but a matter of simple calculation—apply the ratio obtained in the laboratory to the amount of grain purchased. It is also suggested that in place of twelve good men and true—farmers be substituted.

But there were a few fellows who fell. Hang on, boys.

Here's one that was sprung on a member of this class when he went in one of the book stores on Beacon Street to get an advertisement for the Register—"We handle only religious books—I don't think lawyers or law students would be interested in those." How about it?

They have a motto over at Harvard, concerning Yale, which, if my memory serves me right, reads as follows: "E Hades Yalus." Wonder if they have improved on this at Boston College.

Speaking of Yale, a friend asks me if there is anything in the report that Saugus High will get a place on the Yale schedule next fall. Can anyone throw any light on this matter?

Don't forget to have your questions ready for Mr. York. He aids the vigilant—not those who slumber on their rights.

A story comes to us from B. U., bearing the earmarks of authenticity. The professor, by some clever open-field running, had worked his way through a list of lengthy names on the rollcall. The owners of the names all happened to be in the front row. "That's funny," said the professor, "reminds me of a story." "Reminds me," chirped someone in the rear, "of the British Army—with the Irish all at the front."

When it comes to Art we've got to admit Harris is there. Did you see his latest? Wait for the next issue of the Register. It will probably appear in that issue.
Have any of you noticed and wondered how the fat boy with the small derby can keep his seat while his head is rolling round in circles?

Suppose that fellow really was crippled, as he intimated when he put the question — how could he have had the offending limb cut off?

Suggestion for the oral quiz when Mr. York starts shooting them — every man on his toes as soon as the first victim starts his answer — because it's only a matter of time before your turn comes.

"Equity considers that as done which ought to be done." And yet Ponzi got five years.

There are two Gormans in this class — but I have a hunch that one of them always lets the other beat him to it when it comes to the "oral." I sit beside one of them — and as the Dean would say, as an ordinarily prudent man, I could almost testify to it.

There are two men in this class who haven't turned in "adds" — They have been warned that Kaplan might hear of it.

The proprietor of a bath emporium in this city doesn't think that any of us would be interested in his baths — they're mostly soap and water.

He who seeks equity must do equity. Get that fellows. If you want a good magazine, you must help make the magazine what you want it to be. Count on Kaplan to do the rest.

How many bonds did YOU buy? If not, why not?

Are you all ready for the Mid-year's? They're going to be pretty stiff, I think.

By the way, has any one any advance information as to what some of the questions are going to be? There are many men in this class who would love to know.

Good work, fellows. You came across in splendid fashion when Kaplan asked you for financial assistance. Keep up the good work. And let's have some manuscripts for the next issue. It's got to be a good one.

During one of our recent lectures, when the subject of running streams was mentioned, some one was heard to remark that he had a running stream all his own that no one in this wide world could ever take away from him. He's had a cold in the head for some time. Figure it out.

There's a certain young man (we don't know whether or not he is married) who persists in paying a great deal of attention to the female of the species rather than to his studies. Some of these fine days, he's going to wake up to the fact that Kipling knew what he was doing and saying when he wrote his famous poem "A fool there was." Take a tip from Kippy, say we.

Will the gentleman who threw a quarter at Mr. Kaplan's head please stand up?

How many fellows attended the dance? Did you notice that highly illuminated blonde who persisted in saying that Sophomores were the "dearest and cutest boys ever"? Have you still got your watch?
Studying law at the Suffolk Law School is a little different than going to school at the Boston University at Ellsworth, Maine, last summer. What do you say Mr. Parks of the Federal Board and other members of the Loyal Order of Malatra Mala? Ask John Glyn, Louie Aronson and Mr. Shaw! They know.

Don't fail to read the next issue of the "Register" for a detailed account of the Freshman Dance.

Very encouraging to see some of our young would-be attorneys busily engaged around the Court House, talking to judges, district attorneys and other human beings. Don't get discouraged men. Carry on the good work.

It is now time that our old friend Richard S. Kaplan was around again with the hat. Cheer up boys, as it is for a good purpose. Every penny collected is an additional nail or brick towards the completion of our long desired school building. It is indeed very necessary to finish the task remaining before us. A good proof of this will be realized by visiting our present freshman class, which is very much overcrowded. Yes, so crowded, that one must go outside to turn around and come in again. A word to those who know is sufficient.

Furthermore, it is we, the students of the Class of 1924 and those who are to follow who shall in the near future derive full material benefit as a final result therefrom. THEREFORE FELLOW STUDENTS it behooves each and every one of us to do our bit in order that our ambition may be realized; also those of our faithful, industrious, energetic and active friend, Dean Gleason L. Archer, who has labored under the most difficult conditions to make this undertaking a grand success.

Who's Who in the Freshman Class
Chairman Hunt of the Dance Committee is a staunch and true democrat. And we hear that the Editor-in-Chief has chosen him as a business manager on the magazine. Good luck to you, Bob.

Louis Barrasso, our vitriolic and fierce treasurer of the Dance Committee, is, as you know, a well-known labor leader. But where does he get that Bullsheviki stuff?

Don't you think Dexter Cohan is a nice boy? Certain ladies do. Oh, Dexter!

Our distinguished class-mate, Tague, has our well-wishes for his future success in politics.

Frank Carella, the orchestra leader of the Sauntaug Orchestra, was the big noise of the dance committee. And he sure did put it over.

Advertising is the specialty of Samuel D. Rubin; if you don't believe it ask any member of the committee—or Rubin himself.

How many of the boys of this class came across with news items or special articles? Look out boys. Mr. Kaplan will be looking for the scalp of some of you. Better get 'hep' and come across with some nice 'stuff' for the next issue.
A bright member of our class, though a student since September, found it necessary to inquire at the office for information as to the whereabouts of the basement. That's what he gets for coming in late every evening. If he but came in a few minutes before lecture, he would learn how to get to the basement where our worthy "freshie" draw away at the "weed." How about it fellows?

The Freshman class is trying to make Suffolk a bigger, better and greater school. What are Y O U doing towards helping us along? Are you shirking or are you putting your shoulder to the wheel? Get wise, fellows, get wise.

Mr. Jameson is going to be a Supreme Court Judge or we miss our guess. While walking down Summer St., a few days ago, he spied a handsome, rosy cheeked, calsominated young damsel slowly wending her way across the street. Instantly, without a moment's hesitation, he turned to his companion, another "fresh" and exclaimed, "A Peach." Could a Judge render a quicker decision than this one?

"A legal person is one who has a knowledge of the law yet is not an attorney," according to the definition given to Mr. Douglas by a first division freshman.

We hope the author of the above definition will some day write a law book.

Professor (in Criminal Law Class): Give a definition of acts "mala prohibita."
Student: Acts sinful, but not otherwise wrong.

REMINDERS

Like attracts like.

He of open mind and liberal, friendly spirit inspires like qualities in others and attracts their cooperation. The power of his individual effort is multiplied by the reinforcement of their collective might.

"Give and it shall be given unto you."

He who indulges envy, suspicion or grouchiness enfeebles himself and repels others.

"What measure ye meet shall be measured unto you."

If the world is passing you by with barely a nod of recognition, project into it your utmost helpfulness and happiness and presently it will respond in kind — and in such mighty volume and power that Success cannot withstand your stout assault nor happiness withhold her brimming cup.

H. J. A.

We greet you, Mr. Baker. Somehow we feel confident you are going to make us experts on the law of Sales, despite the brief time you have in which to give us the subject. But the class is backing you to the limit. That counts for a great deal.

We predict that Bill Collins will some day stand on the floor of the Senate, eyes centered nowhere in particular, delivering an oration that shall go down in the annals of our country's history, as the greatest speech ever given. He can orate, sa fact.
The year 1920 is about to leave us, but before it passes on we feel it our duty to mention several important facts which have occurred this year.

The Suffolk Law School opened this school year with the largest attendance in its history. Despite the many trials with which it was confronted in the past, Suffolk grew and grew until it has become one of the largest law schools in the world. This speaks well for the school, its principles and its faculty. But with the increase in its student body it was found necessary to increase the size of the school. The new building is the result.

Too much credit cannot be given our Dean for his untiring, unswerving efforts towards making Suffolk what it is today. He has known opposition, he has experienced disappointment, yet withal, he has weathered the storm and has emerged victorious in his struggles to make Suffolk THE SCHOOL OF SCHOOLS. Let us not forget this. He is indeed a man whose principles we may do well to follow. In Dean Archer is personified the word "STICK." Despite everything that adversity might do, he has stuck to his post like a REAL MAN. The result is self-evident. Here lies glorious inspiration for every man in this school. His motto has been, "NEVER QUIT." Let it be your motto as well.

Last, but not least, the "Register", publication of which was suspended during the war, has again made its appearance. As you read these lines, think of the work which has been entailed in making these many things a reality. And having thought, determine that YOU too shall become an active factor in the development and progress of Suffolk. Remember, Suffolk is YOUR school. Work to make SUFFOLK the BIGGEST, the BEST and the FINEST law school in the world. Work to make the REGISTER the BEST and GREATEST school magazine in AMERICA. And above all, work to maintain the ideals already initiated and maintained by the many classes which have come and gone before you. So working, SUFFOLK'S BANNER WILL INDEED BE FOUND FLOATING ABOVE ALL OTHERS.
The class of '24 has already made rapid strides towards success as a class. Its dance, held at Paul Revere Hall on Thursday evening, December 9th, was a complete success, in every sense of the word. It was managed in a manner which drew many complimentary comments from upper classmen.

Class of 1924, here's to your future success. May your efforts be crowned with success and glory. May the future bring to you the golden realities which are shining so brightly today as promises. And, with the coming of the New Year, may your scholarship record be forever remembered as the highest and cleanest in the history of SUFFOLK.

In this, our first issue since 1918, we have tried our best to make this the finest issue of the Register this school has ever had. How well we have succeeded we leave to the judgment of our readers. It has been a tremendous task to obtain the material needed, for the students, sad as it is to say, did not render the editorial board the assistance it so badly needed. Though assistant editors were elected by the various classes they failed to materialize, that is, all except our good friend, Mr. Garland, of the Sophomore class who has done his bit and more towards making this issue a success.

The editor, when he first suggested re-issuing the Register, was positive he would have no trouble in finding a loyal corps of workers to assist him. But, after a few weeks had passed he discovered he was wrong. The workers were seeking honors but were avoiding real work. It can be easily realized what an enormous task was placed on the shoulders of the editor. Not only was he compelled to hunt and hunt again, plead and beg for material, news items and other material factors entering into the making of this magazine, but, through the failure of the business managers, duly elected by their respective classes, he was forced to seek ads, aided to some measure by Mr. Garland and Mr. Bartlett. It was wholly unfair, to say the least. But let us forget this.

A new year is at hand. The editor, with the assistance of a few loyal men, among whom I would mention Mr. Gallagher, '21, Mr. McFarland, '24 and Mr. Louis Aronson, '24 has succeeded in achieving his purpose. The Register is in your hands. We leave it to you to render a verdict as to its merits. We realize there are many changes to make, many faults to correct and many additions made. For our faults we ask your indulgence. And we may safely promise that the next issue which will be issued early in February, will be the finest and best issue Suffolk has had.

It is the hope of the editorial board that every member of the school will appoint himself an honorary editor and business manager and submit stories, poems, news items and class notes, together with any ads they may be able to obtain, to the staff, by means of the Register box or through their class editors. Those meriting such action will be appointed to the associated editors and business managers board.

We feel sure that every man doing his little part, the Register cannot help but succeed. The success of the Register is YOUR success. Bear this in mind and we cannot fail.
WELCOME! CLASS OF 1924.

Class of 1924, we extend you a hearty welcome to this school of law. We who are members of the school revere the very name of Suffolk and all that Suffolk stands for. So let it be with each of you.

In this school there is a spirit, a loyalty, and co-operation that, perhaps, does not exist or manifest itself in any other evening school. Here, freshman, you can rest assured you are welcomed alike by the Dean, the faculty and the upper classmen. So we urge each of you, new members of Suffolk, class of 1924, to strive to maintain these high ideals and to perpetuate and further the aims of this school, yours and ours. By doing this, you will uphold that splendid motto of ours, "Honestas et Diligentia." So that in future years, when you have gone forth from the classic and historic portals of this institution you will be able to point to the Suffolk Law School standing there on renowned old Beacon Hill and exclaim with pride, "There stands my Alma Mater."

TO ALL SCHOOLS AND COLLEGES.

We invite the schools and colleges to send in copies of their publications which we may use in our "EXCHANGE COLUMN". It has been our policy, in the past, to conduct an exchange column and we intend to continue this policy this year. It is our intention to have copies of the different school magazines placed in the school library, for use of the student body. So, if you want your college or school publication to be among those in our library, give the name of the school and the paper it issues to the Dean or Mr. Kaplan or leave it in the Register box. In this way you will give them a chance to know the Suffolk Law School and will bring it to the attention of new prospects, who, perhaps, would not otherwise be attracted to our school, the largest and finest of its kind in America.

The February issue of the Register will contain many interesting features, among them being an article especially prepared by Prof. York and an article by Prof. Leonard. The Dean will also contribute an unusual article.

Because of lack of space we have been forced to curtail the problems and quizzes given in October. We have however given all the problems and quizzes of November and the early part of December. This feature will be continued in every issue of the Register. The value of this special REVIEW DEPARTMENT cannot be too much appreciated. As a yearly review it has no comparison. We trust every student will make good use of this department.

In our next issue, we shall include the quizzes and problems of the senior class.

It is our earnest hope and desire that every student in Suffolk Law School shall purchase a copy of the Register. Only by so doing can we be assured that OUR magazine shall be the success we want it to be. We feel sure of your hearty support.
'Real joy comes not from riches, nor from the applause of men but from having done something worth while.'

Does this mean anything to you? Can't you visualize what this sentence would express? What is finer, what is nobler, what is more worth while than to do something WORTH WHILE, something lasting and beneficial to others? Yet how few there are in this world who stop to ponder over this thought.

Too many men are inclined to go through life playing to the gallery, working, striving only for the applause they might receive. Is this not a selfish thought? But what is the fate of these gallery players? Their desires are gratified — for awhile — and then, one little twist of adversity and they are thrust into the depths of oblivion.

It is only the pluggers, the workers, who by dint of unselfish effort reaches that state where he feels a joy such as is rarely experienced by man. He it is who, no matter what fate may deal him, always remains on his feet, smiling all the while and continuing his work of helping the other fellow, for that is what is meant by something WORTH WHILE.

And so should it be with you men of Suffolk. You are preparing to enter a profession where you shall be constantly helping the other fellow. In some cases applause shall be yours without the asking, but in others, it shall be nothing but a fight from start to finish. Why not practice this while at school?

Determine, at once, to do something WORTH WHILE every day of your school life. Work, patiently, earnestly, and the sweetest joy known to mankind shall be your reward.

Some of the students have formed the bad habit of leaving the class room from fifteen to thirty minutes before the completion of the lecture. We feel it our duty to call the attention of these men to the fact that they are making a grave mistake.

In a school such as this, where only one and one-half hours are allotted to a lecture, every minute of that time is valuable. By cutting lectures the men tend to throw away the very thing for which they are paying tuition. As the days pass they will discover they have missed many important facts which they might have possessed had they remained the full period.

We realize there are a few who, because of train schedules, IMPORTANT business matters and other good reasons, must leave a little earlier than the regular time. But because these men must leave is no excuse for the others doing so.

With the coming of the New Year let us hope this practice will be dropped. The results will clearly pay for the effort in so doing.

We wish to call the attention of our readers to the price for which we are selling this number of the Register. All subsequent copies, however, will sell for 25c, the original price.

We wish you all a Merry Christmas and trust that with the coming of the joyful Yuletide every member will determine to do his utmost to make the Register the success we wish to see it.
TORTS QUIZ 2.

1. A shower of sparks, emitted from defendant’s locomotive owing to negligent firing thereof, set fire to plaintiff’s house. Plaintiff tried to put it out and was injured in the attempt. Can he recover (a) for the injury to his property, (b) to his person?

Defendant’s negligent act was the proximate cause of injury to the property, so plaintiff can recover for that. Defendant’s act was also the proximate cause of injury to the plaintiff’s person, since his attempt to quench the fire resulted in natural sequence from defendant’s act. Any prudent person would have done just what plaintiff did and would be bound to exert himself to prevent greater injury to the property. See Ill. Central Railway v. Siler, 229 Ill. 390; 82 N. E. 362. Archer 26.

2. A was under contract to support all the paupers of a certain town in sickness and health for a specified time and for a fixed sum. He sues defendant for assaulting and beating one of the paupers whereby he was put to increased expense for the pauper’s care and support. Can he recover?

No. The defendant’s act was held to be the remote cause of A’s damage. There was no natural or legal relation by which A sustained the loss. He sustained it because of the special contract by which he had undertaken to support the injured pauper. Anthony v. Slaid, 52 Mass. 290.

3. B entered upon C’s premises and with another man began using C’s grindstone. C went to them and repeatedly ordered B to go away. B refused again and again and declared that he would remain as long as he pleased, whereupon C struck him in the face and drove him away. B sues C for assault and battery. Can he recover?

Not unless he can show that C used unreasonable force in expelling him. One may use the necessary amount of force to expel another from his premises after requesting him to leave. Commonwealth v. Clark, 2 Gray 23, Archer 47.

4. An officer rode up to plaintiff who had committed a breach of the peace at a political rally on the preceding evening and said to him: ‘‘You are my prisoner. I have a warrant against you.’’ Plaintiff turned and accompanied the officer, without having been touched by him. The officer honestly believed he had the writ with him, but had accidentally left it at his office. Was plaintiff imprisoned, and if so, has he a right of action therefor?

Plaintiff unwillingly surrendered his freedom of locomotion and submitted to the will of the officer, hence this was an imprisonment. At Common Law the officer would be liable for arrest for a past misdemeanor unless he had the writ in his possession when he acted. But by statute in Massachusetts he is empowered to do so, hence in Massachusetts he is not liable for false imprisonment but would be liable in jurisdictions where any similar statutes exist. Archer 49-55.

5. X maliciously and without probable cause instituted civil proceedings to have Y adjudged insane and placed under guardianship. The trial having resulted in Y’s favor, Y now sues X for malicious prosecution. Can he recover?

Yes. All elements necessary to constitute a cause of action for malicious prosecution are present, namely, termination of trial action in favor of present claim, malice, want of probable cause, and damage which necessarily results from any such assault upon one’s business capacity and social standing. Lockenous v. Sides, 57 Ind. 360. Archer 56.

TORTS PROBLEM 3.

A railroad company was in the habit of leaving cars on a siding which sloped down a grade, the brakes being set on the cars to prevent them from moving. For years the railroad officials
had been troubled by boys playing with and on the cars so left, but no accident had occurred until on the occasion in question, the boys uncoupled a car and loosed the brakes. The car ran down the grade and injured plaintiff. Is the railroad liable?

No. Act of railroad company was not the proximate cause of injury. Officials had no reason to expect that the boys would do what they did. McDowall v. Great Western Railroad Company L. R. (1903) 2 K. B. 331. Archer 26-28. W. 89.

TORTS PROBLEM 4.

The X Wood & Coal Company had a pile of wood on the levee of the Mississippi. The only way to get to market was over a bridge which it was the duty of the City of X to keep in repair. The bridge became impassable and so remained long enough to have permitted hauling the wood to market. While it was thus impassable a flood came and washed away the wood. Is the city liable for the loss either in New England or western jurisdiction of the United States?

No. Flood was the proximate cause of the loss. In New England the rule that a municipal corporation is not liable for acts of its officials in performing governmental functions would also relieve from liability. Dubuque v. Dubuque, 30 Iowa 176. Archer 28. W. 92.

TORTS PROBLEM 5.

Plaintiff was severely injured by inhaling gas which escaped from defendant's broken gas pipe and found its way into the house where plaintiff was sleeping. The house was not piped for gas nor supplied with it in any way. Defendant's pipe had broken under the street nearby, owing to the unexpected settling of earth around it. Can plaintiff recover?


TORTS PROBLEM 6.

Defendant's granary was set afire and his property stolen. He suspected plaintiff, a boy of 13, and found him present at a second fire which had broken out. Defendant "placed his hand on plaintiff's shoulder and asked him If he felt better after he had set the fire." Plaintiff sues for assault and battery. What decision?

"Under all the circumstances disclosed in evidence, it was a fair question for the jury whether the touching of the person of the plaintiff should be regarded as an assault and battery." Wigmore, page 39. Crawford v. Berger, 91 Iowa 675; 60 Northwestern 205. Archer 41.

CONTRACTS QUIZ 2.

1. Defendant Tel. Co. received from the plaintiff the following message: "Will sell 800 thousand laths $2.10 net cash." The message delivered to X in Philadelphia read: "Will sell 800 thousand laths $2.00 net cash." X replied: "Accept your telegraph offer on laths." Plaintiff shipped laths at $2.00 when X of Philadelphia insisted that such was the contract price. He now sues the telegraph company for the loss sustained.

(1) Was there a contract between plaintiff and X and what were the terms? Archer Sec. 71. (2) Was the Tel. Co. liable?

(1) Yes, the terms are as received by X. (2) Yes. Ayer v. Western Union Co. 79 Maine 493.

From opinion: "It would be hard, that the negligence of the Tel. Co. or any error in transmission resulting from uncontrollable causes, should impose upon the innocent sender of a message a liability that he never contemplated. It would be equally hard that the innocent receiver, acting in good faith upon the message received by him, should lose all claim upon the sender. It is evident that either the sender or receiver must suffer loss. We think the safer and more equitable rule is that between sender and receiver the party who selects the telegraph as means of communication should bear loss. (Receiver must be innocent of mistake or error, or knowledge thereof.) Williston, page 69.

2. The defendant promised the plaintiff that he would pay a certain bill which the father of the defendant owed to the plaintiff, if his father failed to do so. The promise was in writing. The defendant's father failed to pay the bill before his death. Plaintiff now brings action against the defendant on the written promise. Decision?
For the defendant. Nudum Pactum. Cook v. Bradley, 7 Conn. 57 H. & W. page 133. Contract void for want of consideration. Ex nudo pacto non oritur actio. What is a consideration? A benefit to the party promising, or loss to the party to whom the promise is made. The quantum of benefit, on one hand, or of loss on the other, is immaterial. In this case defendant received nothing, plaintiff lost nothing. No consideration. Archer See. 97.

3. Plaintiff claimed that the defendant owed him $100, which the defendant denied, but promised that if the plaintiff would make oath to the correctness of his claim he, the defendant, would pay the amount thereof. The plaintiff made such oath. Now the defendant seeks to avoid payment. May he do so?

Defendant may not avoid payment. Opinion: It has frequently been decided that a promise to pay money on consideration that the plaintiff would take an oath that it was due was a valid and binding contract. Brooks v. Ball, 18 Johnson (N. Y.) 337. Williston, page 186.

4. In October, 1871, the plaintiffs advertised for tenders for a supply of iron. The defendant sent in a tender as follows: "I hereby undertake to supply the Great Northern Railway Company, for twelve months, with such quantities of iron as it shall order at the prices agreed." The company's officer replied: "I am instructed to inform you that my company has accepted your tender. The terms of the contract must be strictly adhered to." Several orders for iron were given by the company, which were duly executed by the defendant; but ultimately the defendant refused to supply any more, whereupon this action was brought. The defendants contended that there was not a binding contract.

Decision?

For the plaintiffs. There was a bona fide offer and acceptance. Williston, page 136. R. R. Co. v. Whithan, 9 Common Pleas 16. Offer and Acceptance, Archer Chapter 4, no particular section.

5. The plaintiff wrote the defendant a letter which he received on July 17, 1878, in which the plaintiff accepted the defendant's offer with slight modifications, and in which plaintiff said: "If you agree to this plan, and will telegraph me on receipt of this I will forward power of attorney to Mr. Ware. Telegraph me 'yes' or 'no.' If 'no' I will go on at once to Boston. If I do not hear from you by the 18th or 20th I shall conclude 'no.' " The defendant on July 17 telegraphed 'yes.' The plaintiff never received the telegram. The defendant contended that a contract was completed by said letters and telegram on July 17. Was his contention correct?

There was no contract. Any person making an offer may make the formation of a contract dependent upon the actual communication to himself of the acceptance. This was not done in this case.

CONTRACTS PROBLEM 3.

A committee appointed by a corporation proposing to erect a building issued a notice to architects inviting them to participate in the competition for plans on the conditions therein stated, one of which was that "committee reserve the right to reject any or all designs submitted." A, among other architects, presented to the committee a full set of drawings of the proposed building. The committee met and voted "that we proceed to examine drawings and specifications presented to us and select the architect who has the largest number of votes" and on the next day the committee met again when A was found to have the largest number of votes and the committee then voted to and did reject all the plans submitted and also voted that "A be chosen architect in accordance with the vote of last night." The committee did not communicate this vote to A, but A was informed of it unofficially by two members of the committee. This vote remained on the books of the corporation for forty days without being changed and was then rescinded. Was there a contract?

No. A's plans were rejected. The later vote did not purport to be an offer to him and was not officially communicated to him as such. Offer must be communicated. Benton v. Springfield, 170 Mass. 534.
CONTRACTS PROBLEM 4.
The plaintiff furnished the defendant's minor son with clothing and board in the West Indies where the son had gone to escape the consequences of a felony which he had committed. The plaintiff furnished these things because he knew that the father was a wealthy merchant and could well afford to pay for them.

Decision?
Angell v. McLellan, 16 Mass. 27.

For the defendant. When a child leaves his father's house voluntarily, for the purpose of seeking his fortune in the world, or to avoid the discipline and restraint so necessary for the due regulation of families, he carries with him no credit; and the parent is under no obligation to pay for his support.

CONTRACTS PROBLEM 5.
In a case that was being tried before the Superior Court the defence found that it was very important to have a certain witness present. The witness was a very busy man and he could be present only at the risk of a loss of money and great inconvenience to himself. The defendant, therefore, offered a considerable sum of money in addition to his witness fee if he would attend. He did so. Later he brought action for money promised. Could he recover?

Cited in opinion in the case of Pool v. Boston 5 Cushing 219. He could not recover more than his fees allowed by law, he having done no more than he was legally bound to do. Archer Sec. 99.

CONTRACTS PROBLEM 6.
Defendant divorced his wife, the plaintiff. Afterward, in order to induce her not to do anything that would disgrace him, he signed an agreement with her to this effect, "I agree to pay Louise Smith $60 a month as long as she shall conduct herself with sobriety, and in a respectable, orderly and virtuous manner." In the same instrument she promised to so conduct herself. Both signed. Plaintiff brings action on this agreement. Can she recover?

Yes. Question at issue is whether or not there is consideration. There is. A promise not to do something which the promiser may lawfully and without wrong to the promisee do or abstain from doing is a good consideration. Dunton v. Dunton, 18 Victoria Law Reports 114. Williston, page 262. Archer Sec. 88. It was contended that the consideration was not sufficient because the plaintiff promised to do something that she was legally bound to do. This contention was not upheld.

CRIMINAL LAW PROBLEM 4.
A and B agree to race each other in their automobiles in the highway and while so doing and, while running at an exceedingly reckless rate of speed, X is run over by one of the autos and killed. The government is unable to prove which auto ran over X. Can either A or B be convicted?
Yes. Racing on highway unlawful. Each liable for result.

CRIMINAL LAW PROBLEM 5.
B was indicted for murder in the first degree and the indictment charged him with feloniously, willfully, purposely, and with premeditated malice, killing and murdering one R. At the trial evidence was given showing that on the day of the murder of R, B had been drinking and was at the time of the killing very much intoxicated. The court gave as part of its instruction to the jury that "voluntary intoxication will not excuse the crime. If the defendant B was drunk, it was his own fault and he cannot claim any immunity by reason of his intoxication." Was this the proper instruction to give to the jury?

Voluntary drunkenness is not a defence and will not exempt a person from unusual liability. But the drunkenness may be such as to render a person incapable of intent. Defendant might have been so drunk that he was incapable of deliberation and jurisdiction necessary for murder in the first degree, and judge should have so instructed the jury.

CRIMINAL LAW QUIZ 2.
1. A, while lying in bed one night, sees a man coming through the window. Has A the right to shoot the intruder?
Yes. Right to kill, defense of person or dwelling. 45 Vermont 308.

2. A has been annoyed exceedingly by hen thieves. Hearing a noise in the hen house one night, and in the
moonlight distinguished a figure of a man escaping with a chicken under his arm. A commands the thief to stop and upon the thief’s failure to do so, shoots him, wounding him only. Is A guilty of a crime?


3. A was indicted under a statute for ‘‘maliciously’’ destroying a certain window. A with others got into a general scrap outside of a public inn. During the course of the fight A picked up a brick and threw it toward the crowd with the intention of hitting some one of them. The brick went over the heads of the crowd, however, and broke the window in question. Was A guilty of the crime charged?

No. Did not have the specific intent to break the window. Government must show specific intent. B. 191.

4. A, B and C had a counterfeiting scheme and they agreed that A should do the engraving on the bank notes, B should do the numbering and C should sign them. The doing of these things completed the notes, each defendant doing his part of the work by himself without the others being present. Could they be convicted, and if so, how would each defendant be classified in reference to the crime charged?

Each is a principal in the first degree. All do a part, neither does the whole.

5. John and Joseph, desiring to kill X in order to obtain his money, lured A to commit the crime. On the day in question A went to X’s house to do the job. John was at the time in a street about 100 feet distant from X’s house, ready to assist A if needed. A, in fact, killed X. Who were the principals and who accessories?


REAL PROPERTY PROBLEM 4.

X was a tenant for years of certain land, occupying it in his business as a nurseryman and market gardener. He planted one-half of the land with young apple trees for the purpose of carrying on his trade as a nurseryman and he planted the other half with young pear trees for the purpose of carrying on his business as a market gardener. Six months before his lease expired, and before any of the trees had become fruit-bearing, he learned that he could not get a renewal of his lease and wanted to remove the trees. What are his rights? Explain the law.

He can remove the apple trees because they were planted with intention to leave them there only temporarily and then to remove them. He cannot remove the pear trees for they were intended to be left there permanently for the purpose of bearing fruit. Nursery trees are emblements which are personal property. Other trees are not emblements and are real property. Lecture Notes, page 14.

REAL PROPERTY PROBLEM 5.

A testator by his will gave to X a certain estate upon which were plantations of larch trees. At the time of his death, a great number of the trees had been more or less blown down by extraordinary gales. It was argued that as between X and the executors the trees which had been blown down to such an extent that they could not grow as trees usually grow were severed and belonged to the executors, and that the trees which were merely lifted but would have to be cut down for the proper cultivation of the plantations belonged to X. Is this argument sound and why?

No, all the trees were realty and passed to X, the devisee. Lecture Notes, page 13, section 15. ‘‘Trees which have fallen or been cut and nothing further has been done by the owner of the land to indicate an intention to convert them into personal property remain a part of the land and will pass under a deed thereof.’’ If they are land that will pass by deed, of course, they will pass by will.

REAL PROPERTY PROBLEM 6.

D, the owner of a machine, intending to hire a certain shop in the future, authorized the owner of the shop to remove the machine thereto and set it up ready for use, under an agreement by which it was to be stored free of charge until the owner of the machine used it, when rent for a portion of the shop was to be paid. The machine, which weighed about a ton, was placed in the shop under this agreement and was fastened to the
floor by screws and braced to the beams of the floor above. It could be removed, but with some injury to the floor. It was adapted and designed for use in a machine shop. While the machine was thus in the shop, and before it was used by D, its owner, the owner of the land mortgaged the land and building to P, who saw the machine in the shop and was ignorant of the agreement between the owner of it and the owner of the shop. The condition of the mortgage was not performed and P foreclosed the mortgage and sold the property to X. As between X and D, who owns the machine and why?

X owns the machine. In view of the character of the machine, the purpose for which and the manner in which it was annexed, it became a part of the realty, as between mortgagor and mortgagee. It weighed about a ton, was firmly fastened to the floor and was supported by braces attached to the flooring above. It was adapted and designed for use in a machine shop, was purchased by D as a part of the machinery to be used in the shop. Having thus been placed on the premises by direction of D, it passed to X under the mortgage from the land-owner. Southbridge Savings Bank v. Stevens Tool Company, 130 Mass. 547. Lecture Notes, page 18, section 26, says: "Whatever is placed in a building, subject to a mortgage, by a mortgagor or those claiming under him, to carry out the purpose for which it was erected, and permanently to increase its value for occupation or use, although it may be removed without injury to itself or to the building, it becomes part of the realty."

REAL PROPERTY QUIZ 2.

1. An outgoing tenant of a farm had been engaged in the milk business. He had a larger number of cows than could have been supported from the farm alone. He had piled up under and about the barn 35 cords of manure. Does the landlord or tenant own it?

Both. Undoubtedly, manure made on a farm from the consumption of its products belongs to the landlord. But if the manure is made from feed not raised on the farm, such manure is the personal property of the tenant. The tenant had a right to some ascertainable proportion of it which could be measured off to him, and the rest belonged to the landlord. Lecture Notes, pages 22-23. Nason v. Tobey, 182 Mass. 314.

2. A, a mortgagor in possession, sold a dwelling house on the mortgaged land to a house-mover without permission of the mortgagee. The purchaser removed the house from the premises and was transporting it along the highway when the mortgagee brought replevin. The mortgage was duly recorded prior to the transaction. Can plaintiff recover?

Yes, as between mortgagor and the mortgagee of land, the legal title is in the mortgagee. Lecture Notes, page 20. Butler v. Page, 7 Met. 40. When the house was removed, it became personal property, but it still belonged to the plaintiff mortgagor, who therefore can maintain the personal action of replevin. Lecture Notes, page 21. See Westgate v. Wixon, 128 Mass. 304. The case on which problem is based is Dorr v. Dudderar, 88 Ill. 107.

3. A dug a well upon his own premises from which he drew water to supply his mill with drinking water. Afterward, B sunk a coal pit on his land, by reason of whereof A's well was drained dry. A sued B for damages. Can he recover?

No. Percolating or underground waters are the absolute property of a land owner so long as they remain on his land but no longer. Thus the owner of land may dig a well or pit on his own land, notwithstanding he thereby diminishes or cuts off the water in his neighbor's well. Lecture Notes, page 12. The case is Pixley v. Clark, 35 N. Y. 520.

4. (a) How are estates of freehold recovered in Massachusetts?
(b) What are the parties to the action?

(a) Either by peaceably retaking possession or (2) by a writ of entry.

5. A disseised B, a tenant for life, of his estate and occupied under a claim of right for more than twenty years, shortly after which B died. What effect has the lapse of time upon the estate of the remainderman?

No effect. A remainder will not be defeated or barred by the destruction of the precedent estate by disseisin. Lecture Notes, page 8. Mass. Bar Examination Jan. 1899, 12, P. M.
REGISTER

BILLS & NOTES PROBLEM 3.
D, an agent of a life insurance company, in collusion with other persons, sent in an application for a policy on the life of S. T. W., a non-existing person, which was accepted and a policy issued in favor of M. J. W., also non-existing. Proofs of death of the supposed S. T. W. were subsequently sent to the company and a check payable to the order of M. J. W. was drawn by the company and sent to D, who indorsed it in the name of the payee and cashed it at the defendant bank. Upon discovery of the fraud the company sues the bank to recover the amount. The bank contends it is not liable on the ground that the check was on these facts payable to bearer. Is its contention correct?
No, because the drawer did not know that the payee was fictitious. N. I. L. 26. Enger v. Bank, 86 N. Y. Supp. 107.

BILLS & NOTES PROBLEM 4.
(a) Defendant signed a number of promissory notes, blank as to date, payee and amount, and left them on his desk in his office whence they were stolen, filled in and indorsed by the thief to the order of the plaintiff for value, who purchased them before maturity without knowledge of the theft. Is the defendant liable to the plaintiff on the notes?
No, as the instruments were incomplete and not delivered. N. I. L. 32. Holsman v. Teague, 158 N. Y. Supp. 211.
(b) In an action by the payee against the maker of a promissory note payable on demand, the defendant offered to show that it was understood by conversations at the time the note was executed that it was not to be paid until certain buildings were sold. Should this evidence be admitted?
No, because at variance with the terms of the written instruments which were drawn payable on demand. Bank v. Heckert, 207 Pa. 231.

BILLS & NOTES PROBLEM 5.
A note read as follows:
"Ridgeway, Pa., Nov. 26 '02.
$215.00
GARDNER SHINGLE COMPANY.
Three months after date we promise to pay to the order of the Abbey Press Co. two hundred fifteen dollars at Elk County National Bank, value received. (Signed)
G. A. McClain, Sec.
A. M. McClain, Treas.
G. A. McClain and A. M. McClain were secretary and treasurer respectively of the Gardner Shingle Company. Who can be held liable on this instrument?

BILLS & NOTES PROBLEM 6.
Directors of a bank upon examination of its loans found a note signed by the cashier and payable to the defendant X or order, but unindorsed. The cashier was called in and stated that defendant had agreed to indorse and when defendant was interrogated on the matter he confirmed the agreement and indorsed the note which was afterward indorsed by the bank to the plaintiff for value. At the trial the defendant denies liability, claiming that he received no consideration for his indorsement and offers to prove the above facts in substantiation of his claim. Should he be allowed to do so?
No, consideration is conclusively presumed between remote parties. Bank v. Dooley, 113 Wis. 590.

BILLS & NOTES QUIZ 2.
1. Plaintiff, whose real name was Storch, had, on account of trouble with his wife, assumed the name of Krause and defendant gave a note to plaintiff payable to the order of Krause. Can plaintiff, suing in his own name of Storch, recover against defendant?
Yes, the payee is not fictitious. Lockland v. Storch, 123 Ark. 253.
2. A indorsed in blank a non-negotiable promissory note, and sold it to plaintiff, who claims this form of indorsement makes the note negotiable and that A is liable as indorser. Are these contentions correct?
No, neither of them, and the indorser is liable only as common-law assignor. Wettlaufer v. Baxter, 137 Ky. 362.
3. A woman delivered to her husband a check made payable to her
eressor with instructions to pay her debt with it. The husband gave the check to the creditor as a payment of a debt of his own to the same creditor, who accepted it as such without knowledge of the above facts. Can the creditor recover on the check against the drawee?

Yes, he is a bona fide holder even though he is payee. Boston Steel & Co. v. Steurr, 183 Mass. 140.

4. Defendant signed a note in blank and gave it to A with authority to fill it up not in excess of $200. A filled it up for $2000 payable to his own order. Can defendant avoid liability on the note and if so, how?

Yes, by introducing the real facts in evidence, since between immediate parties the authority to fill blanks is only prima facie. No, except as between immediate parties or those having notice. Liberty Trust Company v. Tilton, 217 Mass. 462.

5. In the above problem how, if at all, would your answer differ had A filled up the note for $2000 payable to the order of B and delivered it to the latter in exchange for certain goods of equal value, B not knowing the above facts?

B could recover from defendant here, as he is a bona fide holder and in his hands it is valid as if it had been filled up strictly in accord with the authority given. Liberty Trust Co. v. Tilton, supra.

EQUITY PROBLEM 4.

A, a resident of N. Y., gave a mortgage to B on certain lands in Ohio. The mortgage was given to secure the payment of six notes, four of which were usurious and two bona fide. In New York under statute a usurious contract is void. A asks to have the mortgage cancelled and that B be prohibited from prosecuting an action commenced in Ohio on the notes. Can A succeed?

He who seeks equity must do equity. While the contract is void in New York for usury and no action in law or equity could be maintained on the usurious notes, yet he who seeks the aid of equity must do equity by paying the amount of the bona fide notes. A can succeed only on condition that he pay the amount of the bona fide notes. Williams v. Fitzhugh, 37 N. Y. 444.

EQUITY PROBLEM 5.

A, in making his will, left small legacies to his two daughters and left the remainder of his estate to B, his grandson, who lived with him. In case B died before A the property was to go to A's daughters. B was sixteen years old; he knew of the provisions on the will in his favor and he learned that A had an intention to revoke them. In order to prevent the revocation, and that he might enjoy the property, he murdered his grandfather. He was sentenced to prison for murder in the second degree. A's will was properly executed in accordance with the statute of wills and if there had been no will B would have been an heir. The two daughters claim A's property and B claims it under the will and as heir. What decision?

He who comes into equity must come with clean hands. No one shall be permitted to profit by his own wrong or to found any claim on his own iniquity or to acquire property by his own crime. This maxim is dictated by public policy. B murdered the testator expressly to vest himself with an estate. By his crime he made the will operative. The property would go to the murderer, but it could never have been the intent of the legislature in enacting the statute to give the benefit of the testator's estate to the murderer. A's daughters took the remainder of the estate charged with such legacies as were directed by the will, but the provisions naming B as beneficiary were declared void and inoperative.

EQUITY QUIZ 2.

1. A brought a bill in equity in 1874 against the city of C to enjoin it against using a private canal for the discharge of sewage. The sewer was used for this purpose since 1851 but the deposits in the canal did not impede navigation or create a nuisance till about 1869. Did A have a remedy in equity?

Equity aids the vigilant not those who slumber on their rights. A plaintiff seeking the aid of equity must present his case within a reasonable time. If the delay has prejudiced the rights of the defendant by making it difficult or impossible to defend, or if circumstances have changed so that the defendant cannot be placed in
stata quo, the plaintiff is guilty of laches, and equity will not grant him relief. Held that laches depends not alone or mere lapse of time, and, in the absence of evidence that the rights of the city were prejudiced by the delay, a was not guilty of laches and could maintain his bill. Boston Rolling Mills v. Cambridge, 117/396.

2. A died possessed of certain parcels of real estate along with other property. His estate was left in trust and the trustees were given power and authority by the will to sell and convey, and to make new investments, but nowhere in the will was there an express direction to sell the real estate and turn it into money. The trustees sold the real estate and invested the proceeds which they treated as part of the trust fund. How would this part of the trust fund be regarded and treated in equity?

Equity regards that as done which ought to be done. The doctrine of equitable conversion holds that when there is impressed upon the subject matter of a transaction a direction to perform some positive act, equity will treat the matter as though the act had been performed, and the property will be regarded as having resumed the form intended by the parties. Held that in the absence of express direction in the will to sell the real estate and convert it into money, the part of the funds obtained from the sale of the real estate will be treated in equity as realty until the funds reach the hands of one who owns it absolutely. Whitney v. Huefner, 221/265.

3. B loaned A $5500 to enable him to purchase a parcel of land of which A received a deed in fee simple. B suggested that he should receive some security for his loan and brought A to his lawyer who made out a deed absolute in form, conveying the land to B in fee. A was grateful for the loan and agreed orally with B that he would in a few days repay the $5500 and that B would reconvey the property. Afterward B refused to convey the property back when A tendered the amount with interest. Has A a remedy in equity?

Equity looks to substance and intent rather than form. In applying the maxim, equity seeks the true intent of the parties irrespective of the exact language in which their undertakings were expressed. The true intent having been ascertained equity will enforce that intent. Equity will treat a deed absolute in form as a mortgage when it is executed as security for a loan of money. The court looks beyond the terms of the instrument to the real transaction, and when it is one of security and not of sale, it will give that effect to the actual contract. Equity will treat this transaction as an equitable mortgage and not a sale, and will direct B to reconvey the property to A on the payment of $5500 with interest. Campbell v. Dearborn, 109/130.

4. A made a contract in writing with B to convey to him a parcel of land located in this State. B, with A's permission, entered on the land and made improvements. A never was a resident of this State and no service was made on him in this State on the bill in equity. B made a payment of some cash at the time of the contract and according to the terms tendered the balance but received no deed. Will equity give B a remedy?

Equity acts in personam and not in rem. Equity has jurisdiction over the persons of defendants when service is made on them within its jurisdiction, but not of the subject matter. Hence it acts specifically by directing its decrees against the person directing him to do or refrain from performing certain acts. By statute in Massachusetts, when a person who is seised of a trust estate, either express or implied, is out of the Commonwealth, the equity court may appoint some suitable person to convey the land. This land was charged with an implied trust and in the absence of the implied trustee from the state the equity court may appoint a trustee to make the conveyance. Felch v. Hooper, 119/52.

5. Brown, a broker, who was acting as a common agent for his customers, held the promissory notes of several of them for sale for their benefit. Brown fraudulently pledged the notes at different times as security for his own debt to a bank, which took them in good faith, for value, and without notice, and the bank collected some of the notes to satisfy Brown's indebtedness. The maker of one of the notes, whose entire note was collected, seeks
a remedy against Brown, who was insolvent, against the Bank, and against the makers of the other notes. Will equity aid him in any manner?

Equity is equality. When one of several obligors is compelled to perform the entire obligation or to perform more than his equitable share of the undertaking he has the right of contribution against the other joint obligors to compel them to perform pro rata their share of the joint undertaking. As all of the notes were pledged as security for the same debt, the whole loss should be borne by all of the makers of the notes in proportion to the amounts of the notes so pledged. McBride v. Potter, 169/7.

**PROBLEM 6.**

A purchased and took conveyance from B of 1216 acres from a larger parcel of land. A undertook for himself and as agent of B to survey off his 1216 acres, and through mistake included therein a surplus of 307 acres and took and retained possession thereof from 1831 the time of the conveyance. In 1842 A learning of the mistake, concealed his knowledge and had his brother C secure a title through misrepresentation to a tract which would include in its description the surplus 307 acres, and A and C divided the land between them. B's heirs did not discover the mistake and fraud until 1852 when they brought a bill in equity. A and C claim a good title under the statute of limitations since they have held adverse possession for more than 20 years. What will equity decree?

Equity aids the vigilant not those who slumber on their rights. The statute of limitation applies in equity as well as law except that in equity the statute does not begin to run until the discovery by the plaintiff of the cause of action. Since the fraud and mistake which would give equity jurisdiction was not discovered until 1852, the suit was brought seasonably and the period of adverse possession began to run only when the plaintiffs learned of the injury in 1852. Longworth v. Hunt, 11 Ohio State, 194.

**PROBLEM 7.**

A was about to purchase a parcel of land, and he entered into an oral agreement with B that B should loan him $800 to make the purchase and that the vendor should convey the property directly to B, who should hold the title as security for the money loaned, and also for all other monies which he would thereafter loan to him; and that A should take possession of the property. The conveyance was made to B and A took possession. B afterward advanced other money to A, in all $2400, for which A gave his promissory note. A died and there was a dispute between B and A's administrator as to the state of the title. What decree?

Equity looks to substance and intent rather than form. When a person loans money to another and by agreement between the parties real property is conveyed by deed to the lender as security for the loan, the equity court will look beyond the mere form of the deed of conveyance to the substance and intent of the parties and will consider the deed as an equitable mortgage which may be redeemed by payment or may be foreclosed for breach of the agreement.

A's administrator would stand in the position of a mortgagor and if B foreclosed would receive the surplus money, if any, received from the sale of the property. Campbell v. Freeman, 99 Cal. 546.

**EVIDENCE PROBLEM 6.**

In 1854 A, a woman of mature years, executed a deed to B. In 1861 it became material to determine whether A was married when she executed the deed. There was evidence to show that she was a married woman in 1860. The question is whether any presumption arises from her married condition in 1860 that she was married when she executed the deed in 1854.

There is no presumption of any kind that A was a married woman in 1854. The presumption of coverture is prospective from the time it is shown to exist, and never retrospective. Erskire v. Davis, 25 Ill. 228.

**EVIDENCE PROBLEM 5.**

A is indicted and tried for practicing medicine without a license. Upon whom is the burden of proof as regards his authority to practice medicine?

The burden is upon A. The case falls within a statutory exception to
the general rule. Where the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disapproved by that party. Such is the case in a criminal prosecution for a penalty for doing an act which the statutes do not permit to be done by any person except those who are duly licensed therefor, as for exercising a trade or profession and the like.

**EVIDENCE PROBLEM 4.**

In a civil suit against one X to recover money alleged to have been embezzled by him from the plaintiff railroad while he was acting as its ticket agent plaintiff offered evidence that when X began work for it he was insolvent; that his salary was modest; that he had received some small extra compensations; but that subsequent to and during his alleged peculation he was the owner of large property far exceeding the aggregate of all his salary and receipts while in the company's employ. Is this evidence competent?

Yes. Not on the ground of its proof of being stolen property, but as having, if the jury believed money was fraudulently abstracted from the plaintiff by someone in its employ, a tendency to prove who abstracted it. Also held competent as part of the res gestae as tending to show theft, from habits of life and pecuniary condition during the time of his employment. Boston etc. v. Dana, 1 Gray 83. W. page 350, question 14. Archer, sections 39 and 42.

**EVIDENCE QUIZ 2.**

A, a girl of fourteen years of age, is on trial for burning a dwelling house. While in the custody of officers and in response to questions by them she confessed her guilt. Will the fact that she was under arrest when she made the confession or that she made it in response to questions by the officers, or from fear induced by some cause or other than threats or promises made to her, render the confession involuntary and inadmissible?

None of the facts stated is sufficient to render the confession involuntary.

2. A is on trial for maliciously shooting B. B testifies to his position and attitude in the parlor of a tavern the night he was shot at, and to the identity of A as the person who shot at him, as seen through a glass window by the light of the pistol's flash. The state, against objection, is allowed to prove experiments and observations, made subsequently at the same place by several witnesses who were not present at the shooting, for the purpose of showing that B might or could have seen and recognized A when the alleged crime occurred. A is convicted. The question is whether the court's ruling is prejudicial error.

The court's ruling is not prejudicial error. The evidence affirmed is material to the question of A's identity.

3. A sues B on his promissory note. The question is whether C, the attorney in whose hands the note was placed for collection, can be compelled to testify whether the note was indorsed or not when he received it.

C is a privileged witness and cannot be compelled to disclose whether the note was indorsed or not when he received it. The privilege extends not only to what C heard, but also to what he saw as an attorney.

4. A sues B for falsely and maliciously representing to the treasury department of the United States that A was intending to defraud the revenue. The question is whether B can be compelled to answer interrogatories filed by A inquiring whether he did not give or cause to be given to the treasury department information of supposed or alleged frauds on the revenue contemplated by A.

B cannot be compelled to answer A's interrogatories. Information is privileged.

5. A sues B on his promissory note. The question is whether parol evidence is admissible to exonerate B by showing that he signed the note as C's agent with A's knowledge and consent.

Parol evidence is inadmissible.

**BANKRUPTCY PROBLEM 4.**

Cate, who held one of a bankrupt's promissory notes on which bankrupt's wealthy brother was endorser, urged the bankrupt's creditors to accept a composition. The creditor agreed. The composition was carried out and the bankruptcy case closed. Soon after this Cate sued the endorser on this note. Judgment for whom and why?
Judgment for the endorser. It has been held that where there is a termination of bankruptcy proceedings affected by the consent of a creditor, as by composition, the endorser of bankrupt's note is discharged.

**BANKRUPTCY PROBLEM 5.**

Smith seasonably filed his application for discharge. Notice was sent to his creditors, one of whom wrote the judge as follows: "This man Smith, re Bankruptcy No. 4492 is a crook, a thief and a robber and I hope he will not get his discharge." What will happen as to the discharge?

It will be granted as a matter of course when the case is ripe for it. The act specifies what are valid objections to a discharge and one or more of these must be formally specified in objection thereto. The creditor's letter did not meet the requirements of the Act.

**BANKRUPTCY PROBLEM 6.**

Smith held a note against Belnap for $3500. The latter was adjudged a bankrupt. Smith presented his claim for allowance, but did not attach his note to the proof of claim. The Referee refused to allow the claim unless Belnap attached same to the proof. Belnap did not wish to do this and gave as his reason that he did not wish so valuable a piece of paper lost. He exhibited the note to the Referee who examined it, and told Belnap he would allow the claim, if the note were left with the proof, otherwise he would not allow it. Belnap consults his attorney for advice as to what to do. What should be for advice?

That the Referee had no right to allow the claim unless the original note accompanied the proof. Better follow out the referee's advice if you wish to prove the claim.

**BANKRUPTCY QUIZ 2.**

1. Pfeifer while a bankrupt had been adjudged in contempt by a referee who pronounced sentence on him to the effect that he should be committed until such time as Pfeifer should answer certain questions which he had refused to answer before the referee. Assuming that the form of the sentence was legal, what if anything is irregular about the proceedings?

No person except the judge can punish for contempt. The referee exceeded his authority.

2. Murphy called to see an attorney who had written him demanding payment of a hospital bill contracted by Murphy prior to his bankruptcy. Murphy told the attorney that he had been discharged in bankruptcy but that the hospital bill he had forgotten to schedule, and that he would certainly pay it soon; but that he could not be forced to pay it by a law suit although he was now worth ten times what he owes at the present day. State two good reasons why the attorney thought he could force Murphy to pay the bill by proceedings at law.

The debt not having been scheduled put the burden on Murphy to prove the hospital had actual notice within one year of the bankruptcy, which if Murphy cannot prove spoils his defense of his discharge in bankruptcy, and Murphy's direct promise to pay revives the debt though he were discharged.

3. Within four months of Taylor's adjudication, Lee bought a house and land of Taylor at $200 less than its market value. Indeed Taylor told Lee at the time that he had been offered $200 more for the place than he offered it to Lee. Lee asked him why he did not sell to the person offering the higher price, to which Taylor replied: "That man wanted me to take a mortgage back for $1000 while I am now offering it to you for spot cash." Assume that Lee acted in good faith, and that Taylor wanted spot cash in order to conceal the same from his creditors. Can Taylor's trustee in bankruptcy succeed in setting the transfer aside even if it were within the four months' period?

No, because Lee acted in good faith and is an innocent purchaser for value, even if he did get the place at a bargain. Taylor's reason for the sacrifice was not sufficient to put Taylor on his guard as dealing with an insolvent person.

4. One of Bankrupt's creditors had demanded to know of him his true financial condition and had asked to see his book, which request was refused. The creditor then pressed his debtor for a settlement in full which he succeeded in obtaining after the debtor had braggingly stated that "any creditor who is as disagreeable as you are can have every cent I owe him, and good
riddance to him and to you." Within four months after this the debtor filed a voluntary petition. His trustees threatened to proceed against this former creditor to recover a preference. Can he succeed?

No, the payment thus received was not under such circumstances as would lead a man of ordinary intelligence and prudence to believe he was being preferred. Creditors are not required to examine debtor's books of account in order to determine a debtor's financial condition.

5. Marriam sold goods valued at $650 to Leister, who was insolvent at the time. A few days later after Leister had received the goods and bill therefor, Marriam, learning that Leister was insolvent and had been for some time before the sale, wrote Leister demanding a return of the goods, with which demand Leister promptly complied. Five weeks later Leister's creditors filled a petition against him alleging the second act of bankruptcy. The petitioning creditors based their allegation on the above facts. Should the petition be allowed?

Yes. The facts fall within the second act of bankruptcy as it has been held that taking back goods sold constitutes a preference within the meaning of the bankruptcy act.

WILLS & PROBATE PROBLEM 3.

A clause in a will gave to the executor $15,000 in trust to appropriate the same in such manner as he might, by any instrument under his hand, direct and appoint; and in default of such appointment the same was to be considered a part of the rest and remainder of his estate. A few days later the testator executed and signed a paper addressed to the executor of his will, directing that the sum of $15,000 bequeathed by the aforesaid clause of his will was to be paid over to a certain city in trust for the support of a certain public library in that city. After the testator's death the executor brought a bill in equity for instructions as to whether he should pay the said sum of $15,000 to the said city or to the residuary legatee named in the will. Who is entitled?

The residuary legatee is entitled. The document appointing this fund to the city for library purposes was not in existence at the time the will was made and the will did not refer to it as being then in existence, as the law requires in order for a document not executed as a will to be incorporated into the will as a part thereof. In fact, the will expressly referred to such document as NOT BEING IN EXISTENCE AT THE TIME THE WILL WAS MADE. Hence the document cannot be probated as part of the will. Thayer v. Wellington 9 Allen 283 is the case in point and it is also referred to in Parrot v. Avery 159/594 Lecture Notes page 13.

WILLS & PROBATE PROBLEM 4.

The probate of a will being opposed on the grounds of insanity and of undue influence, evidence was offered of the contents of a draft of a will made by the testator himself at a time prior to the alleged insanity and undue influence, said draft never having been executed as a will. Was such evidence admissible?

Yes. Lecture Notes page 24 say: “At the trial of the issues of a testator’s sanity and of undue influence, the contents of an earlier instrument, whether formally executed as a will or a mere draft or memorandum made by the testator a short time before the instrument in controversy, may be proved in evidence as showing his intention or wishes at the time as to the disposition of his property.” McKeon v. Wildes 153/487 Mass. Bar Examination Jan. 1900 16. (afternoon.)

WILLS & PROBATE PROBLEM 5.

The wife of an elderly man consults a lawyer as to whether her husband is competent to make a will stating that while his health is infirm his mind is generally clear, that he has long since retired from business; and having made some clearly unwise investments, has been induced not to buy or sell property or make disposition of considerable amounts thereof, without the advice of herself or his lawyer. That his memory is fairly good, though it lapses noticeably but infrequently. Is he competent to make a will?

Competent on this showing. The highest degree of mental soundness is not required. Lecture Notes Page 15. The capacity to transact ordinary business affairs is greater than the capacity required to make a will, hence it follows that a testator who did not
have general contractual capacity may still have sufficient capacity to make a will. Lecture Notes page 16. See King v. Lawless 190 Ill. 520, 28 A & Eng. Encyc. (2nd ed) 71, 72.

WILLS & PROBATE PROBLEM 6.

A testatrix made a hospital in which she had previously shown no interest her residuary legatee under the belief that her estate was practically exhausted by specific bequests, when in fact the residue amounted to more than two-thirds of the whole estate. Her estate was worth $25,000 and her specific legacies amounted to $7700. The evidence showed that she never intended to give to this hospital a sum very much in excess of $500. She did not know she was giving the hospital more than two-thirds of her estate, when she signed the will. Can this provision for the hospital be set aside on the ground of lack of testamentary capacity or mistake? Discuss the law.

No, the fact that a testator is grossly mistaken as to the extent of his estate does not establish a want of testamentary capacity, the true test being whether he is capable of comprehending the quantity of his property and its value. Lecture Notes Page 16. Holmes v. Campbell College 87 Kansas 597 41 L.R.A. (N.S.) 1126. The mistake does not affect the validity of the will as it is a mistake as to a collateral fact, provided it was made with testamentary intent. The fact of the mistake does not prove the lack of testamentary intent. Lecture Notes Page 25. See Whitman v. Whitney 225.

WILLS & PROBATE QUIZ 2.

1. What is essential to the valid execution of a will in this state: (a) With reference to the testator (b) With reference to the formalities of its execution?
   (a) Must be of full age and sound mind. (b) Will must be signed by testator or by a person in his presence and by his express direction. It must be attested and subscribed by three or more competent witnesses in testator's presence. Lecture Notes pages 27-28. Mass. Bar Exam. June, 1906.

2. How may an extraneous paper be made a part of duly executed will?
   Mass. Bar Exam. June, 1912, morning question No. 7. (1) Will must refer to such paper as being then in existence. (2) Proof must be made that it actually was in existence before will was written. (3) Proof must be made that the paper referred to in the will and the paper offered to be incorporated in the will are identical. Lecture Notes page 13.

3. A testator made a will while under guardianship as non compos mentis. On whom is the burden of proof?
   The burden of proof is on the proponent of the will (the executor) to prove soundness of mind. A person under guardianship for insanity is only prima facie incapable of making a will. 18 Pick 115. Lecture Notes Page 16. Breed v. Pratt. Crowninshield v. Crowninshield 2 Gray 524.

4. (a) A testator wrote his will in his own handwriting and signed it but not in the presence of the witnesses. (b) the witnesses signed the will in the presence of the testator but not in the presence of each other; (c) There was no attestation clause; (d) The witnesses did not know the nature of the document they were witnessing; (e) There was no testimony as to whether testator knew the contents of his will. Was the will validly executed?
   Yes. (a) Testator need not sign in presence of witnesses. (b) Witnesses need not sign in presence of each other. Notes Page 32. (c) No attestation clause is required. Notes Page 33. (d) The witnesses need not know it is a will they are signing. Notes Page 35. (e) The testator is presumed to know the contents of his will from the fact that he wrote it himself. Notes Page 33.

5. The probate of a will was contested on the ground of fraud and undue influence. The presiding judge charged the jury that undue influence must savor of fraud, to which the contestants took an exception. Was the charge correct?
   Yes. The procuring of the execution of a will by means of undue influence is an act which partakes of the nature of a fraud, an act which necessarily imports at least a constructive fraud. Lecture Notes Page 20, Whitcomb v. Whitcomb, 205/310.
Let's get down to brass tacks, boys. This is the hardest year of them all. Only a few more weeks remain before the mid-year exams. Are you all prepared? If not, it would be well to look over your notes once again. And it would indeed be wise if you studied the questions given in the back of this book. Only by hard, diligent study can you hope to pass with a high mark. What if you are busy? What if time is short? You are paying to learn. Therefore, sacrifice some of your so-called hours for pleasure and use them in study. You'll find the results will fully compensate you for the few hours you gave to your books. Only by learning your subjects this year in a thorough manner can you hope to pass the other subject in the next two years. Only by dint of hard labor can you hope to master the law. It is not as easy as it appears at first sight. Therefore, take a tip from one who knows and GET TO WORK.

Here's luck.

Heard a good one in the smoking room the other night.

A teacher was questioning her pupils as to the meaning of several words. Turning to Johnnie, she asked:

"Can you give me a sentence with the word 'salute' in it?"

"Yes'm," piped Johnnie. "Two soldiers were going down the street one day, one of them drunk, when suddenly an officer appeared and came towards them. The soldier who was drunk could not recognize the officer or his rank, but the other soldier, knowing that if caught in that condition he would be punished, whispered to his companion, 'Straighten up, Jack. It's a Lieut.'" (It salute)

Do you get it? Execution would not be too great a punishment.

Where has Louie Aronson been all these days? Did you know that he has the makings of a fine writer. Keep it up, Louie. You're going to make good.

During a trial in a Western court an Irish witness was called upon to give his testimony.

"Did you see the shot fired?" was the first question put to him.

"No, sir, but I heard it."

"That is not satisfactory. You will step down."

As the Irishman turned to go, he laughed out loud. Whereupon he was rebuked by the court and told that he was in contempt.

"Did your Honor see me laugh?" questioned the witness, respectfully.

"No, but I heard you."

"Excuse me, your Honor, but that is not satisfactory."

Then the court did not seek to restrain its own laughter.

—Harper's Magazine.

Advice from the seniors to the freshmen: Discuss your cases in the smoking room and not in the library.

Work hard boys, and retain the prestige of our class. At the last Bar Examination, 6 members of our class tried the examination and 4 were successful — Tough Luck and Hard Work seldom haunt the same man.

A phrase is being used by certain members of this class to indicate that they are unable to answer the question put to them. "I jazz" is the phrase. What's it mean, fellows?

-Ray for the Freshies! Who said we couldn't do it?
FOR
Good Food — Quick Service
SEE
BOB MORGAN
DERNE LUNCH
30 DERNE STREET - - - BOSTON, MASS.
Rear of State House, Next Door to New Building
Reasonable Prices

MT. VERNON CAFETERIA
COR. MT. VERNON & HANCOCK STS.
When Looking For Good Food Give Us a Try
SPECIALS EVERY DAY
WE SPECIALIZE IN HOME MADE COOKING

NEW ARLINGTON DINING ROOM
7 ASHBURTON PLACE, BOSTON, MASS.
Dinner .40
Supper .35
Real Home Cooking
All Pastry and Baking
Done on the Premises

DINNER
11 to 2

SMITH’S DINING ROOM
5 ASHBURTON PLACE
CLOSED SUNDAYS AND HOLIDAYS
Telephone Haymarket 54126

SOMERSET PRINTING CO.
Commercial Printing
COLOR STAMPING : EMBOSING
ENGRAVING : PLATE PRINTING
32 PEMBERTON SQUARE - - - BOSTON, MASS.

Compliments of
CLASS OF 1924
Quality Always Wins

Quality First

Boston Garter

In every walk of life, doing something better than the other fellow spells Success. Boston Garter success is simply a matter of being ahead in both quality and workmanship, giving wearers the greatest amount of satisfaction.

MAKERS

GEORGE FROST COMPANY

BOSTON, MASS.
Compliments of
CLASS OF 1923

Compliments of
CLASS OF 1922

Compliments of
A FRIEND

Compliments of
C. J. BAILEY, '23

Compliments of
NATHAN NADELMAN, '21

Autobacco
Mild — Sweet
Does NOT BITE the Tongue
18c. 45c. 90c. and $1.75 Tins

S. S. PIERCE CO.
BOSTON AND BROOKLINE