THE PLACE OF EQUITY IN THE LAW SCHOOL CURRICULUM

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I

THE ARGUMENT FOR ABOLISHING EQUITY AS A SEPARATE COURSE

FORTY years ago Professor Maitland stated:

When some years ago the new scheme for our tripos was settled, we said that candidates for the second part were to study the English Law of Real and Personal Property and the English Law of Contract and Tort, with the equitable principles applicable to these subjects. It was a question whether we ought not to have mentioned equity as a separate subject. I have no doubt, however, that we did the right thing. To have acknowledged the existence of equity as a system distinct from law would in my opinion have been a belated, a reactionary measure. I think, for example, that you ought to learn the many equitable modifications of the law of contract, not as a part of equity, but as part, and a very important part, of our modern English law of contract, and books such as Anson and Pollock enable you to do so. I should consider a book on Contract extremely imperfect if it gave no account of the equitable doctrine of part performance, the equitable doctrine of undue influence, the equitable remedy of rectification, and the like. For all this, however, it has seemed to me possible that certain important provinces of equity, in particular the great province of trust, may not be fully dealt with by other lecturers. Hence these lectures.[1]

It is a striking paradox that it was the late Walter Wheeler Cook, whose casebook for a generation has been one of the two most widely used in American law schools, who first in this country suggested the elimination of Equity as a separate law school course.[2] An article by Hohfeld the following year has similar implications.[3]

Almost twenty years later, the issue was revived. In 1930 Dean Charles E. Clark, in the preface to Volume I of his *Cases on Pleading and Procedure,* stated that among the highlights of interest in the volume are: "The history of equity, and its triumph over law; the attempt, still largely unrealized, to secure a real union of law and equity and the attendant questions as to trial by jury, appeals, and equitable de-

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1 FREDERIC W. MAITLAND, EQUITY 21–22 (1909).

2 Cook, *The Place of Equity in Our Legal System,* 3 AM.L.SCHOOL REV. 173 (1912).

3 Hohfeld, *The Relations Between Equity and Law,* 11 MICH.L.REV. 537 (1913).

fenses;. the enforcement of equitable decrees by contempt proceedings and otherwise; and the extraterritorial effects of such decrees."[4] In the preface to Volume II he stated:

The two volumes are intended to provide courses to take the place of those on Common Law Pleading, Code Pleading, and Equity Pleading, and parts of those on Equity. Material now often studied under such titles as Equity III, Quasi Contracts, or Fraud and Misrepresentation is not here included. While cases on specific performance are included, yet, since the procedural aspects are emphasized, a course on Vendors and Purchasers dealing with the important subject of realty contracts would still be appropriate, as would a development of the course on Torts to assume the existence of the injunctive process.[5]

Professor Bordwell, speaking to the Equity Round Table of the Association of American Law Schools in 1933, stated:

Much water has gone over the dam, however, since Professor Cook wrote in 1912. The old curriculum has seen its best days. A new school has arisen, not over-enamoured of the past. Procedure threatens to come into its own. And therein, it is believed, lies that hope for a militant equity that will repeat the conquests of former days. Let Contracts and Torts and Property have what properly belongs to them. Give Titles some content by making it a course in Vendor and Purchaser, corresponding to Sales, and covering both the contract and the conveyance. Give to Contracts and Torts whatever has become substantially substantive and is necessary for a well-rounded presentation of those subjects. But place equity where it belongs and where it has always belonged, under Procedure. Trusts does not belong there, nor much of what has come to be substantially substantive law in various fields. But the driving force of equity has always been procedure and will remain such.[6]

The movements to abolish Equity as a separate course have appeared at twenty-year intervals, first in 1909, then in 1930, and now following World War II when so many law schools are revising their curricula.

One of the best recent expositions of the viewpoint that Equity should be abolished as a separate course is that in 1948 by Professor John Honnold in a report to the Curriculum Committee of the University of Pennsylvania.[7] Professor Honnold points out that an early and careful introduction to Equity materials is vital to a well-organized course of study. Prior to such introduction the student will receive a one-sided picture of legal problems. There

4 P. v.
5 P. vi (1933).
6 Bordwell, *The Resurgence of Equity*, 1 U. OF CHI.L.REV. 741, 749 (1934).
7 The author of this article is very deeply indebted to Professor Honnold for permission to examine his report and to make extended reference to it in this article.

is a close relation between the development of the common law writs and that of the Court of Chancery. Furthermore, when a student is introduced to the common-law remedies, he should immediately be made aware that specific relief may also lie in some circumstances. The early introduction is also important because of the pervasive effect of equity in substantive law. For example, in property there is likely to be early discussion of "equitable ownership." If Equity is placed in the second year it may come too late to serve as an introduction.

Professor Honnold points out that much of the standard Equity course serves as a receptacle for odds and ends of substantive law which were given birth by the English Court of Chancery and which have not as yet been assimilated into the substantive courses of the curriculum: the process by which sections of equity such as trusts, mortgages, suretyship, and wills have broken loose for separate treatment should be continued to the fullest extent possible. Teaching these odds and ends in an Equity course divorces them from closely related problems. For example, problems of performance and forfeiture in installment land contracts are divorced from those of the purchase-money mortgage. Similarly, equitable servitudes are considered apart from easements, determinable estates, and zoning. Finally, materials on invasion of privacy, interference with family relationships, unfair competition, and "free ride" either duplicate or are closely allied with problems covered in torts, family law, and government regulation of business. The principal problem thought to follow from this arrangement of material is the difficulty of relating the problem in Equity to the complete factual background and to alternative devices at law reaching towards the same objective.

The memorandum of Professor Honnold further states that if an introduction is to be given in the first-year course on remedies, substantial time should be given to it. A simplified introduction, if followed by a fuller explanation at a later time, would involve duplication. As to injunctive relief against tort, this should come immediately after consideration of the remedies available in the common-law forms of action; and to avoid the impression that specific relief is always obtainable, cases should be studied in which specific relief is withheld because of practical administrative problems.

Professor Honnold would include materials on specific performance of contracts, and not turn them over to the Contracts course. The problems in equity cases are not the technical problems of crea-

tion and performance of contracts, but are closely akin to those considered in connection with injunction against torts: (1) whether a judgment for damages will provide an adequate remedy; and (2) whether specific performance is administratively feasible and appropriate.

With respect to the consequences of the power of specific performance, involving such problems as "bona fide purchase" and "following the res," Professor Honnold suggests consideration in the Property or Contracts courses, or alternatively, treatment in the Remedies course. Other miscellaneous equity materials have no place in either a separate equity course or in an introductory course. Decrees concerning foreign property and "in rem" decrees are dealt with in Conflict of Laws. Equitable conversion should be covered in Decedents' Estates. A necessary part of the suggestion which has been placed in operation at Pennsylvania is establishing a separate course in Land Transactions to deal with a number of specialized problems such as the Statute of Frauds, marketable title, delay and default by the plaintiff, assignment, risk of loss, equitable conversion, and servitudes. It is also suggested that a specialized course in Business Torts or Unfair Competition combine the traditional equity problems of unfair competition and "free ride" with statutory developments relating to trade-marks and trade names, FTC regulation of unfair competition, and Robinson-Patman regulation of fair pricing practices. Certain procedural devices of equitable ancestry such as interpleader, bills of peace, relief quia timet, and declaratory relief are now integrated with the Remedies course. As an alternative to the above program, considered necessary unless time is found for a full introduction in the Remedies course, Professor Honnold recommends a two-hour course in the second half of the first year to cover the materials recommended above for inclusion in the Remedies course.

II

THE ARGUMENT FOR RETAINING EQUITY AS A SEPARATE COURSE

The late Professor Holdsworth, taking sharp issue with Maitland, stated that:

> . . . it does not follow from the fact that equity was not a self-sufficient system, but a series of glosses on, or appendices to, various branches of the common law, only bound together by a jurisdictional and procedural bond which has been dissolved, that it is not necessary to teach it or learn it as a separate whole. . . . The matters which made up the system of equity

may have been disparate; but, because the jurisdictional and procedural bond insured a similar technical approach to all these matters, it gave a unity to many of the principles which underlie them. The true meaning of these principles, and of the cases upon which these principles depend, cannot be grasped unless equity is studied as a separate whole. Both the principles and the cases may easily be misunderstood unless some knowledge of the technical environment in which they were born is present to the mind of the student. That knowledge will never be acquired if equity is studied in snippets.[8]

Professors Chafee and Simpson, authors of one of the two most widely used casebooks in equity, stated in 1934:

We are aware that there are those who believe that the day of the separate equity course is over. We do not think so. We believe that a thorough and imaginative understanding of the present-day operation and potentialities of equity can best be attained by an historical—a genetic—approach to the subject, and that such an approach may best be made through a course or courses devoted to equity as such.[9]

Professor McClintock, author of the well known *Handbook of Equity*, pointed out in 1936:

In recent years there has been much discussion as to the place of equity, not only in the curriculum of our law schools, but also in the practice before our courts. It has been contended that the system of equity was based only on the accident that certain portions of our laws were administered by a different set of courts from those that administered other portions of the law, and that modern codes and practice acts which have combined the administration of all portions of the law in one set of courts and by one system of procedure have eliminated the necessity for the study of equity by either law students or practitioners. It is probably inevitable and practically desirable that this fusion of tribunals and procedure will result in a more or less complete fusion of doctrine, but it is quite evident that such a result has not yet been achieved, and it is equally evident that, if the result is achieved merely by the elimination of the principles of equity, some other machinery will have to be developed to restore to our legal system the power of discretion in administration of certain forms of legal relief, which has been the great contribution of equity. It is therefore believed that a study of equity is still valuable both for practice under our existing system and for wise guidance of its future progress.[10]

The late Professor William F. Walsh, author of both a casebook and a textbook on equity, concludes:

The history of the origin and development of equity and of its relation to the law is absolutely indispensable to any real understanding of it. To consider it piecemeal as part of the law of contract, tort, property, landlord

8 Holdsworth, *Equity*, 51 L.Q.REV. 142, 160 (1935).

9 I ZECHARIAH CHAFEE, JR. AND SIDNEY POST SIMPSON, CASES ON EQUITY x (1934).

10 HENRY L. MCCLINTOCK, HANDBOOK OF EQUITY v (1936). See also the same statement at p. vii of the second edition (1948).

and tenant, and the like is largely to defeat any real understanding of it and of its relation to the law. Code merger makes equity far more important than before. Instead of eliminating equity or converting it into law, code merger has brought it into the modern legal system freed of the old restraints, with all its principles and practices unchanged and unimpaired, and operating directly in all cases. We should continue to teach equity as a distinct and separate course if we are to understand its history and its nature. The great danger of teaching it in a scattered way in the other courses is that the spirit of equity may be lost in the shuffle and equity rules may be taught narrowly as so many additional legal rules.[11]

Professors Glenn and Redden, authors of the latest casebook, have pointed out that "to appreciate the mortgage, suretyship, and many phases of bankruptcy, reorganization and corporation law (to mention only a few subjects), the nature of the equity process must be thoroughly understood. To that end, the employment of equity in the fields of tort, contract, rescission, and procedure, is a profitable subject of independent study, and most of our law schools recognize this fact by offering courses that are so outlined." [12]

In 1948 Professor McClintock stated:

It has been urgently advocated that we should no longer regard equity as a separate system, but as merely a part of each branch of the law with which it deals, remedies and procedure, property, contracts, torts and so on. Whatever may be thought of the logic of that practice, it is apparent that it will be difficult to preserve the characteristic features of equity, its discretion and adaptability, if it is nowhere considered as a whole. If it is not, as some contend, inevitable that those characteristics will be lost anyway under the combined system, it is highly probable that they cannot survive when the various aspects of the system are separately treated and often taught and applied by men who have no adequate foundation themselves on which to base an exposition of the characteristics. The only hope for the preservation of equity lies in a continuous study of it as a system based on fundamental conceptions, but applied in all of the various fields of the law.[13]

The above arguments are reflected and amplified in the results of the questionnaire hereinafter discussed.

11 Walsh, *Is Equity Decadent?* 22 MINN.L.REV. 479, 497 (1938).

12 GARRARD GLENN AND KENNETH REDDEN, CASES AND MATERIALS ON EQUITY iii (1946).

13 HENRY L. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY 18–19 (2d ed. 1948). Compare the view of Circuit Judge Frank in Bereslavsky v. Caffey, 161 F.2d 499, 500 (C.C.A.2d 1947).

III

CONCLUSIONS OF 1948 EQUITY QUESTIONNAIRE

A questionnaire prepared by the Foundation Press, Inc., and distributed on November 24, 1948, revealed some most interesting statistics concerning the status of Equity in the postwar curriculum. Replies were received from 108 schools. Equity courses were offered in almost exactly one hundred schools.[14] Only eight schools offered no Equity courses: Louisiana State University, Northwestern University, the Universities of Chicago, Illinois, Iowa, Pennsylvania, Wisconsin, and Yale University. One course was the usual offering, sixty schools giving that number. Two courses were also very common, thirty-five schools giving that number. Three schools offered three courses.

The importance of Equity cannot be gauged simply by knowing that courses are offered. One must also know the number of semester hours devoted to the subject. Four hours is the most common number, there being twenty-seven schools having that number. Nineteen schools offer five hours, sixteen offer six hours, fifteen offer three hours, nine offer two hours, four offer nine hours, three offer seven hours, and two offer eight hours. Differently stated, nine schools offer two hours, fifteen offer three hours, twenty-seven offer four hours, nineteen offer five hours, sixteen offer six hours, three offer seven hours, two offer eight hours, and four offer nine hours. Thus the range is from two to nine hours. Seventy-seven schools offer courses in the range from three through six hours. Seventy-one schools devoted four or more hours to Equity, and eighty-six devoted three or more hours. It seems fair to say that Equity is regarded as important enough to take up a considerable part of the curriculum.

Last, but not necessarily least, in an evaluation of the importance of Equity are the figures concerning the required or elective character of the course. Eighty-four schools require the course, while only fifteen make it elective.

In states having separate equity courts or separate equity procedures it is thought desirable to offer courses in Equity. Professors Chaffin of Alabama and De Maio of Arkansas so indicated.

[14] Thirty-nine schools are using Cook's casebook (eighteen not specifying which edition, sixteen using the fourth edition, and five the third edition). Thirty-six schools are using *Chafee and Simpson*. Twelve use *Glenn and Redden*. Six use *McClintock* and four *Walsh*. Two use *Clark* and two use *Durfee*. One is using *Bispham*.

Professor Chaffin felt that at least six hours were essential in such states. Arkansas has separate courts of equity. Alabama does not have separate courts, but the principles of pleading and procedure are radically different. Dean Owens of Santa Clara goes so far as to assert that the subject becomes of even greater importance in jurisdictions where law and equity have been merged; to study "law" without study of "equity" would be like studying the human anatomy without the heart. Professor York of Willamette points out that Oregon is one of the states in which a careful distinction is made between law and equity cases. Professor George L. Clark of Kansas City, author of Principles of Equity, points out that the constitutional provisions as to the right to jury trial prevent a merger of law and equity. Professor Lenhoff of Buffalo points out that in New York a separate course is advisable, and refers to what Clark concludes as to equitable defenses, the theory of pleading, and the "one form of action." [15]

The fact that equity questions appear in considerable number in state bar examinations is a reason sometimes assigned. Professors Holliday of Balboa University and Evans of Southern California pointed out that three out of twenty-four questions on the California bar examination involved problems of equity. Professor Hanson of Ohio Northern pointed out that Equity is required for the Ohio bar. A study covering all states except Delaware, Georgia, Louisiana, New Hampshire, Utah, and Wyoming revealed that every one of them included Equity.[16] Only five other subjects met with similar unanimity: Constitutional Law, Common Law, Evidence, Pleading, and Real Property. Professor Curran of De Paul believes that students having a separate course in Equity comprehend bar examination questions involving equity problems better than students not having such a course.

One reason commonly assigned for offering a separate course in Equity, and to the writer the most appealing of all, is that, as Professor Spaulding of George Washington points out, students cannot appreciate the spirit of Equity as well when they study it piecemeal and when they are diverted by the over-shadowing common law of the various subjects as when the subject is studied for its own sake. Professor Forkins of Loyola (Chicago) makes the same assertion. Professor Williams of Dickinson points out that teachers of other courses already have difficulty covering them,

15 CHARLES E. CLARK, HANDBOOK OF THE LAW OF CODE PLEADING 76–154 (2d ed. 1947).

16 Stevens, *Admissions to the Bar: A Factual Survey of Bar Examination Subjects*, 34 A.B.A.J. 95, 97 (1948).

and that to add equity materials would result in the neglect of equity or of the other courses. Professor Clark of Kansas City points out that Contracts and Torts already have a large amount of material. Professors Lenhoff of Buffalo and Curran of De Paul make the same criticism. Of course, if additional hours were added to the other courses this criticism would be met. But even then the equity materials might be less well covered by instructors not well versed in Equity. Dean Rundell of Wisconsin points out that a year or two ago a separate course in Equity was abandoned. It was the expectation that Equity would be distributed among other courses, but the expectation was hardly realized. Hence Wisconsin is reconsidering the place of Equity in its curriculum. Professor Rogers of Tulsa feels that retaining Equity as a separate course results in clarity and readier grasp by law students of the subject, and that to abolish it would result in the loss of the historical background. Professor York of Willamette points out that while much of Equity can be transferred to other courses, there is a large indivisible core of broad principles without which the student is left with a hopeless gap in his learning. Dean Hebert of Louisiana State points out that the splitting up of Equity among other subjects has been so unsatisfactory that the curriculum committee is seriously considering the re-establishment of a separate three-hour course. Professor Clark of Kansas City deems it desirable to present Equity as a distinct stage in our legal history. Professor Simeone of St. Louis points out that while some parts of Equity may be transferred to other subjects, yet some parts such as specific performance should be taught in a separate Equity course. Professor Finnegan of Creighton regards Equity as a valuable course because it gives a cross-reference to many other courses, and thereby helps the student to discover interrelations and to get away from compartmentalized ideas which specialized courses give. Professor Jervey of Columbia believes that an introductory course in Equity is essential to the sound training of a first-year student, and that such a course will be retained at Columbia for the near future. It is of interest that Columbia was one of the first schools to take up the idea of abolishing separate courses in Equity.

IV

COMBINATION OF OTHER COURSES WITH SEPARATE EQUITY COURSE

Any number of combinations of Equity with other courses have been suggested. Professor Wiesley of Utah would combine it with Civil Procedure. Washington and Lee is experimenting with a combination of Equity with one course in Civil Procedure and one in Remedies.

There is a trend towards teaching the law of restitution in the course in Equity. New York University has dropped Restitution and integrated it with Equity.

At Duke University the new curriculum contemplates the absorption of considerable Equity materials in other courses, with the residue together with some Quasi-Contracts to be offered in a two-hour course entitled "Restitution and Equitable Remedies." There is a possibility that this in turn will be combined with a projected second-year Civil Procedure course to form a six-hour course in Remedies.

Professor Curtis of Stetson believes that Equity should be retained, but should include the course in Quasi-Contracts; or at least that the two should be taught as a continuous course and by the same teacher.

At the University of Nebraska there is a three-hour course in Equity covering also Restitution and Trusts. The author of this article found it possible to cover little more than the traditional equity materials. In most schools eight to twelve hours are devoted to these subjects. It was this typical, very sharp reduction in private-law materials to make way for public law subjects that brought forth such severe criticisms of the new Nebraska curriculum. Nor is Equity covered in Contracts and Torts, as each is only a three-hour course. Dean Beutel expressed the opinion that the subjects of Restitution and Trusts need little time because of the availability of the Restatements and treatises such as Scott on Trusts.

V

DISPOSITION OF EQUITY MATERIALS IN SCHOOLS ABOLISHING SEPARATE EQUITY COURSE

In February, 1949, the author engaged in correspondence with the deans of the schools no longer having separate Equity courses.

At Louisiana State the subject matter is now split up among other courses. Dean Hebert states that the curriculum committee is seriously considering the re-establishment of a three-hour course in Equity and that his faculty is increasingly skeptical concerning the success of the elimination. A revision of the curriculum is now under active consideration by a faculty committee. Because Louisiana has never had separate courts of law and equity, and because of the acute problem of what subject matter should be included in the Louisiana curriculum covering two legal systems, Louisiana State decided a number of years ago to abandon a separate course in Equity, considering that the subject matter might be adequately covered by various members of the faculty in other courses.

In the re-examination of the question, Louisiana State will probably reopen the question of offering a separate Equity course of a survey nature. In Dean Hebert's view, the historical distinction between law and equity and the distinction between equitable and legal doctrines should be singled out for special treatment so as to give this very important aspect of the development of Anglo-American law a position of importance in the minds of students. While much of the procedural distinction between law and equity in the federal courts has been abandoned, the substantive law differences remain of paramount importance. This, says Dean Hebert, seems to him ample justification for the offering of a separate Equity course. It is his intention to recommend to his faculty that such action be taken. However, there is a considerable feeling that the subject is already adequately covered in the other courses.

At Northwestern University following the war it was decided to adopt a Group Unit Plan, and to group together in the same term subjects which had some relation to each other. It did not appear that all of the subject matter of Equity would fit into any one group. This subject matter is therefore divided among a number of courses including Contracts, Torts, Courts, and Real Estate Transactions. No one course seemed to be so exclusively concerned with equitable remedies that it deserved such a label. Dean Havighurst states that consideration is being given to adding an elective course which will deal with other remedies such as reformation and rescission. It may ultimately be found desirable to use the term "Equity" at least as a sub-title.

At the University of Chicago Equity has been absorbed into other courses.[17] Only Trusts is given as a separate course. Dean Katz

[17] No course in Equity is listed in the new curriculum of 1937 discussed by Dean Wilber G. Katz in *A Four Year Program for Legal Education*, 4 U. OF CHI.L.REV. 527 (1937).

states that the reason for not having a separate course on equity is that it is thought more effective pedagogically to consider, for example, problems of specific performance of land contracts along with other conveyancing problems, specific performance of other contracts in the course on contracts, and fundamentals of equity jurisdiction in the basic procedure course.

At the University of Illinois courses are offered in Mortgages, Trusts, Vendor-Purchaser, and Restitution. The three-hour freshman course which formerly was called Equity and dealt primarily with the nature and character of equity plus equitable relief against tort has now been combined with the beginning three-hour course in Civil Procedure and is given in a four-hour course called Judicial Remedies. It is a required course and its primary purpose is to give to the beginning student a complete picture of the remedial field, both legal and equitable. Casebooks used are Atkinson and Chadbourn's *Introduction to Civil Procedure* and Cook's *Cases on Equity,* plus some mimeographed materials on the extraordinary legal remedies. No single casebook is adequate to cover these materials, the nearest approach being Simpson's *Cases on Judicial Remedies.* The reasons for the elimination of a separate course are several. It is thought desirable to give the first-year student an over-all picture of jurisdiction, both in law and in equity, and the various remedies which will be available to him in handling his client's problems. It was thought that in developing this merger equity could be best understood against the background of jurisdiction at law since it is the inadequacy of the latter which gives rise to all equitable remedies. The fusion of law and equity in the courts also makes it appear that the more realistic approach is to treat the two in combination rather than as separate and unrelated subjects. Professor John E. Cribbet states that after one semester of such an approach he feels that it offers great possibilities. The plan will be continued.

At the State University of Iowa there is a four-hour course in Civil Procedure, one-third of which is devoted to equity. Certain of the procedural merged parts are included in the regular procedure part of this course, while the latter part of the course is largely in equity. For that part of the course "Mimeographed Materials in Equity" are used. There is a separate course on Vendor and Purchaser, which includes specific performance. The course in Restitution includes much Equity material, as do the courses in Property and in Creditors' Rights, where equitable liens are considered. Dean Ladd states that the reason for not having a separate Equity course is that it was found that the Equity course had duplicated too much of

what was in other courses. With the preliminary introduction to Equity, the other matters are taken care of in other courses. Of course the elimination of a separate course means that certain fringe subjects will not be covered. The other purpose in eliminating a separate course was to save time and make room for other work that is regarded as essential. The greater part of Equity is still covered under the new arrangement.

At the University of Pennsylvania for the past two years equity materials have been presented in the course in Judicial Remedies, a required course, and a second-year course in Land Transactions. Professor Honnold has prepared mimeographed material designed to give students an introduction to the various ways in which the remedy at law may be inadequate, and to the problems which arise from specific relief. This material is intended to follow development of the scope of recovery at common law.

At the University of Wisconsin the separate course in Equity was abandoned a year or two ago. Dean Rundell states that there is a feeling at Wisconsin that although what has been done is sound enough, there has not been developed as completely as there should have been "the history of equity and its characteristic procedures and remedies." He feels that the history of equity and the special characteristic of its procedure in imposing personal obligations is something that must be approached as a problem in itself, separate and distinct from the subject matter of any particular course. Wisconsin does not look forward to re-establishing a course wholly devoted to the history of equity and an account of its procedure, but is thinking of giving a more significant place to this material in the first-year course on Procedure than it has in the past. It was the original expectation that the equity materials would be distributed among other courses, but this expectation was hardly being realized.

Professor Charles Bunn, chairman of the Wisconsin curriculum committee, points out that the old equity groupings are no longer appropriate for teaching purposes. A major reason is the completeness of the merger of law and equity in practice. Every judge of a court of general jurisdiction in most Code states, including Wisconsin, and every federal judge under the Federal Rules of Civil Procedure, has both law and equity powers and applies whichever is appropriate in the case before him. It seems unnatural to maintain in teaching a division which no longer exists in practice. Moreover, it was the desire to bring together in one place everything about vendors and purchasers of land, rather than just specific performance. And injunctions against tort depend a good deal on what tort is being enjoined. In any case, what has been done at Wisconsin is:

1. The history of equity and its characteristic procedures and remedies are dealt with in Civil Procedure and the later procedure courses, as part of the law of procedure.

2. Specific performance of land contracts is dealt with in the course called Sales of Land.

3. Specific performance of other contracts is referred to briefly in Contracts.

4. Injunction against tort is dealt with in the courses in Patent Law and Trade Regulation, Labor Law, Administrative Law, and Jurisdiction of Courts.

Professor Bunn points out that what Wisconsin has done, in effect, is to carry forward what happened when the courses in Trusts and Mortgages were separated from the general course in Equity, and for the same reasons. Equitable doctrines, procedures, and remedies are now so integral a part of the law of the various subjects that they can be most effectively taught where they arise, rather than in a separate compartment.

At Yale traditional equity materials are distributed into other courses where the materials seem more closely allied with accompanying subject matters. Parts of the old Equity are now covered in Contracts II, parts in Procedure II, and parts in such courses as Credit Transactions.

Much comfort will be afforded to the advocates of the elimination of a separate course in Equity by the fact that Dean Griswold of Harvard has stated that in Harvard's new curriculum there will be no such separate course. However, Professor Chafee intends to give an advanced course on Interpleader and some other matters. The other matters covered by Equity will be taken up in other courses.[18] Specific performance will come in Contracts and Procedure, nuisance will be covered in Torts, and bona fide purchaser in Trusts and Bills and Notes. The basic principles of equity jurisdiction will be covered in the first-year course in Procedure. Six hours of Procedure will be given in the first year. The course in Administrative Law, henceforth to be a second-year, three-hour course, will also deal to some extent with equitable remedies.

Columbia, the first school to abandon Equity, was the first to restore it, doing so in 1937. The faculty committee on curriculum is now considering whether the restoration is to be permanent or temporary. Dean Young B. Smith states that there is likely to be no change in the im-

[18] The Harvard Law School Record, Feb. 16, 1949, and Feb. 23, 1949. See HARVARD LAW SCHOOL BULLETIN NO. 5, (April, 1949).

mediate future, but that he does not know what the final decision will be. As in most faculties, there is some difference of opinion among the Columbia faculty as to how the subject of equity should be handled. Some years ago Columbia had integrated with other courses a good part of what had formerly been included under the heading of Equity. At that time some equity materials were combined with the first-year Procedure course.

VI

CONCLUSION

In my opinion the separate course in Equity should be retained. The changes in other subjects in the curriculum and the obtaining of satisfactory casebooks in case of abolition are practical difficulties that counterbalance the small amount of good to be obtained by abolition. There is real danger that the ethical and discretionary flavor of equity will be lost except for the ablest students. As chairman of the law school curriculum committee, I have successfully recommended the retention of Equity at Temple.