

Arthur Corbin and the University of Kansas School of Law: Four Letters

*Donald Bostwick**
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Few people today know that one of the greatest contracts scholars of the twentieth century, Arthur Linton Corbin, was born in Linn County, Kansas, in 1874.¹ Corbin's father, Myron, rode with John Brown in antebellum Kansas. Arthur Corbin spent his first fourteen years in Linn County and then moved to Lawrence, Kansas, with his parents in 1888. After two years as a student at Lawrence High School, he enrolled at the University of Kansas (KU) where he excelled as a student, edited the literary magazine, worked for Chancellor Snow, and, in the summers between terms, threshed wheat. After graduation, Corbin moved to Augusta, Kansas, where he taught at the high school. After two years in Augusta, he moved back to Lawrence to a teaching position at Lawrence High School. During the 1896–97 school year, Corbin became an intimate of Dean James "Uncle Jimmy" Green, the dean of the KU Law School. Corbin did not enroll, although he purchased and read the first-year books. The following fall, Corbin enrolled as a law student at Yale. He graduated from Yale in 1899 and returned west, to Cripple Creek, Colorado, where he practiced law for four years. In 1903, at the age of twenty-seven, Arthur Corbin returned to Yale, where he became the first full-time law professor and where he remained for the rest of his long life.

Every law student becomes familiar with Corbin's great treatise on contract law during the first year of law school.² The twentieth century produced two great American contracts scholars, Corbin at Yale and Samuel Williston at Harvard. In addition to *Corbin on Contracts*, Corbin

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1. On Corbin's life and career see Arthur L. Corbin, *Sixty-Eight Years at Law*, 13 U. KAN. L. REV. 183 (1964); Scott Gerber, *An Ivy League Mystery: The Lost Papers of Arthur Linton Corbin*, 53 S.C. L. REV. 605 (2002); Carl W. Herstein, *Annual Survey of Michigan Law*, 46 WAYNE L. REV. 1037, 1049–51 (2000); Robert H. Jerry, II, *Arthur L. Corbin: His Kansas Connection*, 32 U. KAN. L. REV. 753 (1984).

2. ARTHUR LINTON CORBIN, *CORBIN ON CONTRACTS* (1952).

produced a steady stream of law review articles. He served as president of the American Association of Law Schools, and was instrumental in the formation of the American Law Institute and in the publication of the *First Restatement of Contracts*.³

In spite of his stellar career back East, Arthur Corbin never forgot his Kansas roots. He was twice offered positions at KU, as a faculty member in 1903 and as dean in 1919. He refused both, but in 1906 Corbin delivered the annual alumni address at KU, "The Alumnus and the Law,"⁴ and in 1951 he received KU's Distinguished Service Award. In 1961 Corbin, then eighty-five years old and with failing eyesight, donated his personal copy of *Corbin on Contracts* to the KU Law School. Finally, in 1966 Corbin advised KU on steps it might take to improve its law school. He died one year later.⁵

Unfortunately, Corbin's personal and professional papers have been lost.⁶ Thus, much of what we know of him as a person and a teacher comes from the recollections of his friends and pupils, who are rapidly disappearing with the passing years. Any new discovery of his papers is, therefore, significant.

Donald Bostwick enrolled at KU Law School in the fall of 1965. His first-year contracts professor was Earl Shurtz, a long-time faculty member at KU⁷ who used Corbin's textbook. Don was a "summer starter" at KU, and during his first summer he and some friends sublet an apartment from two senior KU law students. On a shelf in the apartment he found an issue of volume thirteen of the *Kansas Law Review*. In this issue was an article by Corbin, "Sixty-Eight Years at Law."⁸ When Don read the article he learned of Corbin's two-year tenure as a high school teacher in Augusta, Kansas—Don's hometown. Inspired by this link, Don wrote to the great man. The letters printed here are the result of that act.

The following letters written by Arthur Corbin to a young KU law student are a remarkable testament to Corbin's kindness, his fondness for Kansas and KU, and the breadth of his knowledge and thinking.⁹ They

3. Jerry, *supra* note 1, at 759.

4. Arthur L. Corbin, *The Alumnus and the Law*, 32 U. KAN. L. REV. 761 (1984).

5. Jerry, *supra* note 1, at 761.

6. Gerber, *supra* note 1, at 606.

7. Earl Shurtz, an expert on contracts and water law, taught at KU Law School from 1955 to 1977.

8. Corbin, *supra* note 1.

9. These letters have been transcribed as written by Professor Corbin, maintaining his abbreviations of spelling, use of emphasis, and capitalization. The letters are in the possession of Donald Bostwick.

are as valuable to a young law student today as they were when they were written forty years ago. They are just one more treasure that Arthur Corbin gave to KU and its law school.

* * *

Box 36 West Boothbay Harbor
Maine
July 17, 1965

Mr. Don Bostwick
Lawrence, Kansas

Dear Don:

It was a delight to get your letter, for several reasons: In the first place, I could read it, altho [sic] I have only partial sight in one eye (glaucoma). Your handwriting is as plain as typewriting. You will find mine legible too, even though I cannot clearly read when I write. The original manuscript of my big treatise was mostly typed, as required by the publisher. But since 1950 I have had no stenographic assistance; and my revisions and the annual pocket supplements have been submitted to the publisher on handwritten cards. These have been accepted and placed directly in the hands of the linotypers. Secondly, you write from Lawrence, Kansas, and KU—my home State, town, and University. Now approaching 91, deaf and blind, I live much in the past. Thirdly, you write as a beginning law student—my lifelong profession being the study, the teaching, the writing, and the practice of “law.” Lastly, you write to me of Augusta, where at the age of 19, in Sept. 1894 (71 years ago) I began my teaching profession. I taught one half or more of the entire 3-year curriculum. It took me three miserable months to learn how to maintain discipline as well as to teach, and to discover that my pupils were not little savages, quite undesirous of education if it required work. I had 2 years there, at \$50 a month. I have long looked back on those children with the affection of a parent and brother. Yours is the first letter that comes to me direct from there. In 1894–96, Augusta was a quiet little country town of 900 people. Its one school building was a square 2-story stone building. Few, if any, of my pupils now survive. Perhaps a few of the old family names would still be known there. You mention Roy Haines and George Smith—I wonder why. One of my first seniors there was Stella Haines. Many years later she met my sister who was Professor of German at KU; and they spoke of me. Another senior was “George Smith” whose father may have been the town druggist.

The School Board consisted of Brown (owned the one private bank), C.W. Hawes (a harness-maker, whose daughter Josie was a senior), and a local Doctor. I had a private class in Latin and German, all of the students soon fading away except four rather exceptional people: Hope Thompson (a male country-school teacher), Anna Snyder (who taught the 4th grade, and later went to Emporia where she got credit for the work done with me), and two sisters Stella and Franc Chapman (daughters of a competent widow who ran a farm a few miles out). I boarded first at the home of Estey Makepeace, whose wife taught me German coffee-cake. Later I boarded with the family of old Mr. Hoffman, a Southern Methodist from Ducktown, Tenn. [w]ho strongly asserted: (1) that a "curve ball" was a physical impossibility; and (2) that Heaven was a material place, because "three human bodies were known to have gone there." I attended one "revival meeting," where the preacher's subject was the damnation of "Darwin, Spencer, Huxley, and Tyndall." With two local friends I attended country-school "lyceums," the three of us singing German songs. Wichita then had 25,000 inhabs. I heard that Augusta later struck oil or gas. I rode a little black pony out over the prairie roads, often still on the native sod.

You bring it all back. Walnut Creek, El Dorado, Douglass, Winfield.

Observe that my time now is not "valuable." Prior to May 18, 1964, I had read all the current Contract cases in the Natl. Reporter System, making critical notes on them for the annual Pocket Supplement to my treatise. Then the oculist called a halt. I own 1 ½ acres here on the water-side, and for many years have raised a big garden and cared for several hundred trees: white pine, spruce, birch, oak, cedar, elm, etc. With my nurse's help, I have tended a fine garden this summer; but the work is now too hard.

More than 150 years ago, a law student like you wrote to Chancellor James Kent asking how he acquired his juristic wisdom. The old man, already retired, wrote a long letter in reply. You would find it valuable. It is printed as the last chapter of Vol. I of the 3-vol. set of Essays in Anglo-American Legal History, edited by John H. Wigmore (one of our greatest scholars), published about 1903. It gave me new insight into the making and growth of "law," when I was just beginning to make my own discoveries teaching court decisions and opinions. Kent was one of our greatest.

When you are referred to my 1-vol. treatise, always look instead, if you can, at the same numbered sections in my big treatise (12 vols.). The supposed "rules" that I lay down are based upon the court decisions that are cited and often discussed in the foot-notes and in the Pocket Supplement. No "rule" has any meaning except as applied to facts,

disputed issues. Your job involves the reading of many “rules” said to be “law,” but always with the knowledge that they are generalizations, based on variable decisions, drawn and redrawn by men (more or less like me), changing in form and substance as the conditions of life and the opinions and the belief of mankind (the “mores”) change. Do you know what a “consideration” is—one that is operative to make a promise enforceable? If you do, you know more than I and some others know. And yet, in Vols I and IA I have written many chapters about it. Learn to read, to analyze, to report in your own words, and to compare cases. That is a lifetime job; and it can never lose its value or interest. All “rules” and future decisions, and advice to your clients, and the winning of decisions depend upon it. It is hard work; and students often weary of it, supposing that they can learn and apply “the rules of law” without it. Don’t read a case without mastering the facts that are reported. You cannot depend upon the stated “rules” in a court opinion, any more than you can on mine. Not that they are to be disregarded either. Judges are men, like us, of all varieties of experience, training, and mental capacity. A few appear to be boneheads; but their decisions are the very basis of all rules. Most judges desire to do “justice,” often puzzled to know what “justice” requires. No judge or writer knows it all; but some are far wiser than others. I graduated from Yale Law School with little knowledge, no wisdom, but with some general education and habits of thought. At the end of 40 years of law teaching, I reached Yale’s age limit of 68 (now 22 years ago). Then I wrote continuously, reading all the current reported contract cases. From 1946 to 1961, I was called in to help win important cases in the Federal Courts, “called in” by leading law firms in New York and Washington. They had to rely upon me instead of their law clerks, to draft the briefs and sometimes to make the oral arguments. They were usually able men; and their clerks were useful.

I must wind this up; for it is your time that is “valuable.” Also, my sight is dim—you have much to do, and a long time to do it. I miss the reading of cases, for they are life. We know not whence we came or whither we go; but we are on our way. We must make it as good a way as we can. One classmate of KU 1894 still survives at 92—Frank H. Moore, a fine boy. We correspond. With my best wishes for your success. (over)

Yours Sincerely,
Arthur L. Corbin

In Sept. I return to my winter home near New Haven:

21 Robinwood Road
Hamden, Conn. 06517

My home in Lawrence was 1108 Ohio St., where my parents and sister lived until they died. My old friend Mrs. Don Gagliardo lives there now. She would be glad to see you.

* * *

21 Robinwood Road
Hamden, Conn 06517
Dec. 23, 1965

Dear Don:

I will write what I can on these manila cards, because I can see only dimly what I am writing and writing on white letter paper is harder.

I am pleased that you do not realize that I "retired" from the profession of teaching 22 ½ years ago. I well understand your difficulties with the subject of Procedure and the Forms of Action at Common Law. At Yale in 1897-9, I had several courses in that field; but my instructors, although competent lawyers in active practice, knew little of the history of the origins and growth of law in England or in early America. My understanding of these topics remained very hazy and uncertain. When I took the bar exam in Denver in June 1899, the 65 candidates were assembled in the Supreme Court room before the three Justices, with a Committee of five practicing lawyers at a round table below and in front of the high Bench. Each candidate was stood up in turn for a 5-minute oral quiz by one of the 5 lawyers, each of whom asked questions on only one field of law: 1. Contracts, 2. Property, 3. Code and Common Law Procedure, etc. After this special quiz, the candidate might be questioned ad lib by 3 Justices. The quiz-master on subject No.3 above was an old, bearded lawyer who asked questions that were very difficult for the candidate to understand and answer. All of the 6 candidates prayed that they would not draw old beard as their specific quizzier. It was my luck to draw him. I was able to answer some of his questions, until he asked me what provisions were made for the amendment of pleadings. I had no idea what he referred to; so I asked him back: "Do you refer to the Statute of Jeofails and Amendments?" He had no idea as to what that statute was. He did not answer me; he merely looked down his whiskers and asked another question. The three Justices grinned noticeably—they had no idea as to that Statute either. When graybeard ended, they asked me no questions.

In order to understand Common Law Procedure and Forms of

Action, it is necessary to know a lot about the history of England and of its Law and its law courts. That is indeed a long story. My own knowledge is sketchy; and yet it took some years after I began to teach in order to acquire it. In order to give you much detailed information, I should have to write many many pages. I have never read any students' book that clearly presented the origin, the nature, and the continual growth and change of either our system of what we call "substantive law" or of the courts and their procedure thru [sic] the centuries. Few law teachers in the past have been able to convey much knowledge to their students. The assumption had long been that "the Law" was definite, a system of plain rules that were merely to be learned and applied.

You may get some help from parts of my Vol 5—sec §§ 902 et seq (especially § 905) and § 1102. Those sections were not written for beginners; they presume some knowledge of legal history.

I will try to give you a few hints in your search for light. 1. When the Normans conquered England the King's Court consisted of his Courtiers, his learned men, and his ecclesiastics. They spoke Norman French; but the only system of law that they knew was the Civil and Canon Law of Rome (already over 1000 years old). All that law was in Latin. There was no system of Courts, no subdivisions of Law (such as Contracts, Torts, etc.) altho [sic] Land disputes soon caused the growth of Property rules. If any commoner had a grievance he appealed to a local dignitary, or (if he was important enough) direct to the King. When Henry II mastered the Barons and (more or less) unified England, appeals to the King for justice were being referred to learned specialists in his Court, of ecclesiastics who knew Latin and the Roman Law. In 1265 a learned man named Bracton sat as a King's judge in Southern England, deciding disputes over land, often between Normans and Saxons. (One or two of the litigants bore the French name "Corbin[.]") He kept a Case Notebook that is still preserved in London. He wrote a long Commentary on English Law, written in Latin and having large portions of Roman Law. The older Saxon customs affected both his decisions and his Book.

As the Centuries went on, the King's Judges became numerous, sitting as a high central Court at Westminster, near the present Abbey and the House of Commons. Other judges were sent out into the Country to hear cases in the sticks.

As cases and precedents and written records multiplied, these Judges began to classify them. On the complaint of a plaintiff at a proper office, an official would issue a Writ (writing) summoning the defendant to answer the complaint. These Writs were very numerous; I have seen

lists of perhaps 60. They were always in Latin.

Observe that when such a new Writ was issued and sustained by the Court at a trial, the Court was making and applying new law but it was not put into the form of a "Rule." It came about that for a certain type of cases [sic] (similar in essential facts) a certain Writ could be used over and over.

When it turned out that few cases arose to which a certain Writ was applicable, that Writ fell into disuse. In fact, most of those Writs disappeared in the Mists of history.

On the other hand, some of the Writs came to be regarded as suitable for large numbers of cases, especially if the Courts were willing to permit variations in the wording. Thus, the Writ of Trespass was, over a long course of time, applied with changed wordings, to many kinds of cases. (Do not make the mistake of supposing that this word "trespass" was used by our ancestors to express the same "meaning" that people now give it. It is necessary to know the history of language in order to understand law and its growth or any other subject of study. "Words" have no meaning per se. It is people who have "meanings"—thoughts, ideas, which they try to convey (with variable success) to other people by the use of "words.") Grievances most often involved harm by violence. Hence the Trespass Writ charged the defendant with the use of violence—that he acted "vi et armis" (with force and arms). Hence the Writ came to be called "Trespass vi et armis." But there were many kinds of violence besides that used against a person's body. So the words of the Writ included modifying words (in Latin) indicating the particular kind. One form of the Writ was known as "Trespass quare clausum fregit" for forceful entries on land. Another was "Trespass de bonis asportatis" for forceful taking of goods.

But grievances were numerous arising out of fraud and deceit; and plaintiffs sought the use of the Trespass Writ in these cases. Doubtless the Writ was often denied them and they got no remedy. Eventually, the officials who issued the Writs were authorized to issue a Writ of Trespass in cases involving no physical violence. They could draft the Writ to be used in similar cases—"in consimili casu." This made new law. It came to be called "Trespass on the special case," or "Trespass on the case," or in sheer brevity an "Action on the Case" or just "Case."

Aggrieved persons next began to ask for this Writ as a remedy for a Breach of Promise, asserting that they had been defrauded and deceived by the defendant. So, some new Latin words were added to the Writ to fit these cases: the deft. had deceived the plf. because he had promised (Assumpsit) a performance and had not rendered it. Commerce was

expanding in Eng. and these cases became very numerous. So now, they had a group of related but separate Writs:

Trespass vi et armis
quare clausum fregit
de bonis asportatis
personal assaults, etc.
Trespass on the Case (not vi et armis)
Trespass on the Case sur Assumpsit

Our law of Informal Contract grew out of the use of this Writ of Assumpsit.

Remember that a system of law does not start out with Rules; it starts with Cases—disputes. There was no Law of Contracts; but out of the Cases in which the form called Assumpsit could be used it [became] possible to construct generalizations (Rules). There are very few such Rules in Blackstone, who lectured in 1765. But now, in 1950–64, Corbin can fill 10 volumes.

There were two Writs, earlier than Assumpsit that had been used in cases that often involved a “promise.” There were Covenant and Debt (indebitatus). Neither one was maintainable for the breach of a mere informal promise. In Covenant, the action was based on a formal written instrument, sealed and delivered. Such a document created obligation (obligation). The Romans had had similar forms. The Writ of Debt applied something to cases in which the defendant had in his possession, including money, which he owed to the plf. as the owner. These two Forms of Action contributed to the system of contract Rules, the growing Working Rules, changing and multiplying (and disappearing) in the constant evolutionary process of life.

There were other early Writs that survived and resulted in “common law” Rules: e.g. Trover and Detinue. They are out of my field.

The dividing lines between these Writs (Forms of Action) were not always clear, and there was overlapping. But the practicing lawyer had to know the Forms. The facts of his client’s case might be new and unique. He must choose the proper Form. And he might be before a stiff-necked, super-confident, half-learned Judge. If the atty. made a wrong choice of Form, the case would be dismissed and the client had no legal remedy. Common law procedure became very complicated. (You are finding it hard now, after it has been replaced by Codes and Rules of Court[,], e.g. Federal Rules of Procedure, drafted by a Committee whose

Chairman was Cir. Judge Chas. E. Clark, my student of Class of 1913, once Dean of Y.L.S., now dead.)

Why do we need to study the ancient system of Writs and Forms of Action? Maitland, the legal historian said, "The Forms of Action we have buried; but they still rule us from their graves." He meant that the Reformed Procedure did not make new law, and that we still must study the old cases using the old Forms of Action to determine what was the law that the reformed Procedure must apply. In some degree this is still true. Especially, it is necessary for us to understand old terms and old decisions, and to know that the old Forms of Action were not absolute and permanent, but that those Forms were themselves changeable and that the "Rules" of law that they created and applied were always variable and impermanent as one component part of the evolutionary process of human existence. It is by this understanding that we prevent old Forms and old Rules and old Dogmas from continuing to "rule us from their graves." All of these "old" things have something to teach us even though we never should worship them. Man is still master of his fate to the extent that he has a mind capable of knowing and profiting by experiences with the wisdom to vary his direction and his action successfully. (Our country may now be "biting off more than it can chew." Who knows?)

Courts today have the same Power and Privilege and Duty, in acting under the new Procedures, that the ancient Judges had thru [sic] the Centuries in which they invented and used and discarded the Forms of Action. Some of our great Judges in the first 75 years after the Revolutionary War knew this. After the Civil War few seemed to know it. My law teacher prior to 1900 did not suggest to me that "the law is a living growth, not a changeless code." But before 1900, Holmes was opening our minds. After 1900 Pound rendered service. In 1914, I published an article in the Yale Review (not a law magazine) entitled, "The Law and the Judges" for which some legal lights wanted me fired. In 1920, Judge Cardozo delivered his lecture at Yale entitled "The Nature of the Judicial Process." All of the "Rules" that I print (in great number) in my 12-vol. Treatise are at every point described as "Tentative Working Rules." (See my Article in the Kansas Law Review, December, 1964.)

There is One Great Reason why our Courts are not controlled by the old Common Law Forms of Action or by the rules of law that they sponsored. Under the English and U.S. Procedure Acts (e.g. New York in 1850), (pushed thru [sic] the legislatures by a few leading and influential lawyers / one was David Dudley Field in N.Y.) there has occurred a Fusion of Common Law and Equity. I must write a few lines

about this. I have already indicated that the Anglo-Amer. system of law started at scratch, not with any lovely set of worded rules and principles. Also, that men with grievances did not always get a satisfactory solution from the King's Judges, operating under the long and varying system of Writs or operating otherwise. All that an aggrieved party could do (if he had sufficient wealth or influence) was to petition the King. These petitions came to be referred to a high ecclesiastic in the King's court (such as the Archbishop of Canterbury or the Lord Chancellor). These Churchmen did not even know the Common Law of the Judges and had nothing to do with the Forms of Action. These "petitions" were for centuries addressed to the "Chancellor" who heard them himself or by a Vice-Chancellor. Until the Pope refused a divorce to Henry VIII, the Lord Chancellor had always been a high ecclesiastic. Thereafter, not so. There was often friction between the Judges and the Chancellors (A long story, from Thomas A. Becketly to Chief Justice Coke and Lord Ellesmere—Coke threatened violence, but pious James the First backed Ellesmere.) The "Chancery" became a separate court, one that by its long succession of decisions created its own system of law—we call it "equity." By the Chancellors orders (injunctions) the application of Common Law Rules was prevented and enforcement of Law Court Judgements was sometimes prevented. Equity was thus often in conflict with "law." The great Dean Ames of Harvard asserted that there was no such "conflict," giving a wholly insufficient explanation[.] (Ames published a fine history of Assumpsit, in which he threw light on the history of the doctrine of "consideration.") Hohfeld and Cook published articles knocking out that theory.

The Procedure statutes fused the two systems ("Law" and "Equity")[,] gave jurisdiction over both to one system of Courts, and provided that where the two systems were at variance the Equity system should prevail. Therefore today a student must study the history of the Chancellors and their legal doctrines and remedies.

Under the Federal Rules of Procedure, the Federal Courts ceased to have two "sides" operating with separate procedures. A few States still retain a Court of Chancery; but even in them the two Courts apply a largely fused law.

I will wind up by quoting as nearly as I remember it, a petition in Chancery from about 1500 A.D.

To the Reverend Fader in God, John Archbishop of Canterbury and Chancellor of England; Merely beseetheth your continual orator (prayer), Sebastian Giglis, that whereas . . . (stating the facts, that one "Robert Welby, a preste" was defrauding the orator and justice could not be got

in the Law Courts because Welby has there used a legal defense known as “Wager of Law” bringing in required witnesses[)].

Wherefore, the orator sought a remedy “in the mercy of God” etc.

This defense called “Wager of Law” was used from very early time in the Action of Debt. The defendant would be given judgment if he made Oath that he did not owe the alleged debt and brought with him 12 others who made Oath that he was an honest man. As you may imagine, that defense became greatly despised by creditors and was greatly abused by debtors. Therefore, in Slade’s case, near 1600, a daring barrister obtained a Writ of Assumpsit, in place of Debt, to collect money due. You can well believe that the defendant violently objected to this trick of the plf. The Writ contained the words, that the defendant being indebted had promised to pay (“indebitatus assumpsit”). All the King’s Judges were called to hear argument. They held two hearings, the [plaintiff’s] case being argued by the Atty. Gen. then Sir Edward Coke (as I remember). After the second hearing, the Judges sustained the changed Writ. Thus was new law made by the Judges (but they well knew that the defense by “Wager of Law” was doing injustice). This decision practically killed the Action of Debt until the defense by “Wager of Law” was abolished by Parliament. The Judges sustained the altered Writ by saying that whenever a Debt existed the Law would “imply” a promise to pay it. Before long, this led to the printing of blank forms of “Indebitatus Assumpsit,” with a number of Counts for a lawyer’s use, choosing and filling out the one that suited the facts of his client’s case. These became known as the “Common Counts in Assumpsit,” thus; a count alleging indebtedness[:].

for money lent;
for goods sold and delivered;
for work and labor done;
and others.

Whenever Assumpsit was used to enforce payment of a debt, it was and still is known as “Indebitatus Assumpsit.” The Procedure acts in Conn. and some other states still permit use of the “Common Counts,” to be followed by a “Bill of Particulars” informing the Court and the Defendant of the specific facts of the case.

Since I have mentioned the King’s Law Courts and the Chancery and the “fusion” of their two systems of law, I should mention also some other Courts and systems of law that have contributed to our law today.

The Lord High Admiral, as well as the Lord Chancellor held his

court and made decisions, creating a system known as Admiralty or Maritime Law. This is now part of our whole system, but is not “fused” with the rest. There are some large law firms in N.Y. who are specialists in “Admiralty Law;” and the Federal Courts maintain a separate Admiralty Procedure.

Of even more importance is “The Law Merchant.” Before the “Common Law” and “Equity” were born in Eng., there was a system of law created by and applicable to the transactions of international traders (merchants) operating in and about the Mediterranean and the Eng. Channel. The merchants invented “Bills of Exchange” and other “Negotiable Instruments;” and their disputes were heard and decided in special Merchant Courts. When such commerce drifted into England, the trading merchants there were permitted to have their Merchant Courts applying Merchant Law to merchants only. Five ports of entry on the Eng. Channel known as “The Cinque Ports” (including Dover and Boulogne) had such courts. They had their own procedure and knew nothing of either the “Forms of Action” or of Chancery pleading. And the King’s Courts knew nothing of the Law Merchant until in the late 18th Cent. So many Londoners and others had become “merchants” that Lord Chief Justice Mansfield (one of the greatest of Judges) called in London Merchants to advise him and applied their merchant law in the King’s Common Law Courts. Thus the “Law Merchant” became so fused with Com. Law and Equity that we no longer refer to it by a separate name.

There were still other Courts in Eng. that had temporary influence, now forgotten. Star Chambers; the Exchequer; Ct of Requests. Observe that all of these growing systems had much in common. Each added something to the “law” that you study and that I taught and helped reduce to print in my Treatise and the “Restatement” for the Amer. L. Institute. The largest contributor to our present fused system was the law of the King’s Courts of Common Law. Followed by the Chancery and the Merchants.

Note.

Dear Don:

I hope that this scribble by a blind man will assist you in your efforts to learn as much as is necessary about the Forms of Action at Common Law. The amount that is “necessary” grows steadily less, as these Forms recede into the misty past. But some knowledge is still necessary, especially to understand the growth of a system of law and the character of its rules, principles, doctrines, myths, and dogmas. If you find it

useful, I have no objection to your having many copies made for use by others.

Let your instructor read it. He may like to make criticisms or additions. In any case, regard it as merely a brief account of legal history, with few details and huge omissions, as remembered by an aged blind man.

With my kind regards,
Arthur L. Corbin
December 24, 1965

Note.
December 25, 1965

Dear Don:

This sheet is really a P.S. The other sheets were written piecemeal. I have just re-read your letter, and note that it is postmarked "Augusta, Kansas." How well I remember that address. I can still see the little town of 900, the old school bldg., and many of my individual pupils.

Of course, your casebook and your instructor will give you many details as to the use of the Writs. What I tried to do is to give a feeling of the historic progress of our "law" as it grew and multiplied thru [sic] some 900 years, with a breath of the atmosphere that surrounded the use of the Writs as they were invented, multiplied, used, altered, and replaced, finally becoming only a part of history. Our ancestors did not ask whether a transaction created a valid contract; they asked whether an action of Assumpsit could be maintained. When the Writ had been sustained in a number of cases, a "generalization" could be put into words—i.e. a tentative working rule was born, constantly subject to alteration as new cases arose. That process, that "creative" process, is as active now as it ever was. It is easy to see that process in action if one rapidly surveys the history of court action by centuries, or even by decades. It is hard to recognize it if one merely watches it from day to day.

Then, in order to put the Common Law in its place, I added a something about Equity, Law, Merchant, and Admiralty, etc. It was only after the Kings had gained control of all England, so that the King's Writs had to be respected throughout, that the law of the Judges became in fact common law and in time became so-called. Prior thereto, the "law," such as it was, was local and regional, largely customary, and variegated.

I once read an article by Plucknett in the Law Q.R. Scholarly historical research, without scintillation. I do not remember much about it. Interest in Law grows increasingly as you get to see the sweep of history and its effects on human life.

A.L.C.

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21 Robinwood Road
Hamden, Conn 06517
Jan. 18 '66

Dear Don:

Did you get my reply to your request from Augusta? I mailed it soon after Xmas, to your address in Lawrence. It was in a long envelope, not air mail, containing about a dozen pages on cards like this, with an account from memory of the Forms of Action at Common Law. I fear that it was delivered in your absence and was mislaid.

Your fellow townsman,
Arthur L. Corbin

* * *

21 Robinwood Road
06517 Hamden, Conn
Feb. 8, 1966

Dear Don:

Unless you have need to shorten the time, I advise you to spend the full three years at the Law School. Vacations, either in a law office or elsewhere, freshen your mind and body. Also, if your grades are such that you make an Editor of the Review, you should have some extra time for writing Notes and Comments. That work is the most useful of all in mastering the law and preparation for the future practice.

Even if you are not an Editor you should, each year find a subject suitable for your independent research and production of a written thesis. That is the best preparation for the construction of briefs and arguments.

In the cases that I had in the Federal Courts after my retirement from teaching, the briefs that were prepared by the law clerks of the large

firms opposed to me left much to be desired. Legal problems are always complex requiring a power of analysis and a mastering of language that the lawyers themselves frequently lack. I convicted them of error after error in my cases. Of course, my problems were Contract problems, on which I had spent a lifetime.

In working in a law office, you will not learn much "law;" but you will get some familiarity with the routine of practice and some experience with people. It is only the best lawyers that are expert[s] in interviewing their clients and witnesses. That requires analysis of the problem and a knowledge of what facts are operative.

Yours truly,
Arthur L. Corbin

The 17 hours of Courses that you are taking are altogether too much at one time, if you are required to do more than to swallow what you are told.

When I was a law student in 1897-1899 at Yale, I completed the 3-year course in 2 years, with no summer work. Nor was I overworked. That was not due to my "genius." There wasn't much required of me in the Courses. Often I had 23 recitations per week.

If you were given a problem to work on independently, you would discover the amount of time and effort necessary. Look for such a research subject; they exist in every Course. But don't try to work on more than one at a time.

A.L.C.

Suppose that you own a pipe line carrying fuel oil from the X field in Texas. You make separate contracts with three factories, A, B, & C, to supply them with oil from the X [field] sufficient to run their factories for a full year. A's requirements are twice as much as B's; and B's requirements are one and a half times as much as C's. After 6 months, the Government for purposes of oil conservation for war purposes, so limits production and shipment from the X field that your capacity to deliver oil is reduced to 50%. A, B, and C demand the full promised supply and threaten suit. What should you do? Should you offer to supply them with gas, at greater cost? Did your Contracts Course give you an answer (or answers)? I do not have an answer just off-hand.