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Recommended Citation

John A. Humbach, *What is Taught in the First Year Property Course?*, 29 *J. Legal Educ.* 459 (1978), <http://digitalcommons.pace.edu/lawfaculty/100/>.

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WHAT IS TAUGHT IN THE FIRST YEAR PROPERTY COURSE?

A Report of a Survey of Instructors Teaching the Basic Property Course

JOHN A. HUMBACH *

The battle over the first-year curriculum will unlikely ever end so long as there is a diversity of views as to what ought to be taught there. Because first-year courses are both a requirement (for the most part) and an initiation, most would probably agree that their subject matter should tend to emphasize the fundamental and general, not the esoteric or the highly specialized areas of legal knowledge. Nevertheless, first year subject matter should not be so abstractly "general" that it is too far removed from the real issues which a practical lawyer is likely to face. Beyond this, agreement becomes much more tenuous.

The question of what should be covered in the basic property course is a subdivision of the larger question of what should be contained in the required curriculum overall.¹ To answer this larger question properly, it is not sufficient to consider merely which broad subject areas (*e. g.*, contracts, torts, civil procedure, etc.) should receive required coverage. Rather, consideration must also be given to which particular subject matters merit inclusion within each of these broader subject areas. For it is the merits of these particular subject matters which, taken together, justify the claim for time of the broader subject areas that they comprise. Thus, if property teachers are to justify the claim to their present share (or a larger share) of the first-year curriculum, this must be done by justifying the time allocated to the various areas of property law which they feel it is important to cover in the basic course.

There is considerable room for disagreement as to what should be taught in first-year property. The bodies of rules and concepts which are "property"-related form such a large array that it would not be possible even to touch on merely the high points of all of them within the limits of a first-year curriculum. Neither is it desirable to devote an entire course to mere "high points." Nor, most would probably feel, is it particularly necessary to go into the depths of, say, future interests, the rule against perpetuities, mort-

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¹The question of inclusion in the basic property course is, of course, partially a question of allocation among courses; how should we allocate among various courses the particular "basic" subject matters which have some logical claim to coverage in two or more courses, *e. g.*, conversion or trespass to land. Because a great deal of what is traditionally thought of as "property" law actually amounts to the enforcement of tort-based or agreement-based obligations, a good deal of the subject matter of traditional property courses could easily be considered appropriate to such courses as torts or contracts, to say nothing of remedies, equity or the like. The question of allocation should not, however, distract from the more basic question of which "property"-related subjects should receive required coverage at all. Nor should it seriously undermine the validity of focusing on the basic property course in considering this latter question since, traditionally at least, most of the fundamental "property"-related subjects have been reserved for the basic property course.

gages and land finance, trusts or wills in the first year. The problem is selecting what to treat in depth, what to merely mention, and what to ignore.

The extent to which the "appropriate" content for the first-year property course is unsettled can be seen in both the great diversity of approach in the available casebooks and in the considerable interest and attention recently directed by property teachers to the issue of the basic property coverage. At the December, 1974 Convention of the Association of American Law Schools, the Section on Property presented a very well attended Panel Program entitled "What Should the Basic Property Course Contain?" At the 1976 AALS Convention the same section presented a Panel Program on a related topic, "The Authors Speak on Teaching Materials for the First Year Property Course." The relatively heavy response to the present survey is another indication. Property teachers want to know what their colleagues at other schools are doing.

One of the conclusions which could be drawn from the 1976 Panel Program was that the authors (or co-authors) of the widely used first-year property casebooks seemed unable to articulate any generally agreed purpose or underlying philosophy for the teaching of first-year property. Yet, it is believed, most of those interested in legal education would agree that the retention of basic property as a part of the required curriculum is important; the difference of opinion is mainly as to why it is important. Why it is felt to be important will be found, as previously suggested, in the perceived importance of the various particular subjects actually selected for coverage in first-year property. It is assumed that at least the relative importance of these various particular subject areas will, in turn, be evidenced in the amount of time spent on them, respectively, by teachers of first-year property. Thus, there is value, it is submitted, in determining what is actually taught in the first-year property course and the emphases given. Such a determination offers the individual instructor a basis for comparison and offers more generally the possibility of coalescing a more unified philosophy for teaching the first year property course. Finally, it offers the possibility for individual property teachers to justify their own felt needs for time by pointing to what is being done "nationally."

THE SURVEY

In order to gather information permitting an estimate of the actual coverage of first-year property courses as taught in American law schools, a survey was made by me in October, 1976, under the auspices of the Section on Property of the Association of American Law Schools.² The survey questionnaire was sent to the over 500 property teachers, at over 160 law schools, who were listed in the 1975 Law Teachers Directory Supplement as currently teaching "Real Property."

Responses were received from first-year property teachers at over 116 law schools (72.5% of those solicited), and a total of 211 individual responses

² The kind assistance of the Association of American Law Schools, and particularly of Nancy Jones of the organization, in obtaining the addresses and in underwriting the mailing is gratefully acknowledged. I am grateful also to Fordham University which provided data processing facilities for the assembly of the survey results, and particularly in this connection to Kathleen Cotelidis who supervised the processing of the data.

yielded useable information upon which the data reported below are based.³ This indicates a raw response ratio of about 42.2 percent. However, the actual response rate for first-year property teachers would probably be somewhat higher when it is considered that an unknown number of teachers of "Real Property" are teaching courses (*e. g.*, Conveyances, Landlord-Tenant, or Vendor-Purchaser) which are not the basic first-year property course as such.

In the questionnaires a multiple choice format was employed to permit expeditious assembly of results. The questionnaire was divided into two parts. The first part consisted of 11 general information questions. The second part was a list of 39 subject areas believed to be common components of basic property courses. As to these latter, the respondent was asked to indicate the approximate amount of class time (ranging from "None") spent on each area.

The use of the multiple choice format unfortunately meant that significant data may have been overlooked because of limitations in the prescribed choices. In order to alleviate this problem, spaces were provided where the respondent could indicate (i) any subject areas not mentioned on the questionnaire but which are given significant classroom attention by the respondent, and (ii) any subject areas given substantial coverage in assigned readings but without the use of significant class time.

Only 27 of the respondents listed additional or "outside-reading" subject areas of the sort requested. The counting and analysis of these responses was necessarily impressionistic; however, it may be safely observed that the application of economic theory to property law was by far the most commonly mentioned additional subject area, having been noted by 11 of the 27 respondents. Other additional subject areas receiving significant mention include:

- Nuisance (3 respondents)
- Judicial Process (3)
- Public Housing (2)
- Damages and/or Remedies (2)
- Power of Alienation (2)
- Future Interest Supplement (2)

Also named were such diverse areas as:

- Civil law
- Feudal/English Law
- Title Transfer by Judgment
- Transfer Development Rights
- Bibliography
- Exclusionary Zoning
- Property vs. Contract Rules

³ One of the interesting bits of side-information developed in the survey was the extent to which an inability (or unwillingness) to follow simple instructions is evident even among a group as highly educated and presumably sensitive to the need for prescriptive norms as property teachers. Some 10% of the responses were in forms which were unuseable until the data contained was translated to the form requested by the questionnaire. Considering that the survey format was the standard multiple choice variety, the type in familiar use for standardized tests such as the Law School Admissions Test, this percentage is all the more surprising.

Sometimes other areas were mentioned as additional areas, but where these essentially overlapped questionnaire items they were disregarded.

Of the subject areas covered almost exclusively by assigned readings, the Estate System was the most often mentioned (five respondents); however, other areas mentioned included Income and Estate Tax, Sex Discrimination in Property Law, Public Land Use Controls, Local Statutes, Community Property, Housing Legislation, and Rule against Perpetuities.

THE GENERAL INFORMATION QUESTIONS

The 11 general information questions are set forth below together with the percentages of respondents who indicated the respective answers.

1. How many years have you taught first year property (do not include the current year)?
 1. One year 12.32%
 2. 2-5 years 32.23%
 3. 6-10 years 21.80%
 4. 11-15 12.32%
 5. 16 or more years 20.38%
2. Which casebook do you use?
 1. Casner and Leach 29.38%
 2. Browder, Cunningham and Julin 14.22%
 3. Cribbet, Fritz and Johnson 18.96%
 4. Berger 7.58%
 5. None of the above 29.38%
3. Which casebook do you use (if none of the above)?
 1. Lefcoe 1.42%
 2. Donahue, Kauper and Martin 9.95%
 3. Rabin 9.48%
 4. I use my own unpublished materials and no published casebook 5.69%
 5. None of the above 27.01%
4. What part of the assigned reading is outside of the casebook?
 1. Most 2.84%
 2. About half or more, but not most 4.74%
 3. Less than half, but more than one-fourth 9.48%
 4. Substantial, but less than one-fourth 45.02%
 5. None or almost none (less than 25-30 pages) 35.97%
5. In your treatment of your state's local law, would you say that the coverage is:
 1. Heavy, both in terms of assigned readings and classroom discussion, and achieving a comprehensive coverage of local property law with a lesser or insubstantial classroom emphasis on "national" variations? 2.84%
 2. Heavy in terms of classroom discussion but not necessarily in assigned readings, with a lesser or insubstantial classroom emphasis on "national" variations 4.74%
 3. Moderate in terms of classroom discussion, with little local emphasis in readings, but with attention in class to most local positions on or deviations from the general or majority rules 43.13%
 4. Light in terms of classroom discussion, with the local rule being mentioned only if you happen to know it or only in certain areas (e. g. conveyancing) 27.96%
 5. Insubstantial, with no particular effort made to teach anything but a "national" property course 20.38%

6. In teaching your first-year property course, do you:
1. Spend considerable time (one-sixth or more) on "practice" as distinguished from "theory", exposing students to examples of actual documentation, contracts, negotiating and "business" considerations, title records, and the like 8.06%
 2. Spend considerable time (one-sixth or more) on "practice" as distinguished from "theory", actually requiring students to draft documentation and contracts, conduct negotiations, think about business considerations, search titles and the like 4.27%
 3. Spend some substantial amount of time on "practice" as distinguished from "theory", but not one-sixth or more, and do not require students to draft, negotiate, etc. 39.81%
 4. Spend some substantial time on "practice" as distinguished from "theory", but not one-sixth or more, but do require students to draft, negotiate or the like 9.95%
 5. Spend little or no time on "practice" as distinguished from theory 36.49%
7. Are you generally satisfied with the casebook which you use?
1. Yes, in all (or almost all) of the areas which I teach 24.64%
 2. Yes, but not in all (or almost all) of the areas which I teach .. 40.76%
 3. No, but it is generally satisfactory in many of the areas which I teach 20.38%
 4. No. It is generally *unsatisfactory*, but I believe it is the best available for me 8.06%
 5. No. It is generally *unsatisfactory* and I intend to switch 3.79%
8. How long have you used the casebook (or its previous editions) which you currently use (including the current year if applicable)?
1. One year 22.75%
 2. 2 years 15.17%
 3. 3-5 years 33.18%
 4. 6-10 years 16.11%
 5. More than 10 years 11.37%
9. How often have you changed casebooks in the past? (Treat previous editions of a casebook as the same casebook for this purpose.)
1. Once. (If this answer applied, ignore remaining answers) ... 34.60%
 2. Every couple of years 17.06%
 3. Every 4-6 years on average 18.48%
 4. Never, but I have used my present casebook less than 2 years (including the current year) 3.79%
 5. Never 20.85%
10. How many currently published first-year property casebooks (other than the one you now use) are you now sufficiently familiar with to make an informed decision to adopt or reject it for use? (Answer with respect to current editions only)
1. None 3.79%
 2. One 3.79%
 3. Two 16.59%
 4. Three 29.38%
 5. Four or more 45.97%
11. On what basis did you select the casebook which you currently use? (Select the most important influence in your choice).
1. Recommendation, "strong" recommendation or requirement of school 2.84%
 2. Recommendation of colleague who teaches property, without substantial review on my own (e. g. reading over 75 pages) .. 7.11%
 3. Recommendation of colleague who teaches property and with substantial review on my own (e. g. reading over 75 pages) .. 15.64%
 4. Comparative and substantial review of two or more casebooks 62.09%
 5. Other 9.95%

In addition, cross-tabulations were done among each of the general information questions, and between the general information questions and certain of the major items (*e. g.*, Landlord and Tenant, Conveyancing, Personal Property) in the list of subject areas comprising questions 12-50.⁴

One of the results of this cross-tabulation having possible interest is the relation between years of experience and choice of casebook.

Casner & Leach ("C-L") is by a considerable margin the most popular casebook overall, but interestingly it also ranks first in adoptions in 4 out of the 5 experience categories listed in question 1.⁵ Among "One Year" teachers, C-L is twice as popular as any of its nearest competitors (Berger, Browder, Rabin and Donahue, in descending order). Among 2-5 year teachers it is three times more popular than its nearest competitor (Rabin) with the rest falling in behind (led by Browder, then Berger, Cribbet and Donahue).

At 6-10 years Cribbet leads, having nearly 25% more adoptions than the next (Donahue), which is followed by C-L with the rest being far below in adoptions. At 11-15 years, C-L and Cribbet tie for first, all others being far behind. The nearest competitor in this category are unpublished instructor-developed materials (see below). In the 16 or more years category, Browder again appears prominently, ranking first, followed closely by C-L, then Cribbet and the others further behind.

The use by the instructor of his own unpublished materials is low in every experience category. In the "One Year" category, one (brave) respondent reported using his own materials, 3 each in the three middle categories (2-5, 6-10, 11-15 years), and one in the 16 or more years group.

The cross-tabulation between casebook (question 2 and 3) and satisfaction with casebook (question 7) produced somewhat disappointingly uniform results. The only substantial deviations from the norms were in the cases of unpublished instructor-developed materials for own use (overwhelming satisfaction with materials) and of Donahue (substantial above-norm response of: "Yes [satisfied], in all (or almost all) of the areas which I teach.")

TABLE A

Table A shows the percentage of respondents who spend the indicated amounts of time of the various subject areas listed. Because not every respondent answered every item, the percentages may not add up to 100%. Furthermore, the listed subject areas are not always mutually exclusive, nor are the indicated times exact, but from Table A one may garner an impression as to the emphasis given various subject areas within the first year property course.

Note that "None" includes "almost none" (less than 10-15 minutes of class time). "8+" means "8 or more" hours. "Under 2" means less than two hours, etc. If the choices were, for example 1-2 and 2-5, and exactly 2 hours were spent, the lower (1-2) was requested.

The numbers in the column headings to Table A refer to class hours of 50-60 minutes.

⁴ The results of the latter cross-tabulations are reported *infra* under TRENDS.

⁵ C-L tied (with Cribbet) in the 11-15 category, and it came in a close second (behind Browder) in the 16 or more years category.

Note also that, for convenience in presenting the tabulations, the order of the subject areas is slightly different from that used in the questionnaires. However, the item numbers used on the original questionnaires have been retained.

TABLE A

	None	Under 1	1-2	2-5	5+
12. Nature or Theory of "Property"	8.06%	19.43%	31.28%	19.91%	18.48%
13. Original acquisition of Title ...	15.64%	25.12%	22.27%	23.22%	8.06%
14. Bailments	34.12%	15.17%	25.59%	18.01%	3.79%
15. Finders	23.22%	11.85%	38.86%	18.96%	3.79%
16. Rights attaching to mere possession (jus tertii, etc.)	21.80%	24.64%	31.28%	15.17%	3.32%
17. Adverse possession (other than #16 above)	5.69%	4.27%	19.91%	55.92%	10.90%
18. Gifts of personal property	30.81%	6.16%	11.37%	40.28%	8.06%
19. Wills	41.71%	36.97%	11.85%	5.69%	—
20. Trusts	36.97%	36.49%	16.11%	6.64%	—
21. Mortgages (Real Estate) and Real Estate Finance etc.	19.43%	20.38%	37.44%	11.85%	6.64%
22. Voluntary Security Interests in Personal Property	63.51%	22.75%	6.64%	1.90%	0.47%
23. Liens (common law and statutory) on Personal Property	54.98%	28.44%	7.58%	2.37%	1.90%
24. Power to transfer title to personal property (voidable title, estoppel, etc.)	43.13%	21.80%	19.91%	7.58%	2.37%
25. Accession and Confusion	57.82%	22.75%	9.48%	4.27%	0.47%
27. Estate system (basic differentiation of estates, including rules re rights of entry, possibilities of reverter, etc.)	0.47%	2.37%	12.32%	29.86%	51.18%
30. "Property" characteristics, of non-freehold estates (differences between non-freehold estates, termination, etc.)	9.95%	23.70%	37.44%	17.54%	7.11%
33. Rule Against Perpetuities	18.96%	33.18%	32.70%	8.06%	2.84%
34. Common Law Conveyancing History (Foeffment, Springing and Shifting interests, Rule in Shelley's Case, Worthier Title etc.)	7.11%	18.01%	37.44%	25.12%	8.53%
35. Effects of Marital Relation on Property (other than community property)	7.58%	28.44%	41.71%	17.54%	1.42%
36. Community Property	35.55%	43.60%	8.53%	6.64%	0.95%
37. Concurrent Ownership other than community property	1.42%	6.64%	27.01%	46.45%	15.17%
38. Cooperatives and/or Condominiums	41.23%	30.33%	20.85%	1.90%	0.47%
39. Fixtures (other than as between landlord and tenant)	29.86%	39.81%	18.48%	6.64%	0.95%
42. Income taxation and Real Estate interests	60.66%	20.85%	9.95%	3.32%	0.47%
44. Riparian rights, other water law, lateral support, air rights	24.17%	25.59%	23.70%	17.06%	4.74%
46. Marketable Title	18.48%	16.11%	35.07%	21.80%	3.79%
47. Title Insurance	23.70%	34.12%	31.28%	6.16%	—
48. Recording Acts and/or Title Registration	14.69%	6.16%	18.01%	33.65%	22.75%

TABLE A

	None	Under 1	1-2	2-5	5+
49. Equitable Conversion	23.22%	23.70%	29.86%	17.54%	0.95%
50. Remedies of Vendor/Purchaser	21.80%	12.32%	28.44%	26.54%	6.16%
	* * *				
	None	Under 2	2-5	5-10	10+
40. Easements and Licenses	5.69%	12.32%	33.65%	34.60%	8.06%
41. Real covenants (restrictive, etc.) and equitable servitudes	6.64%	9.95%	30.33%	38.39%	9.48%
	* * *				
	None	Under 3	3-8	8-15	15+
31. Landlord and Tenant (other than #30—see note *)	4.27%	2.37%	14.69%	45.50%	29.86%
32. Future Interests (other than in grantor)	3.79%	28.91%	41.71%	14.69%	6.16%
43. Public Land Use Planning (Zoning, urban renewal etc.)	23.70%	18.01%	22.27%	20.38%	10.43%
45. Conveyancing	13.74%	11.85%	34.60%	24.64%	9.95%
	* * *				
	None	1-5	5-15	15-25	25+
26. Personal Property (other than leaseholds)	27.49%	24.64%	19.91%	13.27%	6.64%
	* * *				
	None	Under 1	1	2	3+
28. Life estates	4.74%	18.48%	33.65%	30.81%	8.53%
29. Fee Tail	14.22%	53.08%	19.91%	5.69%	3.32%

* Note: Included here is time spent on the contractual, tort and statutory rights and obligations as *between* landlord and tenant—e. g., duty to repair, habitability, eviction, assignment and subletting, rent obligations and excuses, etc.

Although the results shown in Table A are self-explanatory and their interpretation is largely a matter of viewpoint, a few general observations may be made.

Most striking, perhaps, is the great diversity of emphases among property teachers in structuring their courses. The figures appear to belie any assumption that the content of the basic property course, as taught across the country, is at all homogeneous. Certainly there is not anything like the extent of homogeneity which I assume (as a property teacher) that one would find in a course in contracts, civil procedure or the like. One may speculate that there is far less homogeneity than our non-property colleagues suspect.

Of particular interest in this regard is the "None" column, indicating subject areas which are omitted entirely or touched upon only slightly. Many of the areas showing substantial percentages in the "None" column are areas which, traditionally at least, may have been thought to lie at the very core of basic property lore. Among these might be mentioned Bailments, Finders' Rights, Fixtures, Riparian Rights, Conveyancing, Gifts, Common Law Liens, Accession and Confusion. Over one-fourth of the respondents omit Personal Property topics almost entirely and another one-fourth spend less than 5 hours on Personal Property.

When the "Under 1" hour column is considered in conjunction with the "None" column, the extent of non-uniformity as evidenced by omissions or near omissions becomes even more notable. Over 40% of the respondents spend less than an hour on original acquisition of title and rights associated

with mere possession (*jus tertii*, etc.), topics which many would argue go to the very heart of demonstrating the common-law "seisin-type" theory of titles (as distinguished, for example, from the civilian idea of ownership). Many other areas, in addition to those named above, which may once have been considered central to basic property receive less than an hour's time from substantial percentages of respondents *e. g.*, "Property" Characteristics of Non-freehold Estates, Common Law Conveyancing History (some of which is, of course, not entirely irrelevant today) and Life Estates. Some 18% spend less than two hours on Easements and Licenses, and 17% spend less than two hours on Real Covenants and Equitable Servitudes. Another surprise is that 7% spend less than three hours on the relations between Landlord and Tenant, and nearly 32% spend less than three hours on Future Interests.

Perhaps some of these omissions or near omissions are covered in other required courses or popular "advanced" electives such as conveyancing, future interests or landlord-tenant. However, some of the omissions obviously also reflect divergent ideas about what the basic property course ought to contain. For example, the often very attenuated treatment given to mortgages, wills, trusts, future interests or the like, all of which are normally treated in depth at an "advanced" level, evidences a rejection by many of any sort of eclectic treatment based on the theory that all lawyers should know a little about these areas even if they do not (or cannot) take specialized courses in them.

The Table also reveals areas which appear to receive relatively heavy coverage from a fairly large percentage of respondents. Determining what is "relatively heavy coverage" for an area is admittedly subjective, but (to my mind) areas which appear from the table to receive such coverage include: the Nature or Theory of "Property," Adverse Possession, Gifts, the Estate System, Concurrent Ownership, Recording Acts and/or Title Registration, Easements and Licenses, Real Covenants and Equitable Servitudes, Landlord and Tenant, and, to a lesser extent, Conveyancing. Of these, only the Estate System, Landlord and Tenant, Easements and Licenses, and Real Covenants and Equitable Servitudes receive anything close to "unanimous" heavy treatment (in the 70%-80% range). Thus, beyond these four, it is most perilous to talk about anything like a basic content for the "basic" property course. And three of these four (excluding Landlord and Tenant) do not usually seem to take up more than about 25-50% of the usual 4-5 credit property course.

If the basic property course covers in very substantial part subject matters which are not by any general agreement considered to be "basic" (in the sense that "basic" contracts covers for most of its content, offer and acceptance, consideration, conditions, assignment, etc.), what then *is* the principle of inclusion or exclusion of subject matters for the property course. At the simplest and most facile level, one may speculate the property teachers are merely teaching that which they like to teach. With the large array of only loosely connected possible areas to choose from, and the impossibility of giving an in-depth treatment of them all, the temptation certainly is to simply disregard that which is boring (to the instructor or the students) in favor of that which is topical or "relevant." Beyond this easy speculation, one may observe that, since much of property law is quite old and quite settled, there

is not much going on in many of its subject areas. There are no large and contested issues of social justice in areas such as bailment law, wild animals or personal property areas generally. The areas which are currently active, such as landlord-tenant or public land use planning, are more interesting to explore. Whether they are fundamental and general, and therefore justified for extensive inclusion in the required first-year curriculum is, of course, another question.

One is led ultimately to the issue of whether any substantial portion of the required first-year curriculum should be devoted to matters which are of direct interest only to lawyers having particular practice specialties or whether the first year should be devoted to imparting the more general sort of knowledge which is basic for all lawyers, whatever their specialties. This is not the place to argue the merits of that debate. It is sufficient here to note that, in the property area, to the extent that the latter objective is the goal, its achievement is frustrated by an apparent fundamental disagreement as to what sort of property knowledge is "general" and needed by all lawyers, irrespective of specialty. Indeed, it is submitted, the latter objective is often *not* the goal, and many property teachers treat their course as a forum for presenting what is really second and third-year elective material to students who have not learned (and will never learn) first-year property.

TRENDS

The survey was not expressly designed to detect trends of change in the content of first-year property courses. However, by cross-tabulating the responses for selected subject areas with the number years of property teaching experience, some evidence of trends can perhaps be observed.

For example, perhaps not surprisingly, the time given to separate discussion of the Nature or Theory of "Property"⁶ dropped off fairly dramatically as the years of experience increased. No one who was teaching property for the first time reporting spent little or no time ("None") on the Nature or Theory of "Property" whereas the "None" response was given by 14% of those who taught property 16 years or more. Similarly, 32% of the "One Year" teachers give 5+ hours to this area compared with only 7% of the teachers of 16 or more years. Public Land Use Planning is another area where emphasis declined notably with increased years of experience. The 6-10 years experience group reported emphasis at about the normal overall, with newer and more experienced teachers being above-normal and below-normal, respectively.

On the other hand, the more experienced teachers tend to give more time to Common Law Conveyancing History (springing and shifting interests, worthier title, Rule in Shelley's case, etc.) than their less experienced colleagues. Similarly, modern Conveyancing was emphasized considerably above the norm by teachers of longer experience while newer teachers (1-5 years) tended to be well below the norm in their emphasis.

If trends may be projected from these distributions of emphasis over the various experience categories, one could guess that, in the future, the histori-

⁶ One respondent observed that the "whole course" was devoted to this area, which in a sense should indeed be true. Accordingly, differences in emphasis shown for this item may partially reflect only differences in the extent to which this somewhat philosophical area is amalgamated into the discussions of the substantive law of property itself.

cal and conveyancing aspects of property will gradually give way to studies of land use, social limitations on ownership and the like.⁷ However, there is question whether it is accurate to project trends in this way, for the differences in emphasis in various experience categories may be accounted for by fads as well as trends, and a single survey cannot distinguish the two. Moreover, so long as the "ancient" lore remains "basic" to property law—in the sense that all the rest builds from it—there is good reason to believe that it will in the long run remain "basic" to the first year property course as well.

Other areas showed little or no variation in emphasis associated with length of teaching, although there sometimes were considerable variations which were unrelated to the experience factor. For example, Personal Property received widely divergent amounts of emphasis at all levels of teaching experience, though the "One Year" teachers were somewhat exceptionally lower. Landlord and Tenant also showed considerable variation among teachers, but this variation could not be associated with length of teaching. The Estate System showed somewhat greater variations in emphasis (above and below norm) among newer teachers than among their seniors, but the 16 or more years group showed the least emphasis.

CONCLUSION

A single survey can give only a general idea about the content and approach to the teaching of first-year property in American Law schools, and even a less precise idea about the direction which things are moving. However, the responses in this survey have provided a statistically significant sample, and from this sample one may rather securely draw several conclusions.

The basic property course as taught across the country is in reality a rather hugely diverse collection of highly different courses. Apart from teaching the Estate System (half of the instructors using less than 5 hours for this), landlord-tenant and the law of servitudes of various kinds, they have little consistently in common other than that their subject matters deal more or less with interests in things. The approach to treating the fundamentals of the law with respect to things, the question of which aspects *are* fundamental, or even whether the first-year course should be largely devoted to fundamentals at all appear to be subjects of very basic disagreement.

Perhaps there is a place in the first-year required curriculum for presenting a miscellany of laws dealing with a particular socially relevant phenomenon—such as property, or for that matter transportation, energy or the environment. Perhaps there is not. Perhaps the "fundamental" and "general" part of property law can be covered in a small fraction of the time given to the basic property course. Perhaps it cannot. This survey will not answer these questions and this report of the survey should not attempt to. But the survey does, I think, raise these questions, and credible answers to them must be forthcoming if a future role for the basic property course is to be justified.

⁷ This tends to corroborate the prediction made recently by Philip W. Amram in "Legal Education in 2001," 28 J. Legal Educ. 241, 246 (1977):

"[T]he study of English real property law beginning with the XIIth century, with its emphasis on conveyancing and future interests, will become secondary. The primary study of real property law will relate to the regulation of the development and use of land, including zoning, every aspect of environmental law, building regulation, housing, reclamation, and financing."