CURRENT LEGAL PERIODICALS

The Future of the English Legal Profession. L. C. B. Gower. 9 Modern Law Review: 211-234.

Whether or not the profession is soon to "perish or be absorbed into the civil service" as some believe, there is no doubt that it must, in the near future, undergo radical changes. It is entirely likely that the English social system will become increasingly socialistic, as a result of which there will be more social services, more nationalization, more bureaucratic control and continued high taxation. The legal system will change in several respects; there will be more administrative law, rules and orders rather than statutes and more special tribunals. This should not "materially diminish the work for lawyers".

The present organization of the profession is said to have three basic faults: its services are too expensive, it takes too long and costs too much to qualify and "rewards are too long delayed", and legal education and training are badly organized. With price control it is no longer true that "justice is as open to all as the Grill Room at the Ritz"; only the well-to-do and the "occasional genius" can afford to enter the profession; a law-student completes his training with only "an incomplete knowledge of principles and a theoretical knowledge of practice". A system of legal aid for the needy is now to be organized along the lines recommended by the Rushcliffe Committee Report. The merger of the two branches of the profession "may well commend itself to the present government as an immediate and practical step". This would minimize expense, relieve overworked solicitors by giving work to "some 80 per cent of the Bar who have little or nothing to do", bring about a more economical use of the law libraries, remove certain irritating rules of etiquette and enable the profession "to speak with a united voice". Such a merger would likely be followed by a reform of the legal-training system. Students would probably be required to study general principles for three years at a university and then be articled for one year at a "minimum salary of, say, £250 p.a.", taking a part-time or evening course during this year, with practising lawyers as teachers. Such a system might do much to heal the rift between lawyers and teachers of law; at present "the practitioners' suspicion of the teaching side almost passes belief".

While these reforms would accomplish a great deal, other, long-term changes must be made. An extended National Legal Service may be built on the base afforded by the Rushcliffe Report

plan. Under such a scheme any person would be entitled to choose his own lawyer or lawyers, but remuneration would be paid from public funds and this would most likely be based on a "fixed part salary and capitation fees" so as at once to ensure adequate payment and to reward ability and effort. Specialists would remain outside the service, perhaps, and be called in for consultation.

Mr. Gower thinks that any "changes will have to be imposed from without". The majority of each of the branches of the profession would, he says, approve the merger although the "most powerful elements" would oppose it; reorganization of legal training would meet with little opposition in principle but there would be great disagreement as to details. There would be the "most bitter opposition from the bulk of the profession" to the proposal to set up a National Legal Service, although many of the younger members would welcome it. While his forecasts will be unpopular with his colleagues, he considers that the picture of the future which he gives is at least "preferable to that in a completely bureaucratized legal system — which in the last resort seems the only likely alternative".

Baseball and the Law. Yesterday and Today. "M.L.C.". 32 Virginia Law Review: 1164-1177.

The American game of baseball was originated by Abner Doubleday in 1839, but it was in 1857 and 1858 that a national organization was formed and an official rule book adopted. In 1871 this organization became a league with nine teams of professional players and a regular schedule of games. In 1875 the present National League was founded in order to combat corruption and within two years, without recourse to the courts, it had banned four players for life because of "thrown" games. In 1879 the "reserve clause", giving a club the exclusive right to a player's services for the succeeding season, first appeared. In the next ten years five other organizations tried unsuccessfully to break into the National League's exclusive field but it was only in 1903 that the American League was recognized. A National Commission was then established by Baseball itself to settle its problems and after the first World War the new office of "Commissioner of Baseball" was created.

Players' contracts were tested in the courts in a number of cases between 1890 and 1914. In most of these the contracts were held to be invalid because of lack of mutuality, a player being "bound as with bands of steel for the entire contractual

period", while a club had "the right to end and determine all its rights and obligations" by giving ten-days notice. In spite of these decisions, contracts continued to be made in their old form because players had nowhere else to play. Even if the contracts had been upheld, specific performance would not have been decreed because they were personal service contracts. Negative covenants, however, are enforceable in such cases if the services are "special, unique and extraordinary" and players have been enjoined from playing for other clubs. In the Uniform Players Contract now used a player "represents and agrees that he has exceptional and unique skill and ability as a baseball player". It seems clear that Baseball is a monopoly but it has been held that it does not violate anti-trust laws because it is not "commerce".

Many attempts have been made to organize ball players but without much success, although in 1912 the Baseball Players' Fraternity forced the National Commission to concede many of its demands and almost succeeded in calling a general strike. The right to organize has never been denied but the Leagues have tried to meet reasonable demands and so have avoided collective bargaining. The latest dispute seems to have been ended by the formation of a joint Player-Management Committee. A number of players recently "jumped" to a Mexican League. They have been suspended and at least one has returned to seek reinstatement. He has been sued by the Mexicans for $127,000!

On the whole, notwithstanding its enforcement of non-enforceable contracts and freezing out of competition, Baseball seems to be controlling itself to the general satisfaction of its patrons and providing them with honest sport and the type of competition they want.

The Second World War and International Law. Eugene A. Korovin. 40 American Journal of International Law: 742-755.

Professor Korovin, who is Professor of International Law, University of Moscow, describes it as "the sum total of legal norms guaranteeing international protection of the democratic minimum". He says that a new treatment of the concept of sovereignty is necessary, in the light of the lessons taught by the recent war; sovereignty must be preserved and consolidated. It is not surprising, he points out, "that the Soviet Union which contributed more to the defeat of fascism than any other country" should resolutely destroy Hitlerism "and at the same time ardently defend the sovereign rights of all the democratic peoples". This

explains its refusal to intervene in the affairs of the Balkan countries and its refusal to supervise elections there.

New problems have arisen as to the subjects of international law. During the war, governments-in-exile became less and less representative of their people, in fact the Polish Government in London is said to have "acted as a direct traitor to the national interests of its country". On the other hand, resistance organizations were recognized as provisional governments although they had no formal constitutional sanction. Relations were broken off with a "puppet" government in Finland. Would it not be more reasonable to consider as a subject of international law such a body as the World Trade Union Federation, with 65 million members, than a tiny state? Should there not be a distinction between formal equality of states and their weight? Can a state which remains nautral or one which has not the resources to check aggression have equal status with one which is ready and able to protect mankind? On the other hand, certain statesmen "would reject our present conceptions of sovereignty" and talk of a "world law". Soviet leaders believe that the "roots of aggressive nationalism", which it would be the duty of a world parliament to check, lie in imperialism and that the special nature of the Soviet type of state "completely precludes even the possibility of such a transformation".

The concept of international delict has now been extended to include crimes by states, organizations and private individuals. The "United Nations" has been formed with power to fight aggression; only peace-loving states, willing and able to assist in carrying out their obligations, may be members. The functions of its executive body, the Council, are clearly defined. The veto right should rather be called the "principle of obligatory unity". The Soviet Union, invariably "the most consistent defender of the spirit and letter of the Charter", maintains that unanimity is necessary for the solution of all big international problems.

War has now become an international crime unless it is in self-defence or to maintain or restore peace by common efforts, while, as all nations that are members of the United Nations must assist in any war against aggression, "neutrality becomes a form of connivance" at a crime. Thus the conception of neutrality must be modified.

Company Law Reform: A Review of the Report of the Committee on Company Law Amendment. O. Kahn-Freund. 9 Modern Law Review: 235-256.

Unlike some other branches of the law which the business community can itself adapt and develop, company law is in need of constant revision and has, in fact, required periodical major recasting. The Cohen Committee in its Report, presented to the British Parliament in 1945, recommends a great many changes, some of them very important ones. A number of these are discussed in this article.

The most startling, perhaps, is the proposal that the ultra vires rule should disappear; every company is to have, as regards third parties, the same powers as an individual. While *Salomon* v. *Salomon* still stands — "one is becoming resigned to its immortality" — the fiction of corporate personality is to be ignored in some respects. For some purposes subsidiary and holding companies are to be considered as a unit. They should publish a consolidated balance sheet and profit and loss account showing the financial status of the group as a whole. Private companies are to be divided into two categories, of which only the "small family concern" would retain the "privilege of secrecy of accounts". The law of contract is to be changed by providing that applications for shares, pursuant to a prospectus, shall be irrevocable until three days after the opening of the lists. Sanctions for the "enforcement of truthfulness and completeness" of prospectuses are to be strengthened and the burden of proof of mens rea in prospectus cases is to be shifted.

As it seems impossible to re-establish control by shareholders over management, only minor changes as to company meetings are proposed, but the Committee recommends that it be made much easier to have an investigation made by the Board of Trade, of any company, and the Board's powers are to be considerably extended. Minimum accounting standards are to be imposed and hidden reserves disclosed. Only members of certain societies or certain designated individuals are to be allowed to act as company auditors. Improvements of the present law as to rights and duties of directors are proposed but in the author's opinion they do not go nearly far enough. Disclosure is to be made of directors' fees and other remuneration but not of the remuneration of each director. The Committee has not recommended the prohibition of registration of nominee shareholders nor a register of beneficial ownership but has proposed that the Board of Trade be empowered to investigate ownership of the shares of any company.

A number of minor recommendations are noted, such as those relating to the simplification of annual returns and registers, the status of receivers, the preferential rights of employees and the pro-

posal that "the Court should have the power to impose a settlement of their internal disputes upon the shareholders". Finally, a recommendation of the Committee as to criminal prosecutions is referred to. This is, that the Director of Public Prosecutions should, himself, prosecute in any case in which he considers that prosecution ought to be instituted; "the time-honoured English system of 'private prosecutions' has largely proved to be inadequate in the face of modern company practices".

Insurance Concepts of Total and Permanent Disability. John Alan Appleman and John D. Carson. 35 Kentucky Law Journal: 1-37.

Here are set out the views of many American courts on the construction to be given to total and permanent disability clauses in insurance policies. It has been said, generally, that they should be construed reasonably, or liberally, or in the light of the insured's or a layman's understanding.

"Total" disability is a relative matter depending on the insured's "occupation, education, training and injury". Total disability to carry on his present occupation may be total disability for all purposes. Even if he continues to work or to do some small part of his former work when he cannot do so without physical injury to himself he may be held to be totally disabled. The word "permanent" must be construed "in relation to the subject matter solely" rather than by dictionary definitions. It does not mean, for the duration of one's life, but "for a long or indefinite period of time", although some courts have held that it must appear that the disability will be for life.

Where disability must be "total and permanent", this does not mean that the insured must be in a helpless or hopeless state nor that he must be incapable of earning any money. The test is usually "the inability to perform the material acts of the insured's business in the usual and customary manner". Even if the clause in question denies benefits unless the insured is disabled from following any occupation, it has generally been held that this means his own or an occupation reasonably comparable to it. On the other hand, if he can perform his ordinary work "substantially" an insured cannot recover under such a clause. In construing such terms as "gain", "profit", or "gainful occupation", it has been held that profit arising from the carrying on of his own business or working in a related occupation for which the insured is "reasonably well fitted" is meant. They do not refer to something earned by doing trivial work or odd jobs. Insured is

not required to train himself to do some kind of work which he is at present unable to do.

While decisions have not been uniform it may be said that "if the insured cannot perform his usual occupation substantially or perform other duties for which he is trained and qualified, so that he sustains actual monetary loss, indemnity will be allowed". The whole subject is treated very thoroughly in this article and hundreds of cases are referred to in footnotes.

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THE ORIGINS OF SOUND LAW

There is a superficial belief among laymen that law is all created by 'the government', and that if countries differ in political policy they must also differ in their law.

We know that a vast proportion of all the 'law' that is applied today in the courts of either of our countries [France and the United States] had its real origin long before the government. Some of it is as old as the Scriptures, much of it is traceable in ancient codes, very little is really added by ourselves. Sound law is neither temporary nor local.

We know that the legal concepts of the Code Napoléon have served many kinds of governments and have been exported to many lands. Indeed, they form the basic law of one of the states of the American Union today. We know that both the Common Law and the Civil Law have survived almost unaffected when governments have collapsed and new ones have taken their place, and have spread from their places of origin to be useful in different environments and with the problems of strange peoples. There is something fundamental about the basic relations between legal right and wrong which changing governments—save for the ruthless experimentation of the Third Reich—do not try to change and cannot change any more than they can change time or tide. (Robert H. Jackson in "The Trials of War Criminals: An Experiment in International Legal Understanding" appearing in the June 1946 issue of the American Bar Association Journal)