REPORT ON LEGAL EDUCATION.[1]

By a Sub-Committee appointed by the Committee of the Law Students' Society of Victoria.

This Sub-Committee was appointed at the direction of the last general meeting of the Society in 1938 to prepare a report for a conference of the National Union of Australian University Students. It was also instructed to report to the Society on " legal education in general and to apply the result of such general consideration to the Melbourne law course and indicate any changes thought desirable in that course." This is the report on the second term of reference. The Sub-Committee held numerous meetings and considered law courses in other Australian Universities, in the Law Society's School in London, and in certain Law Schools in the United States. It also submitted a questionnaire to graduates of the years 1934-7. The response to this, however, was unsatisfactory and no classification of answers was made. This report was submitted to the Committee of the Society in April 1940 and accepted after full discussion.

Teaching Method.

In reviewing the Melbourne law course as a whole it was on this subject that we found the most cause for dissatisfaction. In our opinion the Law School is seriously understaffed. The size of its teaching staff will not bear comparison with law schools in England or America nor indeed with other faculties in this University. We are of opinion that defects in teaching and therefore in standards in the Law School are in the main traceable to lack of teaching staff, and that no real improvement is possible without a substantial increase in their number. The recent appointment of a full-time Senior Lecturer is only one step in the right direction.

There is a contributing cause in the burden of general University administrative work which falls on the present staff. This results in a diminution in the time available to its members for strictly law school business, more particularly for informal contact with students rather than for formal teaching. It may be that the general good of the University requires that this work be allotted to the law professors and that it cannot be done by others, but it cannot be regarded as otherwise than unfortunate, to employ a mild word, that the burden of this work should fall, even temporarily, upon a faculty already seriously understaffed when the result must be an aggravation of the unsatisfactory state of affairs in the Law School itself.

Particular defects and possible improvements must now be stated. We wish first to make some observations with respect to lectures. In some subjects these amount to no more than the mechanical process of dictation of notes at a speed at which the student's whole attention is absorbed in the effort of writing and which makes the understanding of what is dictated difficult or impossible. It is not too much to say that

1. The original report is in four sections—1. Introductory, 2. Teaching Method, 3. Service under Articles, and 4. Content of the Law Course. Practical considerations have made it necessary to present the Report here in a shortened form. Section 1 has been omitted and Sections 2 and 4 summarised in many places. Section 3, on account of its controversial nature, has been left in its original form. While it is felt that nothing material has been omitted, an abruptness in style and the stating of conclusions has resulted, for which we must accept responsibility.—[Editor].

some students are, after such a lecture, quite unable to say what it was about. Such a process appears to us a waste of the time not only of the lecturer but also of the student. A system by which students could be supplied with typed notes giving an outline of the subject, which outline the lecturer could explain and expand in lectures without the necessity for elaborate note taking by the students, is successfully employed in many law subjects, and we are of the opinion that it should be made general.

More important than minor improvements in the system of lecturing is the necessity for providing some form of teaching additional to the lectures. In our opinion it is essential that the lecture system should be supplemented by some form of tutorial classes. Such tutorials appear to us to be particularly necessary in the first two or three years of the course to enable students to find out what is expected of them in the law course, to discover the best methods of work, to distinguish between the important and the unimportant parts of a subject, and of course to enable them properly to understand the lectures which they attend. The work of tutorial classes in clearing up difficulties which arise out of lectures or the reading of cases referred to, difficulties with which the lecturer could not possibly have time to deal, would be most valuable in promoting a proper understanding of the law, and a proper approach to legal problems. Such a tutorial system should be coupled with some system by which the students would submit written work to the tutors, some such system as the " class essays " and " class exercises " used in the Commerce Faculty. It is in the interests of the students themselves as well as of the Law School that something should be done to prevent students falling many weeks behind the lecturer, with the result that when cases on any particular topic come to be studied his explanation and comments on that topic have long been forgotten, with the further result that the last term is devoted to rushing through work which should have been done, if not in the first, at least in the second term. A tutorial system with essays and questions on what should be current work would go a long way toward removing this difficulty. This statement is, however, subject to some qualification. We have, with some reluctance, come to the conclusion that such a system would break down in the absence of some compulsion and accordingly we are of opinion that attendance at some proportion of the tutorial classes should be made compulsory. We realize that such a conclusion is not likely to be popular with all the members of the Society or with all students, but we feel bound to express it as our considered opinion.

We have not submitted detailed proposals for applying these recommendations since any scheme would always be a matter for the Faculty to be considered in the light of the staff available at the time.

Service under Articles.

The immediate reason for enquiry into the conditions generally obtaining in the service of clerks in articles was provided by a memorandum sent by the Council of the Law Institute to the Council of Legal Education.[2] The Council of the Law Institute expresses itself as of opinion

2. Law Institute Journal, 1936, p. 180.

" that substantial alteration should be made in the conditions for qualification for admission to practice as a barrister and solicitor. The Council considers that the present requirements do not adequately ensure that a candidate for admission has become reasonably acquainted with the law and practice applicable to matters with which a solicitor should be competent to deal at the time of entry into his profession."

The Council suggests " as a measure of reform within the present statute law " (*inter alia*)—

" (1) That the candidate for admission be required to serve for three years in articles if he takes the degree of Bachelor of Laws, or six years if he does not; in the former case two years to be served after he takes the degree, so that the total period of training will be six years."

We agree that there are serious defects in the conditions found generally obtaining in the service of clerks in articles and that a more comprehensive training than that at present received during service in articles is desirable for admission to practice. We are, however, unable to consider the reform suggested by the Council of the Law Institute as likely in any way to remove those defects or, without more, to broaden the present scope of training. In fact we think that the adoption of the proposed reform would only intensify present abuses.

At the outset it should be pointed out that the proposed reform envisages the continuance and extension of the " articled clerks' course," now of five years' service in articles, which may be taken by the candidate for admission to practice as an alternative to the degree course, whether or not he proposes to practice as a barrister or as a solicitor.

So long as the present legislative amalgamation of the two branches of the profession is preserved, it is improbable that different qualifications for admission to practice will be prescribed for candidates who propose to practise as solicitors and those who propose to practise as barristers. But it is doubtful whether all the changes apparently deemed by the Council of the Law Institute to be desirable in the training of candidates for admission, who propose to practise as solicitors, could be effected without the prescription of a separate course of training for them. However, as the Council has concerned itself with service in articles only as a training for solicitors we do not think it necessary to discuss the subject from the point of view of the articled clerk who proposes to practise as a barrister.

It might appear desirable separately to mention the proposed extension of the articled clerks' course and the proposed extension of the degree course. None of the members of the Sub-Committee who had taken or were engaged upon the articled clerks' course is in favour of the proposed extension of the period of articles from five to six years. Such members are however in favour of the extension of the period of articles at present prescribed for the candidate taking the degree course. The views set out below in opposition to the proposed reform are therefore not on all points the unanimous views of all of us but, except where otherwise indicated, are those of the majority. All of us however failed to discover any benefit which would accrue to the clerk consequent upon the extension of the articled clerks' course from a five to a six-year period, and the majority of us thought that the considerations which lead us to oppose

the proposed extension of articles as a wholesome reform in the degree course apply even more strongly to the proposed extension of articles in the articled clerks' course. Indeed, a desire for uniformity in the length of the two courses, if the proposed change in the degree course were effected, would appear to be the only justifiable reason, and we do, of course, agree that it would be most undesirable for the courses to be of unequal length.

On the general topic of service in articles, our conclusions are:

(1) that, with a more profitable employment and subdivision of the time spent by the clerk in service in articles, the present periods should be sufficient for the clerk to learn "how to do things, how to conduct interviews with clients and others, of the sense of values that comes from the actual transaction of affairs" [3];

(2) that principals generally neglect adequately to instruct their clerks in those matters which they can learn only from their principals.

In conveyancing and probate matters, many months before the expiration of the year's service in articles, we found that the graduate has not only mastered the routine of the various Government offices but also has become competent to deal with the whole conduct of individual matters—to such an extent indeed that in many cases his duties in his firm are very little different from those of a conveyancing and probate clerk. So soon as the clerk becomes reasonably competent in these matters the temptation to allow him to continue in his position of usefulness is too strong for most principals who, in the pressure of business, can find little time to instruct the clerk in such subjects as legal ethics, the conduct of interviews with clients and others, and the drafting of documents, which can be learnt from them only. But even this position would be less prejudicial to the clerk if so much of the time devoted to these matters throughout the period of articles were not occupied in routine searching and filing in the Government offices. If the clerk were permitted to engage in any one branch of activity in the solicitor's practice only, until he had become thoroughly familiar with it, very few weeks would suffice to render him thoroughly competent in these routine duties. As conditions now are, graduates spend a large proportion of their time in the performance of these duties.

In common law matters the clerk's experience is, of course, largely affected by the small volume of litigation in the superior courts. This fact cannot be used as an argument in support of the proposed extension of the period of service in articles, for in those offices where few, if any, Supreme Court actions are dealt with in one year, it is not our experience that appreciably more are encountered in three years. Here also the same abuse obtains, that the clerk is employed in routine filing duties in the court offices long after he has become thoroughly familiar with the practice of those offices. It is even more unsatisfactory, however, that the clerk's time should be so much employed in the conduct of debt collection matters. No objection could be made if the clerk's experience in debt collection had the purpose merely of making him familiar with

3. Law Institute Journal, 1936, p. 83.

the forms and procedure under the Justices Act. We concluded, however, that in many cases the clerk is made familiar with such forms and procedure with the express purpose that he should assume control throughout his articles of the firm's debt collection business. The employment of the clerk in this way in these two aspects of common law matters fails, after a very short period, to extend his knowledge in any way and minimizes, if it does not exclude, whatever training the firm's opportunities might afford him in the taking of statements from witnesses, the preparation of briefs for counsel and in the various forms used and in the conduct of litigation generally in superior courts.

This tendency to require the performance by the clerk of routine duties at the expense of his training broadly in the conduct of the various types of matters, we found to be general throughout the profession and in all branches of the solicitor's practice. It is most evident in company and bankruptcy matters. Few clerks receive any instruction in, or even are given any practical opportunity or encouragement to enquire into, for themselves, the drawing and adapting of memoranda and articles of association, the practice in winding up, or the everyday problems of the application of the Bankruptcy Act.

The proposal to increase the period of articles is opposed by the Sub-Committee, therefore, on two grounds: firstly, because with the elimination of these abuses there would be ample time for an adequate training and, secondly, because there being no guarantee that the present conditions would cease, any increase in period would only intensify the present disappointing conditions. In fact we decided, reluctantly but without hesitation, that expression should be given to an opinion general among articled clerks, that use is eagerly made of their services in the performance of routine duties to avoid the employment of salaried clerks.[4]

In most cases during their period of service articled clerks receive no payment other than, perhaps, a repayment by way of salary by those principals who require a premium of their clerks. Considering the present use made by principals of the time of their articled clerks, we are unanimously of the opinion that, after the expiration of, at the most, three months from the commencement of the year's articles, some payment, however nominal, is deserved by the clerk. If principals observed their obligation to instruct their clerks in all aspects of their practice and the learning period extended over the whole of the year's service in articles, the training of the clerk by the principal could more accurately be said to compensate him for his coincident services on the principal's behalf. At the present time there is little reciprocity in obligation when the training afforded the clerk only serves to fit him for duties which will most easily solve the problem of occupying his time and prove most useful to the principal, and he is recompensed neither financially nor with adequate training. We recognise however that, if the period of service in articles were increased to three years, while provision for financial remuneration of the clerk might certainly tend to prevent an exploitation of his rapidly increasing usefulness, it would only consolidate the present abuse.

4. This appears to the clerks less unsatisfactory than it otherwise might because the petty complexities of procedure in the Government offices are represented to them as problems necessary to be mastered and of major importance to the future solicitor.

The proposed reform would appear to be undesirable from another point of view also, inasmuch as it would entail the commencement of the period of articles before the completion by the clerk of his University course. Full advantage of the opportunities afforded by the period of service in articles for practical training can ensue to the clerk only if he is as completely as possible equipped with a knowledge of the principles of law.[5]

It may be that the knowledge gained during the present degree course is not as wide or as detailed as it might be, and this is suggested elsewhere in this report, but it provides the best available, and in our opinion, a necessary foundation for service in articles. This consideration would appear to be the greatest objection to the present articled clerks' course.

Further, where the clerk is engaged in service in articles and in reading for University subjects, it is unlikely that full justice will be done to either activity. Service in articles can provide a complete training only if the clerk pursues his studies outside the normal office hours, while litigation, at least, must be conducted irrespective of the clerk's attendance at lectures or perusal of books. This arrangement, therefore, apart from involving a continuous strain on the clerk's time, would clearly be most detrimental to the academic side of his training.

The majority of us is of the opinion that, if the length of time occupied in obtaining the necessary qualifications for practice as a barrister and solicitor were to be increased from five to six years, the additional year should be devoted not to service in articles but to further study at the University. The minority favours a four-year course at the University followed by service in articles for two years, coupled with the abolition of the present articled clerks' course. We are all in favour of some full time University work for all law students. None of us is in favour of the proposed reform by which the degree course would be altered to comprise four years at the University, three years full time and the first year of a three-year period of articles, with admission to practice to be attained after a further two years under articles. This proposal appears to us wholly undesirable.

At this stage we might mention that while there is a tendency in Victoria, at any rate among solicitors, to urge an increase in the period of service in articles, in the United States of America there is a tendency to abolish service in articles altogether as one of the qualifications for admission to practice. Very few States retain this requirement, since in the United States the office is generally regarded as an inadequate medium for legal education. In the great majority of States the one qualification is provided by Law School education and Bar Examinations. The Law School work however is normally both broader and more detailed than that at present available in Victoria.[6]

Apart from the suggestion made above that in the conduct of litigation in the superior courts the articled clerk might well receive more training than he normally does at present, we decided that the inadequacy

5. For example, Titles Office experience can be valuable only if the clerk has a thorough knowledge of the Transfer of Land Act.
6. On this point and generally see "Legal Education in the United States" by Professor K. H. Bailey—*Res Judicatæ*, vol. i, p. 293.—[EDITOR].

of the clerk's instruction was most apparent in the matters of legal ethics, of relations with clients, the drafting of documents and of costing. Oral guidance by the principal seems to us the only satisfactory method of instruction in these matters.

With the competition in an overcrowded profession as keen as it is now and the dangers of touting and unprofessional practices consequently so real, an inculcation in the clerk of all the strictness of legal ethics of in the relations of solicitors with each other, with clients and with barristers, is necessary to preserve professional standards. This need is made greater by our peculiarly local phenomenon of a statutory amalgamation and conventional separation of the two branches of the profession. Although some knowledge of legal ethics is acquired by articled clerks naturally in the ordinary course of their principal's business, we consider that the clerk's instruction should not be left to the haphazard chance of a practical instance affording the principal the opportunity of explanation. We have no doubt that this omission could easily be remedied. Some comments on the academic treatment of legal ethics are to be found later in this report.

The acquisition of some assurance in the conduct of interviews with clients and, more particularly, business interviews, is one of the most difficult problems in the clerk's training. We are disinclined to believe that what appears to be a rather general neglect by principals both to instruct their clerks in this respect and to afford them opportunities of carrying out such instructions as they may receive in actual contacts with clients was due entirely to motives of self-interest (or self-preservation). But we do realise that the need to satisfy and retain the confidence of clients not unnaturally is regarded by principals as of greater importance in this sphere than their obligation to their clerks. Although, in addition, opportunities to acquire experience in the conduct of these relations are more necessary than oral instruction, we do not regard these practical difficulties as insuperable, but rather as requiring the same spirit of compromise on the part of the principal as the latter would expect the clerk to exercise when on occasion asked to perform simple routine duties to relieve the pressure of office business.

The responsibility of the principal in the instruction of the clerk is particularly heavy in the drafting of documents and in costing. It appears to us that sufficient work is probably given to the clerk in the copying and adapting of usual common law and conveyancing precedents, but that in most instances the clerk's training in the drafting of documents proceeds no further. The competent drafting of original documents in all kinds of matters where the precedents cease to be of use undoubtedly requires much skill which, apart from the fundamental necessity of the appreciation of the relevant principles of law, cannot be acquired otherwise than by oral instruction of the clerk by the principal and by the principal allowing as many opportunities as possible for the clerk to make a draft to cover the particular facts to be provided for, and patiently scrutinizing and advising him upon this work. Even if some instruction in the law course at the University were provided in this subject, as is suggested elsewhere in this report, such instruction could be complementary only to the necessary office training.

Finally, on the matter of costing, about which the clerk must be expected to know least when he commences his period of articles, we consider that little opportunity falls to or is afforded the articled clerk of acquiring any knowledge in the preparation and drafting of bills of costs, and hence of any real capacity in their taxation. To most articled clerks the only significant aspect of the costing system is the basic need for comprehensive diary entries. Probably the articled clerk somehow gets to understand that there are many considerations which are not expounded in the books affecting the application of scales of charges and the determination of costs in matters outside the scope of those scales of charges, but little advice upon these considerations is given him in the smaller and less specialised firm and less still in those firms where the practice is so extensive that a costing clerk is employed.

We feel that the excellent personal relations subsisting between principals and their clerks and the good intentions on both sides would render the reforms we have suggested not difficult of attainment.

Content of the Law Course.

It is with both difficulty and diffidence that we express our conclusions under this head, and it was here that we found the most serious differences of opinion among ourselves.

Any view of the curriculum of a law course is largely dictated by one's general approach to the purpose of such a course. It may be regarded as a purely technical training in the details and mechanics of the law, or it may be regarded as designed not merely to provide a technical training in legal principles and their application but also a sociological background for those principles and to promote an understanding of law as part of the general social organisation and of the responsibilities which rest on lawyers in the practice of their profession. We are all in substantial agreement in taking the second view though with varying emphasis. In a law course designed for students who have just left school and not for those who have already completed an Arts course, and the Melbourne course must be treated as such, it is, we feel, essential to make adequate provision for what are generally called cultural studies. The opponents of such a view contrive to give to the word " culture " some derogatory meaning, though why the description of a subject as cultural should be regarded as other than praise is rather difficult to understand. A majority of us are of opinion that it would be a retrograde step to make any real reduction in the number of non-technical subjects though some rearrangement might be beneficial.

We discussed a large variety of subjects and received opinions on each from recently admitted graduates. These, it is interesting to observe, varied through every shade of opinion from a definite affirmative to an equally definite negative. We set out below our views on the most important of these subjects. We do not, however, conceive it to be our function to design an ideal law course but only to indicate our views on particular topics and suggestions for possible reforms, but we have been guided by the consideration that if one included in it every subject theoretically likely to be useful to a solicitor the law course would take not four but rather fourteen or forty years.

Divorce Law and *Divorce Procedure*: We feel that circumstances do not justify the inclusion of these subjects in the course, essential though they may be, because of the pressing need for other and more important subjects not so easily learnt for oneself.

Taxation: Our conclusions are similar with regard to taxation, with the difference that the mass of detail is difficult to acquire and it is very doubtful whether the time required for a satisfactory treatment would be worth while.

Bankruptcy and *Company Law*: With regard to both these subjects we are of opinion that a more extensive treatment than that at present given is desirable. They might be separated from the course in Equity with benefit both to them and to Equity, and if possible this should be done.

Book-keeping and Accountancy: While we all agree that some knowledge of book-keeping and accountancy is really necessary for a solicitor, none of us is of the opinion that such topics form proper subjects for inclusion in a law course.

Banking and *Insurance*: We believe that the essentials of these subjects are already sufficiently dealt with and that any extended and separate treatment would not be justified.

Legal Ethics: This difficult topic does not lend itself to academic treatment and is better dealt with by personal instruction during the period of articles, but we feel that consideration might be given to arranging a few lectures on this subject as the great majority of students receive no instruction in it, either formal or informal.

Workers' Compensation: We are of opinion that an outline of the more important parts of this subject should be included in the course. It need not be extensive and might be added to the Law of Wrongs without unduly increasing the size of that subject.

Practice and Procedure in the Lower Courts: We are all of the opinion that there should be a further treatment of this subject. It is more appropriately dealt with during the period of articles and the treatment in Procedure and Evidence might well be extended without overweighting that subject.

Costing: Although few students receive adequate training in this subject, a knowledge of which is essential for all solicitors, during their period of articles, it does not lend itself to academic treatment and is not at all suitable for inclusion in the Law course.

Statutory Interpretation: Some of us believe that this is one of the most important fields of legal knowledge and that it should be treated more fully. The majority, however, and all recent graduates whose opinions we received, believe that the present treatment in Jurisprudence I is adequate.

Drafting: We are strongly of the opinion that some instruction in this subject should be included in the course. It is one of the most important and difficult parts of a solicitor's practice and the instruction usually received during service in articles is either haphazard or non-existent.

Of the other subjects in the present course which were discussed we desire to mention five only. The view that while some knowledge of

British History is essential this might be acquired by requiring this subject to be taken at School Leaving Pass standard as a pre-requisite to beginning the Law course was favoured. We understand that the Faculty is planning to omit British History B. from the course in 1941 and to divide Constitutional and Legal History into two subjects. This is in accordance with the view of the majority of us who believe that the latter is a useful subject and should be retained and that Legal History could usefully be extended and more emphasis given to the historical approach to technical subjects. We are also of opinion that Roman Law affords an excellent training in the use of legal principles and an opportunity for some treatment of comparative law and that these aspects of the subject are most deserving of emphasis, but we disapprove any tendency to overrate the importance of the mere translation of Latin texts.

The minority of us hold the view, which we believe to be general among those who do the five-year articled clerks' course, that Constitutional and Legal History and also the section of Constitutional Law II dealing with Dominion status (in the view of some the whole of this subject) and Jurisprudence II should be omitted from the course to provide room for technical subjects at present treated inadequately or not at all. This is not the view of the majority of us which believes that it results from defects in the system of articles.[7]

It remains to observe that we are of the opinion that, if it is thought desirable to extend the technical training given by the law course by the inclusion of further professional subjects, the teaching of those subjects can best be undertaken by their inclusion in a full time University course. The endeavour to do simultaneous office and academic work is, we think, detrimental to both. Moreover, the statement that practical subjects are best learnt in association with professional practice is dangerously misleading. Though it is in itself strictly true, it is usually taken to mean that practical subjects are best learnt while the student is serving a term of articles in a solicitor's office. When it is given that meaning it is far from true. The important practical and technical subjects should be made the subject of proper academic study, *i.e.*, study during a full time course and not thrown in for luck during an unnecessarily lengthened term of artlices, for otherwise no proper knowledge of them, of the principles underlying them, or of their application, will ever be obtained.

7. To the same defects may be traced the view that the academic teaching of law, or perhaps the teaching of academic law, serves merely to waste time and render more difficult the learning of things which really matter in practice, which appears more prevalent among those pursuing the five-year articled clerks' course. To a great many students serving their articles the most practical subject is as academic and as abstract as the comparison of the authenticity of the various manuscripts of Bracton. Unless the whole of a practical subject is actually met with in practice, and this is rarely the case even during the five-year period of articles, the part not met with is just as academic as any subject which makes no pretence to practicality. Thus, for example, to any articled clerk who has never seen a Supreme Court action being conducted, and there are many such, the greater part of the Law of Procedure, the most severely practical subject in the course, has no practical significance whatever.