

# THE ACCOUNTING PROFESSION IN AMERICA

## 3. American Federal Tax Education and Tax Practice

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### 3. AMERICAN FEDERAL TAX EDUCATION AND TAX PRACTICE

This paper will discuss how tax accountants and tax lawyers are educated in the United States.<sup>(1)</sup> Under the United States' federal system of government, taxes are imposed at the national, state and local levels. The discussion here is generally limited to tax practice at the national level under the Internal Revenue Code, that is, "federal" tax practice.

In the United States, tax preparers, or "Practitioners", are composed primarily of two groups of professionals: accountants and attorneys. A third group of professionals practices tax. This group is called "enrolled agents". Enrolled agents are persons who are not attorneys or accountants. Enrolled agents have either passed a special test given by the Internal Revenue Service or have worked for the Internal Revenue Service for five years.<sup>(2)</sup> Enrolled agents generally have the same duties and responsibilities in tax practice as attorneys and accountants do. Since there are many more attorneys and accountants engaged in the practice of tax than enrolled agents, this article will focus on the tax education of attorneys and accountants.<sup>(3)</sup> (Circular 230, 31 C. F. R. Sections 10. 3-10. 4)

#### I. Undergraduate Education

Accountants in the United States first obtain a bachelor's degree in accounting from a four-year college or university. In order to become a CPA (Certified Public Accountant), the accountant must pass an examination called the CPA exam. The test is devised by the American Institute of Certified Public Accountants (AICPA) and administered by each state's Board of Accountancy. The test is graded by the AICPA and the results sent to each state. Those who pass all four parts of the exam are awarded their CPA certificate by the state board of the state with which the test-taker registered.

Before or after obtaining a CPA certificate, an accountant may pursue further education in the field of accounting. He or she may obtain a Master's degree, a

Doctor's degree, or both. The details of accounting education in the United States have been described in an article by Stiner and Shiina (1988).

The education of the second group of federal tax professionals—lawyers—is different from the education of accountants. After high school, a student will enroll in a four-year college or university. During these four years of undergraduate education, the student will major in any field the student chooses. Some students will major in accounting before going to law school. Most will not major in accounting. After completion of the four years of undergraduate education, the student will receive a Bachelor of Arts or a Bachelor of Science in whatever major the student chose.

Today there is no significant difference in a Bachelor of Arts and a Bachelor of Science degree. Both degrees represent the completion of four years of undergraduate study. The names are leftovers from medieval times. (Schoenfeld, 1963) Several centuries ago, a student chose a particular area of study such as Arts or Science. Numerous courses in only those areas were studied. The degree conferred at the end of the studies indicated the area in which the student specialized. If the student had studied the sciences, he received a Bachelor of Science. If, however, the student had learned the Arts, he received a Bachelor of Arts. Today, all undergraduate students will learn something of sciences as well as the arts. In modern times, the name of the degree received no longer indicates an area of specialization. Today, a student's "major" indicates the area of specialization.

## **II. Attorneys' First Professional Degree—J. D.**

To be admitted to law school the student must take an entrance examination called the Law School Admission Test (LSAT). This is a standardized test, made of 320 to 360 multiple choice questions and an essay question. The test is 4 hours long. The test is written and graded by a group called Law School Admission Council/Law School Admission Services (LSAC/LSAS). The test scores, and other information that the student supplies, are sent to the law schools of the student's choice. Each law school decides who will be admitted to the school. The

law school uses the LSAT scores, samples of the student's written work, personal data and interviews and other information.

In most cases law school studies will be completed in a three-year program of full-time study. (ABA Review of Legal Education, 1987) Some law schools have a four-year program in which the student takes fewer courses each semester than a full-time student. The four-year program is a part-time program used by many students who must remain employed while they attend law school. In the full-time programs, classes are usually offered in the daytime only. Typically, a class in one subject will be offered three times a week, for a 50-minute session each time. Unlike in undergraduate school, the classes in law school may not be offered on alternating days. It is possible in law school to have classes in one subject three days in a row. In the part-time programs many of the classes are offered at night. These night classes are typically offered once a week in one two-and-one-half hour class or twice weekly in two 75-minute sessions.

In the first year of law school there is a set program of courses. The students are not permitted to select their courses. Instead each first year law student must take the same courses. These courses cover the basic rules of American law. Most often the courses taken in the first year are contracts, property, constitutional law, torts,<sup>(4)</sup> and legal writing. Frequently either civil procedure or criminal law are required courses. These required courses are usually one year (two semesters) long. At the end of the second semester the student takes a comprehensive written exam in each of the courses he or she has studied. If all of the exams are passed, the student may remain in law school and complete the degree requirements. If the student fails one or more of the courses, the student often leaves.

There is much psychological pressure on the first-year law student. This is the first time students have taken courses that require much preparation and the results depend solely upon one test at the end. In contrast, undergraduate courses typically last for one semester. There are several tests during the semester so that the student has an indication of his or her progress during the semester. Undergraduate final exams are not always comprehensive.

Courses in law school are generally conducted using the Socratic method. Socrates was a Greek philosopher who taught by asking questions. In this approach to learning, the textbook consists of a series of cases on various topics within one subject. For example, in contracts class, the professor might ask a student a question about a case. The professor may ask, "Why do two apparently similar cases reach different results?" or "Why do two apparently unlike cases reach the same result?" When the student responds with an answer, the professor will ask another question based on the answer. By not stating clearly a legal principle to be drawn from the cases, but by letting the student develop his or her own answer or explanation, the student is supposed to learn how to think independently and quickly, and will remember better what he or she has learned.

The Socratic method was introduced in some law schools in the late 1860's and early 1870's. (Warren, 1908, pp. 419-427, 496-514) Until that time, the study of law consisted of learning rules of law and seeing how judges applied those rules in cases. Some felt that a study of legal reasoning was a better way to learn law than a study of rules. In a common law system, such as that of the United States, the law is found in the opinions that the judges write for the cases they hear. Judges arrive at the conclusions in their opinions by applying legal reasoning to the facts of the case before the judge. A study of the cases would better reveal how legal reasoning is applied. A study of rules does not reveal the process of legal reasoning, since a rule is what results after the reasoning process has been applied.

The use of the case, or Socratic, method sharpens analytical abilities. This method encourages independent thinking and helps the student of law to see the relationship among cases. All of these skills will be helpful in the practice of law, tax or any other area.

The Socratic method is the method most often used in the first year courses. If the student successfully completes the first year, he or she has learned the method of independent thinking that is characteristic of lawyers. Courses in the second and third years are frequently a combination of the Socratic and lecture methods, or a problem solving approach.

After the required courses have been successfully completed, the law student is free to select any course offered by the law school. There is no formal specialization during law school. The student may select several courses in a related area, such as, business, or the student may select one or two courses from all the areas offered. After the first year, the courses are generally one semester long. There is a comprehensive written test given at the end of each course.

After the first year, if the student fails to pass a course, the student may retake the course or select another course in order to acquire the number of credits needed to graduate. The number of credits required to graduate is different for each school. Among the 175 American Bar Association (ABA)-accredited law schools the minimum number of semester hour credits is 81, the maximum, 96. (*ABA Review of Legal Education*, 1987)

Most law schools require a course in research and legal writing. The course may be one or two semesters, depending on each school's preference. During the course the student will learn what legal research tools are available and how to use them. The student will learn how to write "memoranda" and "briefs" in an acceptable legal style. In a memorandum, all aspects of an issue are presented, both favorable and unfavorable to the "client". In a brief, only the "client's" arguments and counterarguments are included. A brief is a summary of why a court should find in favor of the lawyer's client. It is used in court proceedings. Although the clients in a writing course are imaginary, the skills learned will be applied once the student graduates.

Tax as practiced in the United States is a blend of accounting and law. Tax questions are researched the same way as any legal question is researched. The tax professional who is a lawyer will utilize his research skills in the tax area of law.

In the practice of law it is often important to present a case orally. Either the lawyer must talk to a client, to an accountant or other professional, or argue the case before a court. In order to develop the skills necessary for oral presentations, the law student undergoes a "moot court" experience. "Moot" means that these are

not real cases. A moot court is one in which imaginary cases for hypothetical clients are argued by students who are not practicing lawyers. Real judges or practicing attorneys donate their time to listen to the moot court arguments. The moot court sessions are conducted as if they were held in a real court.

Moot courts have existed since the first law school, the Litchfield School, was founded in 1784. (Harno, 1953, pp. 18-32) It was a school that emphasized practical knowledge. Court appearances were a common part of the practice of law, so a method of teaching courtroom skills was included in the curriculum.

Today's moot courts are similar to those of a hundred years ago. After their presentations, the students are criticized by the moot court judges. Students are judged on their appearance, the quality of their presentations and their responses to questions the judges ask during the process, and the quality of the written work in the briefs submitted.

Moot court is not usually a course. Instead, it is a voluntary activity for the student. It is conducted as a competition. From several teams within one law school, one winner will be selected. This winning team will go to other states to compete against winners from other law schools. Ultimately, there will be one winning team. The winners receive a plaque or some other small prize. They bring honor to themselves and to the schools which they attend.

Although tax lawyers rarely appear in court because most tax cases are settled well before that point, all tax lawyers need the skills that moot court provides. Tax professionals will have many meetings with tax officials from the federal or state governments in which the lawyer will present his or her client's viewpoint. Well developed oral skills will help get the desired result for the lawyer's client. In addition, tax lawyers must research points of tax law and write summaries of their findings for their own use or for presentation to governmental tax officials. The writing skills learned in a moot court exercise will be helpful in a tax lawyer's practice. Finally, strategy is important to any lawyer, including tax lawyers. Moot court gives a student an opportunity to learn some strategy skills when a client's money or property is not at stake.

A typical program of courses in law school is presented below. It is a program selected from the catalog of Villanova University Law School, a private school in eastern Pennsylvania, where the American co-author teaches. This program is appropriate for students interested in tax. Some students of tax may have a different program. Only the first year's courses are required. The remaining courses are selected according to the interests of the student.

<u>TABLE 1. TYPICAL PROGRAM OF COURSES FOR A J. D. STUDENT</u>			
<u>CREDIT</u>	<u>YEAR</u>	<u>SUBJECT</u>	<u>LECTURE METHOD</u>
5	1	Civil Procedure	Socratic
5		Contracts	Socratic
5		Criminal Law	Socratic
1		Legal Research	Library Work & Moot Court
2		Legal Writing	Library Work, Moot Court & Library Assignments
6		Property	Socratic
5		Torts	Socratic
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6	2	Constitutional Law I, II	Modified Socratic
3		Administrative Law	Modified Socratic
3		Decedent's Estates & Trusts	Modified Socratic
5		Federal Income Tax I, II	Modified Socratic
1		Moot Court	Written & Oral Work
3		Evidence	Modified Socratic
3		Legal Process	Problem Solving
2		Sales	Modified Socratic
3		Conflicts of Laws	Modified Socratic
2		Negotiable Instruments	Modified Socratic
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2	3	Business Tax Planning	Problem Solving

3	Federal Securities Regulation	Modified Socratic
2	Legal Profession (Ethics)	Modified Socratic
3	Wealth Transfer Taxes	Modified Socratic
3	Family Wealth Planning	Modified Socratic
3	Federal Courts	Modified Socratic
3	Partnership Law & Tax	Problem Solving
3	Secured Transactions	Modified Socratic
2	Will Drafting	Document Drafting
2	Tax Policy	Seminar

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Source: Villanova University School of Law Admissions Brochure, 1989.

When the program of studies is successfully completed, the law student receives the degree of Juris Doctor (J. D.), which is Latin for Doctor of Laws. In some law schools the degree is called Bachelor of Laws (LL. B.). Today, the designation LL. B. is rarely used. The J. D. is the first professional degree. Most lawyers do not go on for further study. Most lawyers seek employment and admission to practice at this point. Some may get a second professional degree, an LL. M.

After graduation from law school, the lawyer could choose to work in the area of tax. Similarly, after graduation from school, the accountant could choose to work in the area of tax. However, their educational preparation for each of their fields is different. Both professionals have an undergraduate degree. The accountant has had at least one course in tax. The lawyer may have had no courses in tax, depending on his or her major in undergraduate school. However, the lawyer working in tax has had three more years of formal education than the accountant. The attorney in tax has had one or more tax courses in most cases.

Because of their differences in education, the two professionals approach tax

differently. The lawyer is trained to interpret laws and written opinions of courts. The lawyer takes the same approach when tax issues are involved. He or she closely examines the Internal Revenue Code, which is the federal tax law, the published rules and regulations of the Internal Revenue Service, and the opinions of the courts in tax cases. He or she tends to research tax questions very thoroughly. The accountant often has a more pragmatic approach. The accountant is keenly aware of what result the client wants, and how much the client will pay for it. The accountant researches thoroughly within those limits.

### **III. Admission to Practice Law**

After law school is complete, most graduates seek formal admission to practice law. An attorney who is admitted to practice law is permitted to give legal advice to anyone and appear in court for a client. If an attorney gives someone legal advice or appears in court for a client without being admitted to practice law, the attorney has broken the law. Although there are many jobs that do not involve the practice of law, most attorneys want to be permitted to practice law in at least one state.

Admission to practice law is regulated by each state. The federal government does not regulate the general practice of law in the United States. An attorney is "admitted to practice"<sup>(9)</sup> law when the attorney passes the bar examination given by that state. After an attorney is admitted to practice law in one state, the attorney can give legal advice and appear in court in that state. Once an attorney has been admitted by one state, and has practiced law for a certain period of time, and meets some other requirements which can vary from state to state, an attorney may be admitted to practice law in a second state without taking a bar examination again. Every attorney who has a license to practice law has taken and passed a bar examination at least once.

The bar examination is administered by each state. There are two parts to the bar exam: a multistate portion and a state portion. The multistate portion is drafted by the Educational Testing Service (ETS). ETS is a private company in

New Jersey that designs, prints and grades standard examinations in many fields. The multistate portion tests six areas of law that are studied by all law students in the country. These areas are contracts, torts, property, constitutional law, commercial law and criminal law. The questions are multiple choice questions.<sup>(10)</sup>

As part of the bar exam, there is a portion that is written and graded by that state's bar examiners. The questions on the state portion are often essay questions. The topics included in the state portion vary. Frequently included are that state's procedural rules and areas of the law that are unique to the state, such as agriculture or oil and gas law. Corporate law is often included in the state portion.

A passing grade is determined independently by each state. Each state receives the scores from the multistate portion of the exam. The graders have scored the state portion of the exam. The bar examiners select the passing score. Everyone who receives a score equal to or higher than the passing score will pass the bar exam. Everyone who receives a score less than the passing score will fail the exam. Unlike in the CPA exam, the passing score in a bar exam is not known in advance of the test. A passing score in one state may not be a passing score in another state. In addition, a passing score on the most recent bar exam may not be the same as the passing score on the last bar exam. The passing score can change as each bar exam is given. It takes two or three months for the bar exam grading process to be completed.

After the exam, the candidate may be simply informed of the fact of successful completion of the test, without learning the grade. If the person taking the bar exam has failed, the grade is reported to the test taker.

Unlike the CPA exam, there are only a limited number of times that a candidate may take the bar exam. If the candidate fails to pass the exam after the allowable number of tries, the candidate may not take the bar exam in that state ever again. The candidate may move to another state, meet that state's requirements and sit for the bar exam there. Or the candidate may choose to remain in the state and work for a corporation, bank or some other entity where admission to practice law

is not required. A few attorneys choose not to take a bar exam and not to be admitted to practice law. Some of the attorneys who have been admitted to practice law in a state never actually practice law there or anywhere else.

In federal tax practice, admission to practice is necessary if clients are to be represented in Tax Court or any other federal court. Only attorneys who are licensed to practice in a state may appear in federal courts of that state where federal tax matters are litigated on behalf of clients. Attorneys may appear in Tax Court if they are admitted to practice before the Tax Court. According to United States Tax Court rules, attorneys are admitted to practice before Tax Court if they pay a small fee (\$ 25) and file a certificate showing they are permitted to practice in any state.

Accountants can be admitted to practice before the Tax Court if they pass an examination administered by the Tax Court, pay a small fee (\$ 25), and are recommended for admission by three people who are themselves admitted to practice before the Tax Court. This is the only American court before which accountants can be admitted to practice. Usually an accountant would not seek to be admitted to practice before the Tax Court. Accountants normally do not know the evidentiary and procedural rules that are used in Tax Court. These rules are not a part of the accountant's formal studies, as they are for lawyers.

A lawyer in the United States can maintain a tax practice after graduation from law school and admission to a bar. He or she need never obtain further education in order to practice in any area of federal or state taxation. Similarly, an accountant can maintain a tax practice with an undergraduate (bachelor's) degree in accounting and a license to practice accountancy in any state. However, further education for both lawyers and accountants in tax is available.

#### **IV. Master's Degree**

A tax attorney or accountant may obtain more education if desired. After the bachelor's degree, an accountant may obtain a Master's Degree in Taxation (M. T.). After law school, a lawyer may obtain a Master of Laws (LL. M. ) in Taxation.

The master's degree is the second professional degree for a lawyer and the first graduate degree for an accountant. At the master's degree level, specialization is permitted. Taxation is one of the areas of specialization. There are 29 law Schools in the United States that offer an LL. M. degree to attorney. There are 53 colleges or universities that offer M. T. degrees to accountants.

In order to be accepted for study leading to the Master's degree, most universities have admission requirements. Accountants who are candidates for the Masters in Taxation (M. T.) degree must achieve a passing score on a special test called the Graduate Management Admission Test (GMAT). The GMAT is a standardized test given nationally. The test is designed by a private company called the Educational Testing Service (ETS). ETS writes, administers, and grades the tests. ETS sends the scores of the students to the schools to which the student is applying. The schools use the GMAT test scores and sometimes other factors to determine who is admitted to the Master's degree program. GMAT scores are used for Master's degree admissions in all areas of study, not only taxation.

Attorneys who are candidates for the Master of Laws (LL. M.) degree also must satisfy admission requirements. They must have graduated from a law school accredited by the American Bar Association. The grades earned in law school must be high enough to satisfy the university offering the Master's degree.

If the Master's degree were pursued on a full-time basis, the program would take one year to complete. However, since many graduate students are working full-time, many programs offer their courses on a part-time basis. These programs commonly take three years to complete on a part-time basis. Most courses in the part-time program are offered in the evenings, so that the student can attend after work.

Typically, classes are offered one evening per week for two hours. Students can take a maximum of two classes per night. If the student is enrolled full-time, he or she will take five or six courses per semester. A part-time student will enroll for only one or two courses per semester. Some universities offer the master's degree program on either a full-time or part-time basis. Some universities offer their

program at night on a part-time basis only.

The course content will differ depending on the university offering the program. However, every program will offer a basic course on individual, corporate, partnership, and fiduciary income taxation, and estate and gift taxation. Other courses will be offered depending on the interests and needs of the students, availability of the faculty, and areas unique to the location of the school, e. g., banking, agriculture, mineral tax law, etc.

Other courses frequently included in a master's program are courses on corporate reorganizations, corporate liquidations and estate planning. The course offerings are similar, whether the course is offered in the M.T. program for accountants or in the LL. M. program for attorneys. Some universities, such as Villanova University, have accountants and lawyers in the same program. Accountants in the program receive an M.T. Lawyers in the program receive an LL. M. Other institutions, e. g., Temple University, in Philadelphia, Pennsylvania, have "parallel programs." Accountants and lawyers have separate classes in separate programs.

A typical selection of courses for an attorney pursuing an LL. M. in a part-time program is listed in Table 2. An accountant pursuing an M.T. would normally take all of these courses plus two more courses on research methods, ethics, and an introduction to estates and trusts.

TABLE 2. TYPICAL COURSE SELECTION FOR AN LL. M. STUDENT

<u>YEAR</u>	<u>COURSE</u>	<u>CREDIT</u>
1	Introduction to Tax	2
	Property Dispositions I	2
	Taxation of Trusts and Estates	2
	Tax Procedure	2
2	Partnership Tax	2
	Tax Accounting	2
	Corporate & Shareholders' Tax	2

	Business Planning	2
3	S Corporations	2
	Corporate Tax Planning	2
	Estate Planning	2
	Federal Wealth Transfer Tax	2
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	Total credit hours	24

Source: Villanova University School of Law Graduate Tax Program  
Catalog, 1988.

In the graduate courses, the lecture method is primarily used, rather than the Socratic method. Once a lawyer has learned the process of independent thinking required in law school, the Socratic method is rarely employed in the classroom. The Socratic method is time-consuming for the teacher and the student. In graduate school, learning the subject matter in depth is a better use of the student's and the professor's time.

## V. Doctorate in Taxation

There is a third professional degree for lawyers. It is called a Doctor of Juridical Science (S. J. D.). In order to be admitted to the S. J. D. degree program, the attorney must have an LL. M. with grades high enough to satisfy the admitting university. The candidate in some cases will be interviewed by an admissions committee. The committee must approve the candidate's admission.

It is rare for an attorney to obtain an S. J. D. This degree is an academic degree most useful to those who intend to teach in law schools. There is a significant research and writing requirement. S. J. D. candidates must complete a lengthy dissertation in addition to their course work. Most practitioners will not obtain this degree. Most academic attorneys will not obtain this degree either.

An accountant or an attorney with a master's degree can obtain a doctorate in tax (Ph. D.). If an accountant intends to remain in the public practice of account-

ing, he or she will usually not obtain a doctorate. The doctorate in tax is most useful if the person intends to teach taxation in a university. A Ph. D. is more widely recognized than an S. J. D., so a Ph. D. in taxation is more often obtained. The Ph. D. is discussed in Stiner and Shiina (1988, pp. 60-61).

## **VI. Conclusion**

The education of an accounting professional is accomplished through an undergraduate degree in accounting. This degree will be supplemented by a master's degree (M. T.) in some cases, primarily by managers or members of the tax departments of very large accounting firms. The tax accountant also has a license to practice accountancy bestowed by the state in which the accountant practices.

The education of a tax attorney is accomplished through an undergraduate degree in any major, followed by graduation from law school. This professional degree will be supplemented in some cases by an LL. M. in Taxation. The tax lawyer also has a license to practice law bestowed by the state in which the attorney practices. Both tax attorneys and accountants rarely pursue degrees beyond the master's level.

APPENDIX 1

Table of Abbreviations

A. B. A.	-American Bar Association
A.I.C.P.A.	-American Institute of Certified Public Accountants
C. F. R.	-Code of Federal Regulations
C. P. A.	-Certified Public Accountant
E. T. S.	-Educational Testing Service
GMAT	-Graduate Management Admissions Test
J. D.	-Juris Doctor
LL. B.	-Bachelor of Laws
LL. M.	-Master of Laws
LSAC/ LSAS	-Law School Admission Council/Law School Admission Services
L. S. A. T.	-Law School Admissions Test
M. T.	-Master of Taxation
Ph. D.	-Doctor of Philosophy
S. J. D.	-Doctor of Juridical Science

APPENDIX 2

Description of Selected courses in the Juris Doctor Program  
at Villanova University

FIRST-YEAR (REQUIRED) COURSES \_\_\_\_\_

CIVIL PROCEDURE

“Introductory examination of the civil litigation process and the adversary system and their relationship to the fair resolution of disputes, primarily through study of the Federal court system, including choice of court, pleading, parties, pretrial discovery, disposition by motion, jury, judgments, appellate review and res judicata.”

CONTRACTS

“Introduction to the nature of promissory liability; formation of contracts,

mutual assent and consideration; need for, and effect of, formalities; third-party contracts; assignments; conditions and impossibility; discharge; illegality; damages.”

### CRIMINAL LAW

“ . . . . . consideration of constitutional rights of the accused including limitations on search and seizure, confessions and identification. Spring semester: substantive elements of criminal law, including the general elements of criminal liability, homicide, defenses, attempts and accomplice and conspiracy liability.”

### INTRODUCTION TO LEGAL RESEARCH

“A working knowledge of the use of the various tools for legal research is acquired through problems requiring the use of the law library; primary emphasis is upon access to federal and state case law and legislation.”

### LEGAL WRITING

“Close supervision instruction in the writing of legal memoranda, opinion letters, pleadings, appellate briefs and in appellate oral argument.”

### PROPERTY

“Survey course in basic concepts of property law with detailed analyses of problems of conveyancing and leasing.”

### TORTS

“Basics of civil liability for harm including intentional wrongdoing, negligence, strict liability by reason of engaging in abnormally dangerous activities, products liability and liability arising out of ‘no fault’ legislation. Examination focuses upon underlying tort cause of action, defenses, third party involvement, and the effect of developing comparative fault systems.”

Source : Villanova University, Bulletin, School of Law, 1987-1988 (Villanova,

Pennsylvania, 1987), pp. 45-46.

## SECOND AND THIRD-YEAR (ELECTIVE) COURSES

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### CONSTITUTIONAL LAW I

“A study of the constitutional problems concerning judicial review, separation of powers, constitutional limitations on federal-state powers and relations, international agreements.”

### CONSTITUTIONAL LAW II

“A study of the constitutional protections accorded to persons and property under the Bill of Rights and the Fourteen[th] Amendment, particularly under the provisions relating to freedoms of expression and of religion, equal protection, and due process of law.”

### ADMINISTRATIVE LAW

“This course deals with the procedures by which administrative agencies implement legislative policy through rulemaking, adjudication, and enforcement activities; judicial review of administrative agency action; legislative and executive control of administrative action; and the forms and organization of administrative agencies.”

### DECEDENTS' ESTATES AND TRUSTS I

“This survey course deals with wealth distribution taking place while a client is alive and upon his death. Topics considered at length include intestate succession, testamentary dispositions, problems in construing statutes and wills, probate express trusts, constructive and resulting trusts.”

### FEDERAL INCOME TAXATION I

“This course addresses federal income problems encountered in general practice, particularly as they affect individuals and businesses. Students are introduced

to the manner in which federal income tax law is developed, and engage in detailed analysis of various Internal Revenue Code sections. Attention is given to the concepts of gross income, deductions, deduction limitations, timing, and capital characterization. Analysis and application of these tax concepts occur in solving problems.”

### FEDERAL INCOME TAXATION II

“This course is designed to provide coverage of selected topics including: tax free exchanges of property, contributions to and distributions from tax favored deferred compensation plans (pension and profit sharing plans), the general concept of passthrough entities such as partnerships and S Corporations and the general framework for U. S. taxation of foreign income and foreign persons.”

### EVIDENCE

“This course embraces the rules of evidence applicable to the trial of civil and criminal cases, their purposes and practical application including real, testimonial and circumstantial proof, relevance, impeachment and cross-examination, hearsay, presumptions, expert and opinion testimony and privileged communication.”

### LEGAL PROCESS

“This course is intended to foster a more informed and skillful use of the legal system, at all levels of practice, by studying the processes of legal decision (law in action) rather than specific directives that distinguish different branches of the legal system. The course explores the interacting postulates, principles, and techniques (procedural and substantive) that are brought to the same transaction at different stages of negotiation and dispute, by lawyers, legislators, administrators and judges. The roles of private and official discretion in framing legal arrangements receive special attention. Course materials consist primarily of illustrative problems, and employ student team teachers together with the instructor.”

## SALES

“An introductory course to commercial law emphasizing code analysis and interpretation with particular reference to Article 2 of the Uniform Commercial Code. Subjects covered include the scope of Article 2, formation of the sales contract and required formalities, warranties (including the [e]ffect of the Magnuson Moss Act), shipment of goods, property risks, inspection rights, and in general remedies for non-performance of sales agreements.”

## CONFLICTS OF LAWS

“Problems arising from transactions or events involving elements in more than one state; the choice of applicable law; multi-state problems in the field of torts, contracts, domestic relations property and procedure; constitutional and theoretical issues underlying choice of law; recognition of judgments.”

## NEGOTIABLE INSTRUMENTS LAW

“The law dealing with commercial and investment papers; bills, notes, checks and letters of credit as developed through the law merchant, the common law, the Negotiable Instruments Act, the Bank Collection Code, and Articles 3, 4 and 5 of the Uniform Commercial Code. Brief consideration will be given to the electronic transmission of funds, present status and potential developments, protective legislation, debit and credit cards, the Electronic Funds Transfer Act, and present and future practical and legal problems arising from technological developments.”

## BUSINESS TAX PLANNING

“The course will involve several initial lecture periods but basically will be problem oriented. The class will be broken up into small groups (2 or 3 students) and each group will be responsible for leading the class through the analysis, discussion and possible solutions to a series of problems. The problems will emphasize some of the more sophisticated tax aspects of corporate tax planning, including corporate acquisitions, redemptions and liquidations.”

### FEDERAL SECURITIES REGULATION

“The course focuses on the Securities Act of 1933 and the Securities Exchange Act of 1934. Subjects that will be considered include: definition of ‘security’, regulation of securities’ distribution; registration and reporting requirements and exemptions thereto; and civil liability for non-conformity with regulatory statutes and rules.”

### LEGAL PROFESSION

“This course is designed to expose students to the major ethical problems they will face as members of the legal profession in various areas and types of practice. The course addresses the structure of the legal profession and the delivery of legal services, and compares the Code of Professional Responsibility and the Model Rules of Professional Conduct.”

### TAXATION OF FUNDAMENTAL WEALTH TRANSFERS

“This third year course examines some of the important Federal estate, gift and income tax aspects of wealth transfer transactions frequently encountered in the practice of law. These three taxes will be taken up concurrently so that the student can see how they impact on one another with respect to particular transactions.”

### FAMILY WEALTH PLANNING

“Testamentary dispositive planning for married couples and unmarried couples; lifetime dispositive planning including the minor’s trust, insurance trust and charitable trust; tax planning for executives, including year of departure tax accounting problems, and selection of deferred compensation benefits.”

### FEDERAL COURTS & FEDERAL SYSTEM

“The jurisdiction of the United States Courts with emphasis on problems arising from the nature of the federal system, including the nature of the federal judicial

function, the distribution of judicial power among federal and state courts, federal subject matter jurisdiction, the law applied in federal courts, the procedural and jurisdictional aspects of civil rights litigation and appellate review.”

### PARTNERSHIP LAW AND TAXATION

“This course uses a problem method approach to tax and state law aspects of forming, operating, and liquidating partnerships. A problem method approach also is used for a comparative analysis of the use of Subchapter S corporations for federal income tax purposes.”

### SECURED TRANSACTIONS/BANKRUPTCY II

“This course will focus on more sophisticated aspects of the relationships between debtors and creditors, including the federal tax lien, factoring and accounts receivable financing, the impact of Chapter 13 [of the U. S. Bankruptcy Act] upon the rights of residential real estate mortgages and automobile encumbrancers, Chapter 11 [of the U. S. Bankruptcy Act] and its effect upon the rights of secured creditors, and nonbankruptcy workouts.”

### WILL DRAFTING

“A skills course designed to develop facility in the drafting, planning and counselling for the estate plan of those who are not primarily concerned with tax planning. Students are assigned planning and drafting projects which are evaluated functionally. The course, as such, provides a bridge between the theoretic courses in Decedents and Trusts Estates and actual law office practice with regard to planning and drafting the appropriate instruments.”

### TAX POLICY

“This seminar attempts to assess how well our tax laws accomplish their revenue producing, revenue sharing, criminal law enforcement, and social policy functions. Some of the inconsistencies in the approaches of the various tax laws

will be identified and examined. Some suggestions for improving the tax laws will be considered.”

Source: Villanova University, School of Law Course Descriptions, Electives-Academic Year 1988/1989. (Villanova, Pennsylvania, 1988), pp. 1-23.

### APPENDIX 3

#### DESCRIPTION OF SELECTED COURSES IN THE GRADUATE TAX PROGRAM AT VILLANOVA UNIVERSITY

##### INTRODUCTION TO TAXATION

“Analysis of fundamental tax concepts, including gross income (alimony, fringe benefits), introduction to the time value of money (OID, imputed interest, interest-free loans) timing (introduction to accounting periods and methods, tax benefit, claim of right, section 1341), deductions (business use of home, charitable contributions), and basic minimum tax issues.”

##### TAXATION OF PROPERTY DISPOSITIONS

“Detailed treatment of realization events, basis, mortgages, taxable exchanges, nonrecognition transactions, installment sales, characterization, depreciation, depreciation recapture, and sale of a sole proprietorship.”

##### TAXATION OF TRUSTS AND ESTATES

“Federal income taxation of trusts and estates, including the decedent's final return, income and deductions in respect of a decedent, the conduit concept for taxing beneficiaries, the separate share rule, the throwback rules, grantor trusts, tax deduction elections interrelated with the federal estate tax.”

##### TAX PROCEDURE

“Statutes of limitations, gross income omission, assessment procedure, refund procedure, administrative appeals settlement techniques, choice of forum, rulings and technical advice requests, burden of proof, interest and civil penalties, criminal

tax prosecutions and constitutional protections.”

### PARTNERSHIP TAXATION

“Tax treatment of partnership income to the partners, problems associated with the formation, operation and dissolution of the partnership, sale of the partnership interest, unrealized receivables and substantially appreciated inventory, termination, retirement and death of a partner, and comparison of S corporations.”

### TAX ACCOUNTING

“Income recognition and deduction allowances under the cash and accrual methods, pre-paid and contested income and expenses, changes of method and year, inventories, the book-vs-tax minimum tax preference, Section 482 adjustments, accounting methods and practice charges, net operating loss deduction and financial statement analysis.”

### TAXATION OF CORPORATIONS AND SHAREHOLDERS

“Primary emphasis on corporate-shareholder relationships, problems of corporate formation, non-liquidating distributions, and tax considerations in the sale of the corporate business.”

### BUSINESS PLANNING

“Integrated study of corporate, financial, tax accounting and SEC aspects of the following: organization of a small corporation, organization of a public corporation, stock dividends, recapitalization and stock redemptions in the context of stockholder conflict, corporate liquidations, corporate mergers and acquisitions.”

### TAXATION OF S CORPORATIONS

“Analysis of the consequences of forming, operating and liquidating S Corporations; planning for qualification of shareholder trusts, pass-through of items, distributions from corporations which have had C Corporation status, termination,

death of shareholder, debt-equity considerations, applications of at-risk and passive loss limitations, shareholder compensation and fringe benefits, and mergers and acquisitions with other corporations.”

### CORPORATE TAX PLANNING

“Advanced level corporate tax course in which student teams will be required to analyze a proposed transaction and prepare a ruling request or opinion letter for a client. The ruling request or opinion letter will be presented to the class by the teams. Transactions will be based on actual proposed corporate acquisitions, dispositions, mergers, terminations or intercorporate transactions. Each team will be expected to function as a group of tax associates, taking facts as given, defining the issues and presenting solutions. Problems assigned may require study of areas of corporate tax not covered in the prerequisite [course, Taxation of Corporations and Shareholders].”

### ESTATE PLANNING

“Prototype dispositive schemes for married and unmarried couples; the use of inter vivos trusts in estate planning including the minor’s trust, insurance trust and charitable trust; tax planning for the executive including year of termination tax accounting problems, business valuation freeze techniques, sale of the business and selection of deferred compensation benefits.”

### FEDERAL WEALTH TRANSFER TAXATION

“Substantive provisions of federal estate and gift and tax laws and the generation-skipping transfer provisions, including: transfer with retention of interest or power, joint interest, life insurance proceeds, property subject to powers of appointment, marital deductions and split gifts.”

Source: Villanova University, Graduate Tax Program Catalog, 1988-1989. (Villanova, Pennsylvania, 1988) pp. 7-12.

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### FOOTNOTES

- (1) A list of the abbreviations used in this article is found in Appendix 1.
- (2) There are several differences in the enrolled agents test and the CPA exam. First, the enrolled agents test is written and given by the Internal Revenue Service. The CPA exam is written by the AICPA and given by the state boards of accountancy. Second, the contents of the two tests are very different. The enrolled agents exam tests only federal tax law in the United States. The CPA exam tests several different areas of accounting. Tax is only a small part of the CPA exam. For a discussion of the CPA exam see Stiner and Shiina (1989).
- (3) "Circular" as used here means a pamphlet or booklet. A "circular" is a very small book that circulates or goes to many readers.
- (4) A "tort" is a civil legal harm to a person that results from one person injuring another person. Tort law is contrasted with criminal law. Criminal law is the legal harm to society that results from one person injuring another person.
- (5) There are two major kinds of legal systems: common law and civil law. In a common law system, there are relatively few rules in the form of enacted statutes. Instead, the minimum of statutory law is created. When a problem arises, the disputing parties settle their differences in court. New rules are created through the precedent that results from the court's opinion in a specific case. However, these rules are only made in the amount necessary to resolve the case before the judge. The judge will usually not make many rules to resolve future problems. In a civil law system, however, the law writers try to think of as many rules as they can in order to cover as many possible problems as they can. When a problem arises, the solution should be found in the "code". A code is the name for the large group of laws in a civil law country. The United States is a common law country. France is a civil law country. Neither country has purely one kind of law. Tax law in the United States is code law. As many tax rules as possible are written in order to provide answers for tax problems before they arise.
- (6) Much legal language is based on Latin. The United States adopted England's common law system. English law, in turn, developed from Roman law. Latin was the language of the Romans. "Memorandum" comes from the Latin word for remembrance. The plural of memorandum is "memoranda".
- (7) In the United States, the words "attorney" and "lawyer" mean the same. Both words mean someone who has graduated from law school. Both words apply equally to a judge, or to either lawyer arguing a case.

(8) In the United States, the national government is called the “federal government.” There is also a government for each of the fifty states, the “state governments.” Under the American system, some areas of law are the responsibility of the federal government and some areas of law are the responsibility of the state governments. For example, raising and maintaining a national army and navy are the sole responsibility of the federal government. Therefore, no state can make laws interfering with the federal power to raise or support this army and navy. As another example, regulation of education is the sole responsibility of the state governments. Each state regulates education within that state. No state can make laws affecting education in another state. Finally, the federal government cannot make laws controlling education within a state’s borders.

(9) Being “admitted to practice” law means that an attorney is permitted by law to give legal advice to any person. Being admitted to practice also means that an attorney can appear in court on behalf of the client.

An attorney who has not been admitted to practice can do many things. For example, he or she can teach in a university or work for a bank, advising customers on the management of their money. An attorney not admitted to practice can work for a corporation negotiating, dealing with government regulators, or studying legal questions for the corporation. Some respected positions are held by attorneys who not admitted to practice in any state.

(10) The multistate portion is administered in most states on the last consecutive Wednesday and Thursday in the months of July and February of each year. Some states have only one bar exam each year. Most states give the bar exam twice a year.

(1989年2月4日 受理)