NOTE TO USERS

A STUDY OF THE PHILOSOPHICAL, HISTORICAL, STATUTORY, AND PROCEDURAL DEVELOPMENT OF CONTRACT LAW.

by

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A DISSERTATION

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Major: Educational Studies

Under the Supervision of Professor Donald F. Uerling

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A STUDY OF THE PHILOSOPHICAL, HISTORICAL, STATUTORY, AND PROCEDURAL DEVELOPMENT OF CONTRACT LAW.

Lawrence J. Stoley, Ph.D.

University of Nebraska, 2005

Advisor: Donald F. Uerling

The purpose of this research was to study the philosophical, historical, statutory, and procedural legacy of contract law, then, based on this study, create a method of analysis that can be used to insure that the standards of natural law are observed in all contractual relationships in the Catholic schools in the Diocese of Lincoln. The intellect by its nature has the capacity to know, in a finite way, eternal law and to construct precepts that direct human actions toward the "good" known in the eternal law. Participation in the eternal law, to the degree that humans are capable, is referred to as natural law. Natural law enables humans to know the prime mandate of the eternal law. From this understanding of natural law, an analysis was constructed that gave the researcher a means to determine the objective elements of natural law: truth, goodness, and unity. This analysis was applied to contractual instruments used within the diocese. Some diocesan contractual instruments contained essential natural law elements and others did not. In the procedural legacy phase of this study, it was found from a review of case law that American courts apply contract law principles in disputes that arise over private school

teachers' contracts and seem to view private school student handbooks as contractual instruments, especially if appropriate contract language is included.

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Chapter One

Introduction

Context / Background

In June of 1997, I was appointed principal of Falls City Sacred Heart School, in Falls City, Nebraska. During the summer session of 1997, I also took my first education law class as partial fulfillment for my Masters Degree in educational administration. In the course of my studies that summer, and during the next five years as principal at Sacred Heart School, I became very much aware that private education is primarily built around contractual agreements. The bulk of educational contractual matter begins with the relationship between home and school. A contract, in the form of an agreement found in the back of the student handbook, defines the parameters of the relationship that exists between the administration of the school, and the family. Many times as principal, I opened the student handbook and read to the parents and students the expectations of the agreement stated therein. In most cases, once the agreement was recalled, the situation was resolved. Having a prearranged agreement helps to deescalate tense situations, and maintain order within a school system.

Administrator-teacher relationships are another aspect that involves contracts within the private school system. Most of the issues that emerge in this relationship are outlined within the Teacher's Contract and the Faculty Handbook. However, unusual situations arise from time to time that are not dealt with specifically in either the contract documents or the handbook. If they are, the reference may at least be cursory. It is in

these non-typical situations where I have found myself wondering what the best course of action might be.

In June of 2002, I was named Assistant Superintendent of Schools for the Diocese of Lincoln. The Diocese provides K-12 education for over 7,300 Catholic and non-Catholic students within a 23,844 square mile area. Involved in the day to day operations of the 6 high schools and 26 grade schools within this territory are over 600 teachers and 50 administrators, as well as numerous volunteers and staff. Given the magnitude of this school operation, it seemed all the more necessary to have a better understanding of how to define and enforce agreements made between the school, faculty, staff, parents, and students in a reasonable and equitable way. It was within this context that I began this study of the philosophical, historical, and legal basis of contract law.

General Problem / Purpose Statement

St. Thomas Aquinas stated, "law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect [complete] community" (Pegis, 1945, Q92, a. 1.). By virtue of man's creation in the "image and likeness of God" man has been given the gift of an intellect. The intellect by its nature has the capacity to know, in a finite way, eternal law and to construct precepts that direct human actions toward the "good" known in the eternal law. Participation in the eternal law, to the degree that humans are capable, is referred to as natural law.

Natural law enables humans to know the prime mandate of the eternal law. This mandate is best articulated in the axiom, "good is to be done and promoted, and evil is to be avoided" (Pegis, 1945, Q. 94, a. 2). It is from the natural law that one comes to know

the rights that are afforded to all human beings that grant them authority to fulfill divine law. This authority is vested in human societies for the purpose of the common good so that humans may pursue beatitude in fulfilling divine law.

As a means of formalizing practical reason, the Diocese of Lincoln has entered into contractual relationships with its employees, as well as what may be contractual relationships with parents whose children attend its schools. The Church would expect such contracts to be consistent with natural law, but no study has been done to examine the extent to which this expectation has been fulfilled.

The purpose of this paper is to study the philosophical, historical, statutory, and procedural legacy of contract law, then, based on this study, create a method of analysis that can be used to insure that the standards of natural law are observed in all contractual relationships. This limited overview of what has been written thus far prompted the following research question.

Research Question

Are principles of natural law, the Corpus Juris Civilis of the Emperor Justinian, Canon Law, the statutes and practices of England's Chancery, and American contract law relevant to the home-school relationship and employment contract issues in American Catholic schools today?

Subquestions. This question led to other subquestions relevant to the matter:

1) What is natural law?

2) What are the objective principles of natural law?

3) What principles of natural law were incorporated into contractual matters of the Corpus Juris Civilis of Justinian, Canon Law, English Common Law, and remain within American contract law today?

4) What have been some of the land-mark cases that have identified natural law principles as foundational to contract law in Catholic, or private schools?

5) What elements of natural law might Catholic Schools be attentive to with regard to the home-school relationship and employment contract issues?

Definition of Terms

In this particular section, I shall define some of the more technical terms and abbreviations so as to help the reader to better appreciate the scope of this study.

Two terms will be used rather frequently in this paper: jus gentium, and jus civilis. In Latin, jus gentium means law of the nations; jus civile means the law of the Roman citizens. According to Dr. Bruce Frier, professor of law at the University of Michigan, "The jus civile is not a source, but a body of legal rules. The jus gentium is a more general body of law derived from the common practice among Rome and its neighbors."

The Carolingian Dynasty is another term used in reference to Charlemagne. The term Carolingian itself is not self-evident, and might be in need of further clarification. The Carolingian Dynasty began with Charles Martel who was the "mayor of the palace" of the Frankish kingdom. In Latin, Carolus means Charles. Charles Martel was the father of Pepin the Short, who was the father of Charlemagne, hence the beginning of the Carolingian Dynasty with Charles Martel. (Lamm, Cross, Davis,1988, p. 308)

Further definition of terms are needed so as to translate the medieval names of the cities where manuscripts of Justinian's Codex and Institutions are kept. The translation of the names of these cities are: Veronensis, Verona; Parisiensis, Paris;

Oxoniensis (Oxonii), Oxford; Vindobonensis (Vindobona), Vienna; Taurinensis, Turin; Wallraffianus (Wallensis), Walla; Casinas, Monte Cassino; and Bononiensis, Bologna.

Regarding the section discussing Bracton's Commentary of Azo, several codes were used to refer to particular manuscripts. The full name of each manuscript's location is as follows: OA, Bodleian Library, MS. Digby 222. XIII-XIV cent.; LA, Lambeth Palace Library, MS. 92 XIII-XIV cent.; OC, Bodleian Library, MS. Rawlinson C. 159. XIII-XIV cent.; O, Author's speculation of a document now lost. "On folios 129b-48b (infra ii, 365-419), OC, MG and CM have so many readings they alone share, and so many of the same omissions, that it seems reasonable to think that they descend from a common ancestor, now lost, which I call O, the progenitor of this line" (Thorne, Woodbine, 1968, p. xvi); MG, British Museum, MS. Add. 24067. XIV cent.; CM, Fitzwilliam Museum, Cambridge, McClean MS. 145 (Formerly Phillipps MS. 8126); CE, Pembroke College, Cambridge, MS. 298. Circ. 1300; OB, Bodleian Library, MS. Bodley 170. Late XIII cent.; MA, British Museum, MS. Add. 11353. Late XIII cent.; and MB, British Museum, MS. Stowe 380. Late XIII cent. (Thorne, Woodbine, 1968).

Significance

Having completed my research, I am aware of two points that might be regarded as academically significant. First, there has been little research on the historical development of contracts from Justinian to the present. I think the research conducted here will give other scholars interested in contracts a comprehensive look at contract development over the course of two millennia.

Second, there is little evidence of research that has identified objective principles of natural law found in contractual matters. I highlighted these as a means of

establishing objective criteria for purposes of contract identification. I believe identification of these principles will be useful as one more method of answering whether disputed documents rise to the level of contracts. Generally, a contract is considered present when it has been determined that a document manifests an offer, acceptance, and consideration. What I have done in this study is give further precision to the meaning of these objective markers by identifying the natural law elements upon which they rest.

Methods Section

Method. The method most widely used in historical-legal research is the case study design. With regard to the case study, research sources recommend that statutes first be consulted along with federal or state constitutions (McMillan, Schumacher, 1997, p. 490). Next, a list of relevant court cases is compiled. Following a completion of appropriate court cases, an analytical scheme is determined so as to precede systematically case by case in determining related legal principles.

The inspiration and general outline of this project began with "the reading of chapter three of the book Ancient Law: its connection with the early history of society and its relation to modern ideas" (Maine, 1906). Reading this particular chapter led me to two primary sources useful to this study: (a) the writings of Aristotle, and (b) the "Corpus Juris Civilis" of the Emperor Justinian.

The remaining primary sources discovered have been obtained through the use of indices and bibliographies from books on the topic of Roman law as well as through key word searches. These books are: Bracton's "Laws and Customs of England" (Thorne, Woodbine, 1968); "The Code of Canon Law" (Coriden, Green, Heintschel,

1985); Azo's "Institutes and the Code" (Bracton, Azo, Maitland, 1895); and St. Thomas' "Summa Theologica" (Pegis, 1945).

In terms of finding relevant cases that apply to the fourth research question, my intent was to use both the descriptive word method, and the topic method. As a basis for the analysis of employment contracts, it seemed reasonable to use the standard teacher's contract issued by the Lincoln Diocesan Education Office to determine whether it fulfilled those principles of natural law found to be relevant to matters of contract law.

Finally, concerning the analysis of the contractual relationship between home and school, it was necessary to obtain all 32 contractual instruments used by the Catholic schools in the Diocese of Lincoln.

Inductive Data Analysis

The kind of inductive data analysis that I used during the course of this study is that of the universal analysis. I believe this is the best means of analysis given the nature of my study.

The universal analysis enables the researcher to generalize after first analyzing many individual facts. My intent was to look at the student handbooks issued by the 32 schools of the Diocese of Lincoln, analyze them, and identify those that do not constitute a contract. In this same line of thinking, I attempted to analyze the standard diocesan teacher contract used in all schools in the Diocese of Lincoln.

Delimitations / Limitations

Delimitations. In this study, the analysis phase was based on natural law principles. The natural law elements of truth, goodness, and unity were the sole

standards used in analyzing the material for this research. The results of an analysis from this standpoint stated whether a contract existed from a natural law perspective, and not civil law.

The analysis which was constructed was used to evaluate only private school contracts. First, the analysis was used to determine the presence of natural law elements in the home and school contract found in the student handbook, and then in the lay teachers contract used in the diocese.

Limitations. This study is limited to those who are interested in the natural law principles of contract law rather than a traditional case law approach. This study will be limited to contract law in private schools, and will have limited applicability to public schools.

Chapter Two

Literature Review

Introduction

My review of literature began with the reading of chapter three of the book "Ancient Law: its connection with the early history of society and its relation to modern ideas" (Maine, 1906). In this chapter titled "Law of Nature and Equity," Henry Maine traces the development of law from the Greek Stoic philosophers, to the Roman Republic, Canon Law, the Code of Justinian, English Common Law, and finally to American law. This particular source gave me a basic framework that guided me as I studied the development of contract law. In reading this chapter, I was able to gain a better understanding of the history of law in the West. It was interesting to learn that in the Roman Republic there was a distinction made between the law of the Roman people, Jus Civilis, and the law for foreigners, Jus Gentium. The law for foreigners, based primarily on natural law principles, later influenced the Code of Justinian, as well as English Equity. Information such as this gave me a basic road map, along with some key names and documents, to navigate through the very large subject of contract law.

Having read the chapter discussed above, I next read an entry from the Encyclopedia Britannica Macropaedia titled, "Evolution on Modern Western Legal Systems." This representation confirmed Maine's outline of the development of law in the West. In the reference section from this source, I located several books that provided extensive additional information regarding Roman law, English Common law, Canon Law, and American law.

One especially enlightening book on Roman contract law is "Roman Private Law Founded on the 'Institutes' of Gaius and Justinian" (Leage, 1906). This book of 429 pages is separated into three parts: The Law Relating to Persons, The Law Relating to Things, and The Law Relating to Actions. The Law Relating to Things is broken into five sections: The Principal Divisions and Kinds of Things, Ownership of Single Items of Tangible Property, Rights Less Than Full Ownership, Universal Succession, and Obligations. In the section on Obligations, there was some useful material in the following subsections: Contracts, Quasi-Contracts, Transfer and Discharge of Contractual Obligations, Delicts, Quasi-Delicts, and Transfer and Discharge of Delictual Obligations.

In the book, "Roman Law in Medieval Europe" (Vinogradoff, 1909), chapter three, "Roman Law in England," discusses the influence that Roman Law had on England. A particular section of this chapter discusses the commentary of Bracton's work, "Laws and Customs of England." In the introduction of this book, Bracton draws on Azo's manuals of the Institutes and of the Code, which treats the Law of Persons, of Things, and of Obligations and Actions, which would include contract issues. It seemed at this point in my study that Bracton's work would serve as a kind of bridge between Roman law and English Common Law. Fortunately, I came across Bracton's commentary, "Laws and Customs of England," at the Law Library. Volume II contained several useful sections: What is the Jus Gentium, What is an Obligation, and How it is Contracted, If a Stipulation is Made Subject to a Condition, Acts as the Objects of Stipulations, The Judicial Stipulation, Of Obligations Which Arise Quasi ex Contractu, and By What Person an Obligation is Acquired.