

## **Lisa BERNSTEIN dans le Master Droit de l'Economie**

### **PRÉSENTATION GÉNÉRALE**

Dear Students,

I write to welcome you to this class on American Contract Law. The course will be American (though not Trumpian) not only in terms of its legal content, but also in terms of the style in which it is taught and the way that it will be graded. The reading material is being provided to you in advance because you need to read it before the course begins given our very condensed/intense time together. The night before each class you might want to briefly review the statutory sections/comments and the cases so your ready for our Socratic discussions of the same.

In case you are interested I attach below a discussion of the Chicago-Style Socratic method written by my late colleague Elizabeth Garrett. The key thing to know is that it is an opportunity for you to sharpen the very skills you will need every day in practice. As a student, I took every chance I could to enter the conversation because right or wrong I always learned from participating. Indeed, a student who answers incorrectly in a Socratic dialogue will often be contributing more to the learning of their peers than the student who gets things right, for the goal is to learn to question yourself so that when sitting alone in your office, you can test your own arguments from multiple angles. In addition to the Socratic method, as is our tradition at Chicago I will also include mini-lectures (ten minutes maximum) at various points. The goal of these is either to refresh your recollection of material from the reading that we need on the table to do some more complex work, or to frame the issues that our conversation is going to address. I will also introduce group problem solving into the mix. This teaching technique, more common still at business schools than law schools, is a way to help lawyers learn to think on their feet and work with groups of peers, something US law firms are increasingly requiring. Along the way we will learn about commercial contracting, outsourcing, negotiation, and the role of social networks in contracting. Come prepared to have fun.

To encourage a lively discussion please do not bring computers to class. If you want to bring your materials on a tablet that is okay, but notes must be taken by hand. At the end of the class I will leave my notes with Regis so that you can read them if you like before doing the final project. I am quite certain that they will be more detailed and clearer than any you might take. Again, come ready not to sit, but to engage, not to absorb but to participate. Join me in getting American about the law—we may have orange cheese, bad coffee, and a president who defies classification, but one thing we do know is how to make learning law lively and fun!

I look forward to meeting you. I teach all over on my vacations for the simple reason that I enjoy teaching and enjoy students and find that the energy of a good engaged class is more relaxing than any beach. So, come and get ready for some Chicago Style law.

### **The Socratic Method (Green Bag Article)**

"It should be one of the functions of a teacher to open vistas before his pupils, showing them the possibility of activities that will be as delightful as they are useful." These words by Bertrand Russell capture what my colleagues and I aspire to do as law professors. Many of us use, at least occasionally, the style of legal pedagogy known as the Socratic Method. Most students have heard of the Socratic Method; some remember Professor Kingsfield from *The Paper Chase* and the terror his students felt every time they entered his Contracts class. Kingsfield's performance is an exaggerated and outdated caricature of the Socratic Method; this essay will provide you a more accurate picture of the interactions among law professors and students that occur in many University of Chicago Law School classrooms.

The day of the relentless Socratic professor who ended every sentence with a question mark is over. University of Chicago professors who rely on the Socratic Method today use participatory learning and discussions with a few students on whom they call (in some classrooms, randomly) to explore very difficult legal concepts and principles. The effort is a cooperative one in which the teacher and students work to understand an issue more completely. The goal is to learn how to analyze legal problems, to reason by analogy, to think critically about one's own arguments and those put forth by others, and to understand the effect of the law on those subject to it. Socratic discourse requires participants to articulate, develop and defend positions that may at first be imperfectly defined intuitions. Lawyers are, first and foremost, problem solvers, and the primary task of law school is to equip our students with the tools they need to solve problems. The law will change over the course of our lifetimes, and the problems we confront will vary tremendously. Law professors cannot provide students with certain answers, but we can help develop reasoning skills that lawyers can apply, regardless of the legal question.

We could lecture students about legal reasoning, but those of us who use the Socratic Method prefer to foster as much active learning as possible. Just as a professor who immediately answers her students' questions loses an opportunity to help them discover the answers on their own, the professor who dispenses legal principles in classroom soliloquies will reduce students' opportunities to engage in independent critical thinking that can lead them to a deeper understanding.

One challenge for law professors is providing an environment of active learning for the students in large classes. A teaching strategy that includes calling on students

without giving them prior notice is the best way I have found to foster critical thinking for all members of such a group. No student is certain before class whether she will be called on to discuss difficult issues or to respond to answers provided by one of her colleagues. She must therefore pay close attention to my discussions with other students so she will be ready to play a meaningful role. Furthermore, the Socratic Method places some responsibility on students to think about the questions silently and participate actively on their own; the element of surprise provides a powerful incentive for them to meet that responsibility. It also encourages students to prepare for class, which will enable them to learn more from the Socratic dialogue that takes place. The objective is to inculcate in students the habit of rigorous and critical analysis of the arguments that they hear, as well as the practice of assessing and revising their own ideas and approaches in light of new information or different reasoning.

My description of the Socratic Method may make it sound eminently reasonable, but I know that many students view the experience with enormous trepidation. Many students are worried about speaking in front of a large group that includes their professor. Speaking in public, whether in the courtroom, before a group of clients or opposing counsel, or in a meeting of lawmakers working to draft a statute, is part of every lawyer's job, so developing the ability to present ideas forcefully and effectively in such contexts is integral to becoming a lawyer. In addition, students are very anxious about making mistakes when they participate in a Socratic dialogue. Making mistakes in class is inevitable and ultimately helpful as we work toward solutions to difficult legal problems. Any professor who uses the Socratic Method has had the experience of getting a "right" answer too early in the class and then facing the challenge of working backward to clarify for other students the process of reaching a solution. We are teaching reasoning skills, and the process of discovering a right answer is often more important than the answer itself. Mistakes-or perhaps, more accurately, tentative steps toward a solution that lead us down unavailing but illuminating paths-are part of learning.

Another reason for the lingering student unease is that the Socratic Method places in high relief the absence of easy answers to legal problems. I do not mean to suggest that there are no easy legal answers; of course, there are. Some statutes are unproblematically clear; some taxpayers face no intractable problems in computing their tax liability. But focusing on the black-letter law or on less challenging legal questions would not long hold the attention of our students or professors. We apply legal reasoning, as well as our policy and value judgments, to questions that lack clear answers and problems that defy simple solutions. In this environment, students can sometimes be frustrated by the uncertainty and superficial indeterminacy. Students' feelings of unease and discomfort may be heightened during the first year, when the Socratic Method is the dominant teaching style, because they are confronting a new vocabulary, unfamiliar logical analysis, and the unusual form of narrative found in appellate court cases. My colleagues and I are

aware of these feelings, and we take them into account during our interactions with our students. But to provide certainty where there is none or to give a neat framework where the law is messy is to teach dishonestly.

The Socratic Method is one of many tools we use to help our students become lawyers. It is not the only method of teaching we use at the University of Chicago Law School; instead we calibrate our teaching techniques to fit our abilities, the nature of the material, time constraints, and other factors. But the Socratic Method is an important part of modern law teaching. Many lawyers will never enter a courtroom as advocates, but they will counsel clients, devise strategies for legal challenges to social institutions like schools or prisons, draft legislation and advise state and federal lawmakers, or run businesses. The Socratic Method provides all students greater confidence about talking to large groups, allows them to develop the ability to argue forcefully and persuasively, and teaches them to think critically. Indeed, I believe that one reason the University of Chicago is known as the place that trains the finest lawyers in America is our faculty's long-standing and continuing commitment to this challenging method of teaching the law.

(This is a somewhat modified version of an essay by Elizabeth Garrett printed in *The Green Bag*. Copyright 1998 by The Green Bag, Inc., reprinted with permission.)