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Professor Edward J. Murphy was Teacher *nulli secundus*, and those who learned from him cherish their good fortune, for of his kind there are few. He taught contract law to every law student at Notre Dame Law School for two generations, and every student recalls the joy and reverence he displayed when teaching—that joy which emanates from experiences of truth and a reverence from the privilege of teaching them. Professor Murphy taught that through contract law the realization of expectations provided by covenants and promises allows the future to become present in economic transactions without loss of order.

When I first arrived at Notre Dame Law School in September 1963 with the anxious anticipation of an entering student, the bulletin board displayed Professor Murphy's assignments for the initial class; we were to read the first fifteen pages of *Contracts Casebook: Cases and Materials on the Law of Contracts and Sales.*[1] The casebook consisted of two soft-bound volumes of photocopied materials, copyrighted that year by Professor Murphy. His course would become legendary, and its value to me is manifested by the fact that my class notes, together with the original photocopied volumes, still inhabit a shelf in my personal library.

"Contract law," Professor Murphy's casebook began, "has deep roots in the past . . . and a mastery of the subject is an absolute prerequisite for progress in other courses."[2] Characterizing the course as the study of the creation, transfer, and termination of contract rights, the casebook draws from the milestone decisions of English and American law and weaves through them the parallel statutory efforts represented by the English Sale of Goods Act (1893), the Uniform Sales Act (1906), the Restatement of Contracts (1932), and the Uniform Commercial Code (1952). Indeed, simultaneously with our study in 1963, the Uniform Commercial Code was being enacted in many states, an event that Professor Murphy considered momentous.

Professor Murphy revered rules governing the enforcement of promises. Quoting from Sir Frederick Pollock, he stated,

> Enforcement of good faith in matters of bargain and promise is among the most important functions of legal justice. It might not be too much to say that, next after keeping the peace and securing property against violence and fraud so that business may be possible, it is the most important.[3]

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1 Edward J. Murphy, Contracts Casebook: Cases and Materials on the Law of Contracts and Sales (1963) (unpublished manuscript, on file with author).

2 *Id.* at iii.

3 *Id.* at 1 (quoting 7 ENCYCLOPAEDIA BRITANNICA 35 (11th ed. 1910)).

Professor Murphy also noted that the whole economic order rests on the presupposition that "promises will be kept" (*pacta sunt servanda*) and that this was universally recognized, from the Codes of Hammurabi and Justinian through the Uniform Commercial Code. Thus, he observed, "The modern who insists 'you gave me your word' or even 'a bargain's a bargain,' is hardly advancing novel doctrine."[4]

It was not without some moral judgment then that Professor Murphy commented in class, with his slight but tender smile, "The only gentlemanly way to beat a crook [one who did not keep his promise] is on a technicality." For Professor Murphy, a promise had sanctity. And while its legal enforceability was rooted in the writ of assumpsit, Professor Murphy was quick to note that promises were also enforced historically in the ecclesiastical Court of Chancery as a court of conscience.

While Professor Murphy believed that the obligation to keep promises draws to some extent on the moral sense of justice, he never became overly sentimental about that; on the contrary, his delight in contract law came from its ability to establish predictability and enforceability in the daily exchanges in the market. Thus, he admired the Law Merchant, which developed in marketplaces to facilitate commerce, because it resolved contractual disputes on the spot—a necessary mechanism for the itinerant merchants. And despite the Law Merchant's spontaneity and informality, "plain justice and good faith, disregard of technicalities and regard for the sole truth of the matter"[5] characterized its development. Thus, while a promise made under the Law Merchant had a moral anchor, its enforcement was effected by pragmatic and economic considerations. For similar reasons, Professor Murphy admired Professor Samuel Williston's work on the Restatement of Contracts and Professor Karl Llewellyn's work on the Uniform Commercial Code, both of which were influenced by the "spirit of equity"[6] from the Law Merchant.

I remember Professor Murphy's classes more vividly than any others. Using the Socratic method, he enthusiastically steered classroom discussions through the issues, allowing students to discover from their own sense of justice that which the law had already long recognized. He would usually begin a discussion by calling for a recitation of the facts from an old English case. "Mr. Gregory, what are the facts in *Raffles v. Wichelhaus*?"[7] Mr. Gregory, who demonstrated why he later graduated first in our class, adequately stated them. The plaintiff agreed to sell and the defendants agreed to buy 125 bales of Surat cotton "to arrive ex 'Peerless' from Bombay" at a price of 17¼ d. per pound. When the ship "Peerless" arrived in Liverpool in December, the defendants refused to accept delivery, maintaining that they had agreed to take delivery from a different ship "Peerless," which arrived from Bombay in October. The plaintiff sued the defendants for breach of contract.

4 *Id.* at 2.

5 *Id.* at 3 (quoting W. MITCHELL, AN ESSAY ON THE EARLY HISTORY OF THE LAW MERCHANT 20 (1904)).

6 *Id.* (quoting MITCHELL, *supra* note 5, at 16).

7 159 Eng. Rep. 375 (Ex. 1864).

The facts stated, Professor Murphy would then ask, "Well, Mr. Gregory, what do you think?" Mr. Gregory, I am sure, responded that because both ships were named "Peerless" and the contract did not specify from which ship the purchase was to be made, the defendants were bound by the contract. "All right," Professor Murphy would tentatively respond, moving about the classroom with the slight smile of one who knew better the difficulties that the problem would raise. He continued, "If both parties knew that there were two different ships 'Peerless' sailing from Bombay, would that make a difference?" The class was then invited to explore the concept of ambiguity and the notion that parole evidence could be admitted to amplify the parties' intent. The plaintiff had the December-arriving "Peerless" in mind, and the defendants the October-arriving ship. Professor Murphy then moved into the issue of the case, whether a contract depends upon a subjective meeting of the minds or "the meaning which the law imputes to the utterances" of the parties according to what a "normally constituted person would have understood them to mean."[8] He asked, "Well, are contracts dependent on what the parties actually intended or on what the law imputes to their words?" After a lengthy discussion on the objective versus the subjective theory of contracts, he left the issue unresolved.

Professor Murphy had skillfully developed through pointed questions and class responses an understanding of one of the core questions about the enforceability of contracts. The question, and not any answer to it, was the subject of the lesson. To punctuate that notion, he moved to another case decided on a slightly different philosophical approach. "Mr. Krause, what are the facts of *Lucy v. Zehmer*?"[9] While the discussion of that case moved the class toward a more objective theory of contracts, many students, including myself, were wondering, "What is the right answer?" The thirst for an answer was precisely what Professor Murphy was developing, but he would not let that appetite be sated by the view of one student, one professor, or one judge. The legal inquiry could not come to rest so easily.

His unrevealed skill of identifying the great issues, placing them on the table, examining them, and moving on introduced a process that was at first difficult for students new to the law to accept. While we learned, unwittingly, the attributes of the problem and the nature of the judgment that had to be applied, Professor Murphy never highlighted any resolution of the issues. Legal analysis, not memorizing legal rules, was the skill that every student of Professor Murphy's classes developed, and every student thereafter brought that newly acquired legal "maturity" to bear on complex problems presented to the students in studying, teaching, practicing, and judging the law.

Professor Murphy's students always remain his students, and the trails of analysis explored in his classroom became the permanent property of every student. His classes provided foundation blocks that yet instruct me, thirty years later.

8 New York Trust Co. v. Island Oil & Transp. Corp., 34 F.2d 655, 656 (2d Cir. 1929) (Hand, J.).
9 84 S.E.2d 516 (Va. 1954).

My tribute to Professor Murphy would not be complete without sharing my remembrance of his warm friendship and individualized caring. It was shown not just to me, but to all students. He invited us all to his home, where we sang around the piano while he played. And as we moved on to other classes and, after graduation, to other places, we continued to receive occasional inquiries from Professor Murphy about our well being. We knew that these inquiries were sincere; he was the Teacher, and we were still his students.

While the ivy covered law school building of university gothic stands as an outward and physical manifestation of the study of law at Notre Dame, Professor Murphy's memory stands as its inward and spiritual light. Speaking for all of his students, we loved him and we will miss him.