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ANEXOS: (Cartas de Wesley N. Hohfeld para Roscoe Pound – 1910/1918³⁶⁸)

Letter 1:

From Hohfeld to Pound

Date: 09/26/1910

Leland Stanford Junior University

Dear friend Pound:

In coming to the bottom of the pile of “Evidence” books, I find of the Farland alleged to be the subject to your exclusive jurisdiction); and so I enclose the said book herewith. As a necessary adjunct I am sending also a copy of the question-paper.

The work here at Stanford, though joined very closely to that of Chicago, has proved very pleasant; and the relatively cool, though summer days of California seem, as of old, to be the greatest possible rewards for the prolongation of ones existence! When you read that you will doubtless recollect that I am a “native” son or as Dean Richards used to delight in remarking, a “natural” son of the state.

With kindest regards of both Ms. Pound and yourself and all good wishes for your first Harvard year, just to begin, I remain,

Cordially yours,
Wesley N. Hohfeld

³⁶⁸ Transcrições dos manuscritos de Wesley N. Hohfeld disponibilizadas pela *Harvard Law School Library: Manuscript Division*. Cartas também retiradas do anexo do livro italiano LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

Letter 2:

From Hohfeld to Pound

Date: 10/30/1910

Leland Stanford Junior University

Dear Pound:

When I wrote some weeks ago I had no intention of imposing on you, quasi-contractually or otherwise, any duty of making reply; but, all the more for that reason, yours of the 2nd gave me very genuine pleasure, reminding me vividly of the good fellowship of the summer while under the spell of the many pleasant remembrances that crow upon me, I shall open my response.

First of all, let me thank you for your thoughtfulness and kindness in suggesting my name to Judge Sharp. It is the last thing in the world that I have ever thought of doing to prepare such a paper for such an occasion and I shall almost hope that the *lene tormentum*³⁶⁹ of an invitation will not be applied to me. But, if such prove to be the case, I shall try to decide in favor of acceptance – because that will be the best way of sharing my appreciation of your courtesy.

It is a very great pleasure to infer, as I do, that you are enjoying Harvard to the fullest; it must be a great inspiration to have such a fine body of men to work for – not to mention the stimulus that comes from having such fine associates on the faculty. Shortly before receiving your letter, I had heard of the extraordinary impression that you have already made quite in accord with my most pleasant and confident anticipations. In Evidence and Trusts I have six men who took the first year at Stanford and their at Harvard. If is they that have made due report to me, as they have gathered the news from correspondents still at Harvard.

These six men, by the way – always good, but better still since their year in the East – constitute the backbone of the best two classes I have had at Stanford; and it goes without saying that the joy of teaching is just so much enhanced.

³⁶⁹ Em latim *tormenta leve, gentil*.

It is good to know that you have chosen such a fine place as Belmont for your residence. If you are the somewhat of a neighbor to dear “SammyWilliston”, so much the better.

Kindly remember me to Ms. Pound and believe me

Sincerely yours,

Wesley N. Hohfeld

P.S. Sometime ago received a copy of Kale’s brief in that very important perpetuity case: perhaps you did also. It seems to me an exceptionally lucid and able argument and I hope he will win!

Letter 3:

From Hohfeld to Pound

Date: 12/26/1910

Leland Stanford Junior University

Dear friend Pound:

The novelty of "Pound's Rep." was equaled only by the great enjoyment which it gave to my friends and myself. I expected to acknowledge receipt and to express appreciation at once; but under the pressure of daily events about a month has sped by; and how the only compensation intrinsic to the delay consists in the fact that I may at this moment pen these lines by way of Christmas greeting! I assure you that this is to me a very great pleasure.

Referring once again to the ancient instance in quasi-contracts, let me say that I have just enclosed it in a letter that I have owed to Nathan Abbott for over a month. He will derive very genuine pleasure from it, as he is fond of the old books and very familiar with their contents.

I heard indirectly not long ago that Kales had been asked to give some work at the Univ. of Calif. summer session of 1911. Though I haven't seen Boke this year (as he is in leave of absence), I recollect that he met Kales at the A.B.A. a couple of years ago and was very much impressed. Then too, they are contemplating some important changes there, to take place before long; and so I infer they wish to look Kales over for a permanent place. All this in surmise to me, as I haven't been able to get into touch with my good friend Boke, who is the mainstay of the Berkeley faculty; but you may recall that Kales was in the list that I long ago suggested to Boke as a nucleus for a "real, live, law faculty". I hope this sunrise of mine is correct though I apprehend that Harvard can and will get there first! Little does Berkeley know how well-rooted Kales now is in Illinois practice, and how difficult it would be to attract him.

It goes without saying that I noticed by the papers the nomination of Judge Mack, as U.S. Circuit Judge. I guess this opens up a great opportunity for him; and from your very complementary reference to his ability and general fitness, I infer that the country is to be congratulated by his selection.

I had hoped to do a little periodical writing some time during the year; but all this has thus far been crowded but by the concentration of my efforts on *In re Spreckels*. Perhaps you will be somewhat interested in the opinion of Judge Coffey on the question of advancements – *res nova* in California; so I send you one of the copies recently printed up if the decision had been adverse to us, it would have completely annihilated the fruits of the first decision declaring the trust provision invalid. Both decisions are now on appeal and we are engaged on “reply” briefs.

My best wishes for the New Year to yourself and Mrs. Pound. I remain,

Cordially yours,
Wesley N. Hohfeld

Letter 4:

From Hohfeld to Pound

Date: 01/15/1911

Leland Stanford Junior University

Dear Pound:

Yours of the 2nd reached me in due course, and it goes without saying that I was intensively interested in the various items so kindly communicated. Though I am in general a poor hand at making prompt reply to my friends letters, I certainly feel an irresistible impulse to express my appreciation of you generous interest and activity.

I feel honored to think that you regarded me as a worthy prospective member to suggest Kirchwey in relating to the jurisprudence Verein. I can think of nothing that could help me more at Columbia than your expressions of confidence. My good friend, Abbott, wrote a few weeks ago that they had about fifty students more than those of the past year; so it seems that they are prospering there.

Under all the circumstances, I am not surprised at what you say concerning the situation elsewhere! I hope they were able to secure as good a man as Cook. If the man you mention is called, that will leave a \$ 5000 vacancy, will it not? That looks pretty good alongside of my \$ 3300.

A letter from Richards to Woodward mentioned that Scott was about to accept the position of Interstate Commerce Counsel for the Burlington road. So it would seem that the law school changes are beginning very early this year.

Nothing contained in your letter gave me more genuine delight than the news of the salary increase and organization of the club. On the one hand, a solid recognition from colleagues, and on the other the highest honor that the students can bestow! As I had prophesied your call to Harvard, so I have, since the event, taken pleasure in the thought that Harvard made the very most of her opportunities at a very critical epoch. "Das was gut" (German: That is good).

I think I failed to mention in my last letter that some weeks ago Mason asked me to contribute part of the volumes on equity for the American Case Book series. While, after much hesitating,, I originally told him I would consider the matter further, I now finally decided not to undertake the work. All things

considered, I am inclined to think you will approve of my conclusion in the matter.

In odd moments I am still doing all I can to strengthen the argument as to “the potential trust to divide and convey realty”. Starting on the subject of personalty, as you will remember, we say (1) I was the trust to hold for the life of the widow, and at her death to divide the Estate (realty and personalty composing a single blended fund) into three equal parts, etc., being void as to the realty is void also as to the personalty, the trust bring single and indivisible – for various reasons; (2) that, assuming we are wrong on that point, and that, prima facie at least, the trust can operate upon the personalty alone despite the legal impossibility of its operation as to the realty, yet this surviving trust of personalty is bad because during the life of the widow the trustees have a single express power to invest in anything they please, including, therefore, realty. If, therefore, the decree of distribution should give the personalty to the trustees pursuant to the actual terms of the will, the latter would be extinguished and superseded by the former, and thus the decree would “immortalize” the potential trust to divide and convey realty beyond the possibility of subsequent collateral attack. If, on the other hand, the other side contend that the decree can be so framed as to give the trustees the power to reinvest only in personalty, this involves the question of separability or “divisability” of the single power given by the will.

Analytically, this suggested contention would seem to involve the proposition that some sort of cy pres (Latin: means “as near as possible”) doctrine can be invoked to bring about a valid private trust not an express (intentional trust) but, it would seem a “constructive” trust, something different from the one actually intended by the testator. [Incidentally, it seems to me that nothing short of a cy pres doctrine will sustain the construction as to the prima facie separability of the realty and personalty, as assumed for present purposes under this second head].

Of course I am preparing an attack on this unwarranted extension of the cy pres doctrine (thought naturally the other side doesn’t realize that this is what their argument boils down to). But I am also striving to get the closest possible analogies. The best one thus far thought of (apart from the Mortmain case, made useless by that unintelligible decision in 1896 – Ch. – In re Hamilton) consists in the proposition: “If a power can be exercised at a time beyond the limits of the

rule against perpetuities it is bad”. (Gray, 2nd Ed. P. 376). On p. 386, Professor Gray refers to Ware S. Polhill (11 Ves³⁷⁰. 257), wherein Lord Eldon said: “Upon further consideration as to the leasehold state, I think that was the power of sale is void; for it may travel through minorities for two centuries; and, if it is bad to the extent in which it is given, you cannot model it to make it good. I think that the soundest ground is, that the power is bad”.

Other cases support this doctrine as to powers of sale and other powers, in so far as they, by their intrinsic unlimited duration may be exercised at too remote a time. So far, so good. But here is the problem about which I have begun to puzzle, on page 399, Professor Gray says: “A power which cannot be exercised beyond on limits of the rule against perpetuities is not rendered bad by the fact that within its terms an appointment could be made which would be too remote”. I intend to examine the cases cited in note 1. But in the meanwhile, since Professor Gray seems to approve the general doctrine of inseparability of powers (p. 381), I am struggling to discover how the proposition last quoted can be strictly reconciled. If a power falls as a totality when, by its intrinsic nature, it permits of being exercised at too remote a period, why isn’t it bad whenever by reason of its intrinsic nature it involves the possible creation of unlawful limitation as well as lawful ones? Unless I succeed in differentiating this matter from the doctrine of Ware vs Polhill (above referred to), it might be dangerous to use the latter doctrine by way of analogy. The other side might come back with Professor Gray’s proposition on p. 399.

Of course the latter might possibly go, in some cases, on the notion that the testator intended only a lawful execution within the limits of the former granted. But that argument would go too far. Practically there is this distinction, that the testator as settlor might very easily define the duration of his power, as such, but not the character of the limitations permitted to be created.

Well, I must not weary you further. I have mentioned this problem to you in this loose wandering way, much as I would were it possible for us to have one of our good old steins at Creators! Or, of not such, then one of our good old “peripatetic discussions”.

Best kindest regards to yourself and Mrs. Pound.

³⁷⁰ A set of English Chancery reports for the early 19th Century

I remain,
Cordially yours,
W. de Campo Alto (_____ de Palo Alto)

Ps (material written in the margin of page 7 and material written crosswise on page 8): On the questions of powers and separability etc., there is a mighty interesting case in 1910 – Chancery Repts. – the decision being as it seems to me, inconsistent with the general rule against splitting the possible eventualities of a testators scheme.

By the way, did you notice the Calif case of Thomas vs Wentworth Hotel Co. (1910) 110 Pac., noticed in the January issue of the Harv. L. Rev? This case, though agreeing with the result reached in my series of articles on stockholder's liability, is criticize (in rather inadequate fashion) by the Harvard Law Rev. It so happens that Justice Sloss, who wrote the opinion, is a Harvard law "grad" of 1893.

Please excuse my writing, as it is now pretty late and my pen almost refuses to operate.

Letter 5:

From Hohfeld to Pound

Date: 04/19/1911

Leland Stanford Junior University

Dear Pound:

Yesterday I had the pleasure of sending you a copy of our brief on the Spreckels case, and I hope you may receive it in due course.

About February 1st the other side began to hurry us, though not a line of our brief had yet been written. Then too, Mr. Dunne was in Europe and Mr. Morrison too busy to do anything. So the job of replying to the three separate briefs put in by the attorneys for appellants naturally devolved on me. Even with great pressure, we managed to get extensions down to April 3rd only. So you can judge of the rush and pressure with which I entered in the task. From February 1st till April 3rd it was a case of acute concentration with me; so I hope you will pardon all blemishes that you are sure to discover.

You will notice my solicitude in formulating and defending the three general principles of construction and four rules of indivisibility. My anxiety is due to a very reactionary and erroneous decision reached by our Supreme Court in Estate of Haberle (1908) 153 Cal. 275 (See brief pp. 352-357), - the chief authority relied on by the other side. In that case, there was clearly a trust to convey; but the Supreme Court tortured the language into a direct devise - with a *per curiam* opinion at that. The court has always been hostile to finding will invalid as creating trusts to convey.

Probably you would find (as of greatest novelty and interest in comparison with the other matters in the brief) the questions of indivisibility (pp. 421- 533) and the question of potential trust to convey (pp. 533-559). As I see the matter, I think the court will give us the personalty on the ground of "indivisibility" - more especially by virtue of the point discussed on pages 488-530. So I'm afraid that we won't get any decision on the "potential" trust that we discussed last summer. Both points are of first impression.

I'm expecting to come out fine in regard to the matter of compensation. I expect to ask for \$ 15,000 win or lose; \$ 10,000 more if we win the realty; \$ 10,000 additional to that if we get both realty and personalty; and still another \$

10,000 if we win our half a million property in Hawaii. The Hawaiian property will of course involve separate litigation in the Hawaiian courts; and our only chance of winning is on the point of “indivisibility” argued at pages 488-530. On this ground I think we have a good fighting chance. That is, I am contend that the testator’s purpose was that the totality of his properties (including those in Hawaii as well as those in California) should be divided *en masse*. (Op. the words “wherever situate” of the will) But if the single trust to divide can’t operate as to any of the realty located in California or as to any of the personalty (wherever “located”), then the trust is mutilated irrevocably. And why? Because the testator didn’t intend that his trustees should divide the Hawaiian property (as a separate entity) into three equal parts. Or, putting it in another way; when once you remove from the operation of the single trust the California realty and all the personalty, each beneficiary’s share of the Hawaiian property (that is the share that the beneficiary would have gotten by the discretionary division of the trustees) becomes an “uncertain and indefinable residue”.

Well, enough of the case. I continue to enjoy my regular work to the fullest,- and I find the law a more interesting subject of study each and every day. I only wish that I had the opportunity for more discussion of the interesting cases. I miss the good talks that you and Kales and I used to have last summer.

I am sure you will be pleased to learn that Dr. Jordan has put my salary up from \$3,300 to \$3,800, with the promise of \$4,000 for next year. So I have been very fortunate indeed in that regard. In fact, with my salary at this figure, I shall never again have occasion to consider the matter of salary a pressing question. With what I can make the consultation practice from now on, I am quite content for all purposes. What a great satisfaction it is to have the financial question put out of view so that one can concentrate his attention on the more pleasant phases of the professions.

How goes everything with you? I think very, very often of you and the good work you are doing; and may I add, I have over and over again heard the great impression you have made in your new field. You see, some of my students get “reports” from friends of theirs at Harvard.

I hear that Lindauer (our former student here at Stanford) had to quit temporarily on account of ill health. It’s too bad; because he was an exceptionally good student.

With all good wishes.

Sincerely yours,

Wesley N. Hohfeld

Letter 6³⁷¹:

From Hohfeld to Pound

Date: 8/18/1911

Box 81, Palo Alto. California

Dear friend Pound:

It seems a long time indeed since our last exchange of a few words of friendship. I should have written ere this sure that I fully expected to get to the East and to your particular part thereof at least by the meeting of the American Bar Association. American Law Schools Association, etc. As it is, however, I find that this will be impossible; and so what better than to choose this day – just three years since our great dinner in Bismarck Garden (yourself, Richard, Keedy, Woodward and myself) – to send a greeting to you.

I noticed your article in Harvard Law Review last time and read it with special interest, as of course I remembered that you were making a beginning on the subject when I made so many of my pleasant calls at your house last summer. I need hardly add that I found your presentation very illuminating and suggestive; and I shall look forward with pleasure to the appearance of the later chapters. The various volumes that you so kindly presented to me last summer have a proud place on my shelves of jurisprudence, including your “Collection of Legal Essays”.

Kales was out here –i.e. at Berkeley – for six weeks, the same refreshing companion and scholar of old. Berkeley is on *one* side of the bay; forty minutes from San Francisco; and Palo Alto on the other side, fifty minutes from the metropolis. So you see we were able to have a few good times together, including a day in Palo Alto, a day in Berkeley and a good celebration at an Italian restaurant and a vaudeville then in San Francisco. When I was in Berkeley I had the pleasure of visiting his course on “future interests”. It was the first time that I had ever visited any of his classes, and I observed at once his masterful understanding and grasp of the subject. While, in later years, I have managed to

³⁷¹ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

struggle through some of the difficult parts of real property law, I am sure that I should find a course under Kales a great treat.

By the way, on the very day that I was in Berkeley, while finding my way to the room where Kales was lecturing, I met Professor Rieber, Dean of the Berkeley Summer School, and a good friend of mine. He asked me to suggest another “like Kales” for next year; and I immediately ventured to tell him to be sure and have you out here next summer – if only could get you to come. I think you would find it a very pleasant vacation jaunt for you: ask Kales!

I am especially anxious to have you come to this coast; for about six months ago already I had the temerity to tell Boke – the main man at the law faculty of the University of California – that you were one man in all the country that they should endeavor to get for their dean when their funds become available and their reorganization takes place. You see, Boke asked me for my opinion; for just about that time the authorities of the university had announced a gift by Mrs. Boalt of \$ 25,000 “to endow a dean”. It was this elderly lady that gave the \$ 150,000 new law building to the University of California; and a veritable dandy it certainly is. The latest gift – that of \$ 250,000 has been made, already, on a revocable trust, - to become absolute and available in favor of the law school, with the old lady’s death. Of course I told Boke that it would be difficult to draw you away from Harvard and perhaps impossible. But they will be able to pay a handsome salary; and more than that, the opportunity for organization and development on this coast is superb. If only you will get out here some summer, perhaps we should have a chance to tempt you permanently. I have also had occasion to talk on the same matter with Professor McMurray and Kidd of the California Faculty. You see I have an interest in the California School, as I happen to be a college alumnus of the U.C.: and I know all of their lawmen better even than I do my Stanford colleagues. Boke mentioned to me that he had been considering Gifford, Pro-dean of the Fodham University Law School.

I have *sabbatical* leave of absence for next year on half salary, and you may be sure I shall have a fine time off. I shall take part of the year for foreign travel and the rest for some legal work already planned – probably a casebook of some kind – that is, one to be published on my own account. The West people kindly asked me to take hold of their Equity Casebook along with Cook; but the pressure of outside work was then so heavy that I declined, with of course

considerable regret that I couldn't take the opportunity and honor of collaboration with such a good man as Cook.

I shall not be able to start on every foreign travel for a couple of months; but when I get started I should certainly pass through Cambridge and hope to see you and Mrs. Pound once again.

If ever your pressing duties at Harvard and your numerous outside activities permit, send on a line to your old "summer pal".

With all good wishes, believe me,

Cordially yours,
Wesley N. Hohfeld

Our Supreme Court has never had one case "in its bosom" for three and a half months; but nobody has been struck a heavy blow as yet. I am hopeful, but the other side seem to be also!

Letter 7:

From Hohfeld to Pound

Date: 03/15/1912

715 Bush St., San Francisco, California

Dear Pound,

It is good to hear from you once again! Your letter was forwarded to me at this place; but I had been out of town for a few days – you know I am off regular duty –, and so I receive your kind invitation considerably later than otherwise.

Since then I have been trying to find a way of harmonizing participation in the meeting with my plan for an European trip shortly to be entered upon; and I have struggled the harder to do so because of the invitation having come from none other than yourself and because of my appreciation of your thoughtfulness. But, much to my regret, I find it impossible. I expect to leave here very shortly indeed, and my time will be crowded to my limit much some legal work and some other matters pressing upon me.

May I, however, make a suggestion? Cook is the man for you! I saw a great deal of him during the fall quarter just closed: indeed, we were daily “companions-in-law”, and I knew that he is in full sympathy with my own views as the importance of the various “jurisprudential” phases of the law, and the “practical” value that they have for professional study and teaching. He is an exceptionally strong man in every way, and he has a very genuine enthusiasm for the deeper analysis of legal problems commonly dealt with in works an “analytical jurisprudence”? He is a very clear thinker. Knowing that Cook can do the job far better than myself, I feel somewhat less grieved than otherwise at my own inability to participate.

Though very busy, I am for the present enjoying the change from the same regular academic work; but nothing would ever tempt me to withdraw permanently from the latter.

With best regards to yourself and Mrs. Pound, I remain

Cordially yours,

Wesley N. Hohfeld

P.S. I hope that the great pressure of your regular work – great I know it to be – will not prevent you from remembering me again with a letter or two.

Letter 8³⁷²:

From Hohfeld to Pound

Date: 9/24/1912

Stanford University, Cal.

Dear friend Pound:

It is just three weeks since I arrived home, after a pleasant three months abroad; and, now that I am well settled once again, I am trying to answer, one by one, the various letters that I found awaiting me on my return.

Yours of July 16 constitutes one of the latter, for it was not forwarded to me while I was in Europe. Evidently my brother, who was handling my affairs, thought that, as I was going about rather rapidly from place to place, it would have been in danger of getting lost entirely. So with this explanation, permit me to extend my belated thanks for your courtesy and kindness in sending me in my name to lead the discussion of your law association address. It is needless to say that, had I been present at the meeting, I should have considered it a special honor to be chosen to lead a discussion of “the President’s address”.

Though, of course, I’ve not seen the report of your address, I am sure that it has struck the right note as regards the future development of the common law in the United States, and the demands concomitantly made upon law teaching in university law schools. In fact, if I may be permitted to say so, I agree heartedly with every word that you had already uttered, in relation to the same important matters in your “inaugural address” (now in my volume entitled “Legal Essays” by Pound).

Surely university law schools must take the head in endeavoring to develop a *system* as distinguished from the present unwieldy and imperfect mass of case law; and to accomplish this purpose it would seem necessary that the law schools worthy of the name begin by building up a body of men who shall be real jurists comparable to those of Germany – not merely a body of money-making lawyers with wits sharpened by mere dialectic based upon their acute and subtle

³⁷² Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

distinguishing of the judicial instances to be found in the Harvard case-books. As brother Wigmore has pointed out in the Green Bag³⁷³, we at present are hardly in a position to work out and ideal *corpus juris* – because of this very want of a sufficiently large body of men trained, in reasonable measure, from the historical, systematic, comparative and analytical points of view. How I do wish that I could have been present to do what I could in backing up the thesis of your address!

I think the importance of your paper all the greater because certain law schools (such as Chicago) and certain law teachers known to yourself as well as to me are so inhospitable to all efforts to make improvements in the direction indicated. Our good friend Whitter (though of course he himself spends much of his time, in his course of contracts, in expounding the various theories of consideration – including his own, which, by the way, both Cook and myself consider wholly untenable in the light of a little jurisprudential analysis -) even ventured last fall to criticize me for laying too much stress, in my courses, on “jurisprudential” analysis. Yet I am sure that *the better* men among my Chicago students – despite the hostile and open antagonism of the faculty to everything savoring of analytical jurisprudence – were very much interested in the (more carefully) analytical point of view that I always sought to emphasize. And I feel sure that, in the course of a somewhat more adequate interval of time (as distinguished from a single quarter) every student in the class would, in connection with the totality of his law studies and work, have come to see the genuine “practical” importance of the jurisprudential analysis that I interwove with the discussion of the concrete legal problems presented by the cases.

I should hardly venture to express such confidence in the real “*practical*” value of such work, were I not writing for friendly ears and were it not that I had been so steadily confirmed and encouraged by all my Stanford students and alumni of the last seven years. And knowing your genuine interest in the matter, and the impossibility of your misconstruing my purpose. I venture to enclose a recent letter from one of the best of our J.D. class of 1911. The writer, a Harvard

³⁷³ Green Bag era o nome de uma revista jurídica muito conhecida em Boston na época. Tinha esse nome, pois os advogados geralmente usavam uma bolsa verde para carregar seus documentos.

A.B. of the class of 1905, was a student of mine for three years. (*May I ask you kindly to return this letter after your perusal thereof*).

I am glad that you put Cook on your program, in accordance with the suggestion contained in my last letter to you. I have not seen any report of his address but I should probably be in entire sympathy with it. For I note from the title, “The Place of Equity in the Legal System”, that he seems to have covered about the same ground as that represented by the first part of my own *equity* syllabus, a copy of which I gave you in 1910, when I was using it at Chicago. I should thus judge that Cook’s paper would harmonize, by concrete example and illustration, one might almost say, with your own main thesis. As surely, in this day and generation, there seems no good reason why “*the law*” and “*the equity*” relating to such subjects as contracts, quasi-contracts, torts, mortgages, procedure, etc., should be kept apart, with at least *formal* conflicts and occasional circuitry of operation.

Cook is a mighty good man, in my judgment, easily the best of the men now at the University of Chicago Law School. He and I were almost daily companions last fall; and, as you may well imagine, we covered many branches of the law in our discussions “between the library stacks” and at the lunch table. So I had an unusually good opportunity to judge of his unusual clearness and depth of thought, the great scope of his legal information, and his great ability as a teacher. If you need a man at Harvard, why don’t you seize up on such a genuine opportunity as this? How I wish we had money enough to draw him to Stanford! One of my present third year students, Warlow by name, who had his first year at Stanford and his second at Harvard has spoken in the very highest terms of the work that he had, and of you. He is a solid, though not brilliant fellow. It is always a pleasure to me to hear of the good things you are doing on the “Supreme Bench of Juridical Education”.

Probably you know that Huberich has resigned in order to engage permanently in law practice in Berlin. He is doing very well, as I know from a week’s visit with him on the other side. His place will not be filled until the opening of the second semester; and I am hoping that by the time we shall have secured a good man. The difficulty will of course be in the fact that in the first instance the university will not offer more than \$ 4,000, the amount that Cathcart

and I now receive, though I think the authorities would, under pressure, go as high as \$ 4,500 or, possibly for an exception man, \$ 5,000.

Do you think of a good man? I should be very glad to have some suggestions from you: as the appointment will be dictated by the law faculty as a whole, not by any one man. I have been thinking, in this connection of Kocourek. Do you think he would consider going fully into law teaching, and do you believe he would be successful in the work? Possibly you may know something definite as to the character of his work at Northwestern.

Of course I am familiar with his edition o Gareis; and I have also read his introduction to Miraglia. He has an excellent style, it seems to me; and also a very subtle mind.

I hope I have not wearied you with such a long letter, and that I may have the pleasure of hearing from you before long.

With all good wishes, believe me.

Very sincerely yours,
Hohfeld

Letter 9:

From Hohfeld to Pound

Date: 10/28/1912

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound:

I am glad that you are distributing into parts your performance of the “said” quasi-contractual (though, as the defendant claims, non-customary) duty of making reply to my own poor letter of recent date; for thus my own pleasure is measurably increased, and I am enabled always to be in pleasant expectation and anticipation as of the next installment. So, you see, I’m going to take you at your word in relation to the letter yet to come!

In the meanwhile, however, I want to thank you much cordially for your prompt and adequate reply to my inquiry concerning A.K., and also for your full statement concerning the other K. The former has been receiving careful consideration out here; and in reply to an inquiry from us Wigmore has written of him in unqualified terms of commendation and approval. Yet I know not how things will come out; for several other good men have been promently considered, including, as you may have heard, Monnett of Oklahoma.

He has also suggested to us E.R. James, now of Wisconsin, and Judge McClain, who I understand was not renominated for the bench, owing of course to the complications in the Republican ranks. I guess you know James, do you not? – for I believe he has the brand of S.J.D. from Harvard.

I have just been reading your address on “taught law” with keen interest and enjoyment; and it seems to me a pity that someone was not present to endorse and emphasize some of the good and telling points that you make. The whole meeting must have been very entertaining and profitable.

With all good wishes, believe me

Sincerely yours

Wesley N. Hohfeld

By the way, pursuant to a suggestion that you made nearly a year ago, I recently read Fisher’s Life of Maitland and found it a very entertaining book. As you have said, the “beroa de trampagio” are particularly delightful. What a profound and honest student he was, and what a pity that such a man had to

struggle constantly against a disease which, while trying and exacting, would never be suspected from his, gay and attractive style of thought and writing.

Letter 10:

From Hohfeld to Pound

Date: 11/21/1912

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound,

Once again I find myself engaged in the pleasurable duty of thanking you for your kind letter concerning Eldon R. James. You have been more than generous in helping us with your expressions of opinion concerning some of the men under consideration; and I believe that your advice has helped us greatly toward a wise choice.

Just now, (in confidence, of course, since meeting definite has been done as yet) things point to our choice of James. His experience in practice, his long service as a teacher, and his more recent study at Harvard seem to make a valuable combination of qualifications for our vacancy; and from the beginning – especially since your own high words of commentation – I have been favorably impressed. I asked Woodward to write to you.

Did you know of Whittier's serious illness? He is flat in his back in Sierra Madre, Calif., suffering from lung trouble. Hall wrote us a letter suggesting Whittier for our place at Stanford. Too bad that he should have such poor luck as regards health; and of course it must be a source of great inconvenience for Chicago.

I gather from what has been said back here that Huston is spending his sabbatical year under you at Harvard. He is a great chum of Woodward, and a man of very pleasant address.

The last number of the "legal bibliography" of the Boston Book Company announces the "History and Development of the Common Law" by one, Pound! Is that a new edition of your "History and System of the Common Law". I have often dipped into that, and have felt that the volume deserved a wider notice and more extensive uses by law students. The selections are as entertaining as they are instructive.

And say, aren't these first two volumes of the Continental Hist-Series beauties? Some of us are under great obligations to the various committees that

have attributed the various series beginning much to select essays in Anglo – American Legal History.

With all good wishes, believe me,

Sincerely yours,
Wesley N. Hohfeld

Letter 11³⁷⁴:

From Hohfeld to Pound

Date: 2/25/1913

Stanford University, Cal.

Dear friend Pound:

Your recent reprints of articles in the American Journal of Sociology, the Harvard Law Review and the Proceedings of the Association of American Law Schools have all been received; and I wish to thank you for putting me so generously on your “mailing list”. As you know, I have a “volume first” of “Legal Essays by Pound”; and these last contributions are to be the nucleus for “volume second”. But, in that very connection, I may, I fear, seem to be selfish when I have said that I shall not be quite satisfied until I have secured reprints of some of your other articles and addresses that properly belong to this second volume.

The Law and the People, Democracy and the Common Law, Theories of Law, The Scope and Purpose of Sociological Jurisprudence, etc – all these I fail, regretfully, to find in my collection; and, if you happen to have any reprint thereof, I hope to be yet favored by copies.

I know that some of these contributions will reappear in your forthcoming book. But “superfluity will not vitiate”.

In this same connection – as regards “vol.1”, I miss your *Common Law and Legislation. The Decadence of Equity*, and *Spurious Interpretation*. Perhaps you have no extra copies left, but if you should ever run across any such, I should much appreciate being favored. If not, I shall send to the review publishers for “single numbers” so as to be able to embody these essays in my bound collections.

I have enjoyed reading your many recent utterances on both the “theoretical” and the “practical” phases of the law; and I know through a special interest what you say at p. 338 of the American Journal of Sociology (volume XVIII) as to “liability without fault”. I have always believed in the doctrine of *Fletcher v. Rylands*, and I think that doctrine should be extended greatly in the

³⁷⁴ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

law of torts, - even beyond the common statutory forms of employer's liability and workmen's compensation. And until we have a complete and satisfactory extension of the idea that he who enjoys the economic and other advantages of a given activity or agency should bear the losses incident thereto (even though without blameworthiness) we should at least, in common justice, *split* the loss between the parties involved.

But while I can thus venture to "commend" (!) the position above referred to (in the American Journal of Sociology). I am at a loss to understand why, in your "Theories of Law", you have failed to bring your treatment down to date by including that recent *magnum opus*, *What is the Law?* (Michigan Law Review for November)! As far as I can gather from this Michigan article (not free from obscurity), all *previous* writers on law have been in *profound* and *egregious* error! Still, as against this, did you observe Spencer's comment in the last issue of the Green Bag – *Jurisprudence not an Objective Science?* It seems to me that he (Spencer) took the Michigan Law Review article somewhat too seriously; but that, in its general tendency, his criticism was correct.

Beginning with next year, I am to have "conflict of laws" as a course alternating with "specific performance" etc.; and I am looking forward to this subject with great interest – partly, of course, it is so intimately related to general jurisprudence and the great problems of legal analysis.

I marvel at your capacity for such generous output of good work; and the example of men like yourself and Wigmore are very discouraging to me, with the very, very limited showing that I have been able thus far to make. But I am working on steadily – with many interesting projects for gradual accomplishment; and before very long I hope to put out something that may not be altogether without usefulness³⁷⁵.

With all good wishes, believe me.

Sincerely yours,

Hohfeld

³⁷⁵ Refere-se a seu principal artigo: HOHFELD, Wesley N.. *Some fundamental legal conceptions as applied in judicial reasoning* em The Yale Law Journal, 1913, vol. 23, nº. 1, pp.16-59.

Letter 12³⁷⁶:

From Hohfeld to Pound

Date: 5/20/1913

627 Forest Ave., Palo Alto, California

Dear Pound:

It is some weeks since you kindly sent me copies of your more recent articles, more especially “The Administration of Justice in American Cities” and “The Organization of Courts”. The present letter will serve as a sincere, though belated expression of my thanus for your continued courtesy.

The lessons that you are teaching by your timely and widespread articles will, I am sure, have a profound, though gradual, influence on legal development in this country. The force of fundamental ideas, fortunately enough, continues to be tremendous: and I am confident that you will have a very stimulating and far-reaching effect-awakening all branches of the legal profession to the need of a broader and more liberal, and a more flexible consideration of our legal system and its many concrete problems.

For some years I have looked upon the tendency toward “administrative commissions”, etc., as being, in part at least, a reaction against the regular system of courts because of the failure of the latter to render justice without undue delay and expense, and without elevating matters of “legal etiquette” to a position of almost supreme importance. But it had never occurred to me, until my recent perusal of your article on “The Organization of Courts”, (to some extent incorporating your article on “Executive Justice”) that the present movement was so analogous to that of the 13th Century, in relation to the Court of Chancery. Frankly, I regard that suggestion of your as the most illuminating that has penetrated into the vestibules of my mind for a good long time. And what lesson that parallel should have for us! If the Roman, the Frankish, the English and the American experiences point to a sort of cyclic development or “periodicity” of crystallization and retardation of legal systems, then should we not prepare in

³⁷⁶ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

advance to counteract this periodic tendencies? Or putting the matter in another way, should we not, in these periods of retardation, endeavor to see ourselves as future generations are bound to see us, and thus prevent that unfavorable view that we are wont to entertain concerning the common law judges and lawyers of the 13th and 14th Centuries?

You will be interested to know that on June 1st the Michigan Law Review will print an article of mine entitled “The Relations Between Equity and Law”³⁷⁷. The *causa causans* was Cook’s address of last fall. But besides twitting him a bit for using *Stanford* to exemplify his rather sweeping indictment of our equity teaching in this country, I make use of the opportunity to controvert Maitland’s pet thesis, that, apart from one or two instances, law and equity “do not conflict”. I am venturing to hope that my suggestion on that subject may meet the approval of your orderly and critical mind. In dealing with the history of equity, I quote, in a supplemental note, from your address in “The Organization of Courts”, - that is, to bring out the above mentioned parallel.

I wonder whether you received my California Law Review article on *Trust and Perpetuities*³⁷⁸. It must look rather dry to anyone outside of California “where the narrowness of the present system is very obstructive to business and to justice”; but I thought you might be slightly interested in pages 331-333 – where I fire what, for this state, might be called “the opening shot” in behalf of the cultivation of the science of jurisprudence on a scale commensurate with other university activities. To my mind, the lack of vision on the part of our university presidents, as regards these matters, is nothing short of painful. Of course, in the article referred to I had room to say just a word; but I sent a copy to Dr. Jordan, and from what he said I think he can gradually be persuaded of the need of bigger things. And, possibly even more at the state university, there is hope for something better in a very few years, I had gotten several of their men interested.

But I must terminate this letter at once, in order that I may not trespass too greatly on your time and patience. It is, however, - permit me to say as a last word

³⁷⁷ HOHFELD, Wesley N.. *The Relations between Equity and Law* em Michigan Law Review, 1913, XI, nº 8, pp. 537-571.

³⁷⁸ HOHFELD, Wesley N.. *The need of Remedial Legislation in the California Law of Trusts and Perpetuities* em California Law Review, 1913, I, nº 4, pp. 305-335.

– a genuine relief to be able, now and then, to exchange an idea with a truly sympathetic mind!

Very sincerely,
Hohfeld

Letter 13³⁷⁹:

From Hohfeld to Pound

Date: 5/22/1913

627 Forest Ave., Palo Alto, California

Dear Pound:

Probably you will be surprised to hear from me so soon again. The explanation lies in the fact that I have just been reading, in the *last* issue of the American Law Schools Review – that greatest of law magazines – a little item that caught my attention. I refer to the announcement on p. 323 as to the wholehearted adoption of the case method at Yale Law School, -which obviously means, in course of time, a truly first class school there.

In connection with this news, I am wondering whether you might ever have an opportunity to put in a word for me – for you have always been good enough to express your confidence in my ability to “hold down” a moderate sized position. With the change of aims and methods at Yale, it seems more than likely that changes will occur there before long. In fact, in the last issue of the Green Bag (May number), there is an item announcing the gift of \$ 125,000 for endowing a professorship of equity [and] jurisprudence. Of course one of their regular men may be given that place; but the change might leave a vacancy to be filled.

I didn’t know whether you were aware that Woodward had – so I am told in an indefinite way – an opportunity about a year ago to go [to] Yale; I suppose that related to the place now held by Gifford.

Some weeks ago Dean Bates wrote to me and asked whether I would be willing to accept a professorship at Ann Arbor; but of course you will readily understand that, unless they could pay me much more than the other men are now getting, I should naturally prefer to remain at Stanford. I should not be willing to change unless very substantial improvement were in sight.

One thing is certain, brother Pound -, if you have occasion and inclination to back me for a place, there are certain men who can be absolutely relied on to

³⁷⁹ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

give me a good send-off if they are applied to. I refer to Professor Abbott of Columbia, who used to be head of my department here at Stanford: Dr. Jordan, our president, and Professor Huberich, now of Berlin.

I should hesitate to write these ideas to you – even the good and thoughtful friend that you are – were it not that I prefer, if even I am to make a change of location, to do so in the near future. I should like very much to feel definitely settled, and I imagine that if I don't leave here in the next two or three years I never shall.

Where are you going to spend your summer month? I have very recently made up my mind to take a trip east, just for pleasure, and I certainly hope to see you and to have *balb oder Stein* with you. Very probably I shall leave here in about the first or second week of August, and plan to take the Bar Association meeting at Montreal.

With all good wishes, believe me,

Sincerely yours,

Hohfeld

Letter 14:

From Hohfeld to Pound

Date: 06/02/1913

627 Forest Ave., Palo Alto, Cal.

Dear friend Pound,

Upon returning home this morning from a week-end trip, I find your characteristically kind and encouraging letter; and, as these vacation days now upon us Westerners give no legitimate excuse for delay, I hasten to express my appreciation of your good words, and also to tell you a bit of news that will meet your friendly interest.

Just a day or two after writing my last letter to you, I received an invitation to take the Keener's place at Fordham University School of Law, with a salary of \$4,500 and opportunity to practice during rest of the day if desired. There were many attractive features about the offer; but, upon reflection, I thought it best not to accept. For one thing being non-sectarian myself, I didn't think it the best thing to join a Catholic institution, even though, to be sure, I have no religious prejudices, and even though, as I gather it, the law school faculty is made up of all classes of Christians. Then, too, counting in my half salary for sabbatical (...) but a trifle more, than what I now perceive at Stanford. The pro-dean, Professor Dee, stated that I had been recommended to him by Prof. Nathan Abbot, my former, highly respected, chief here at Stanford. With two men like you and Abbott believing moderately in me, I have good reason to feel hopeful of the future. No one could be a more loyal friend than he has always been to me. Apart from the deanship, there has been no vacancy at Columbia since Abbott went there in 1906-1907.

As long as this is almost exclusively devoted to a single subject, I am enclosing a letter which, being self-explanatory, needs but little comment. Pomeroy, who has been professor of law at Illinois for the last three years – that is, since 1910 – had resided in California down to that time; that is, ever since his father became dean of Hastings College of Law, San Francisco, in 1879. While nothing more than an acquaintance of recent years, i.e. as regards myself, he has of course been familiar with conditions and persons at Stanford Law School right down to the present time. In fact a number of our students have assisted him, from

time to time, in his editorial work and legal authorship. Then too, do you remember our Professor Alden (for many years in the English Dept. at Stanford) who taught English at Chicago in summer of 1910? Since 1911 he has been head of the English department at Illinois; and it is not impossible to believe that he has assisted in creating the rumor to which Pomeroy refers.

Nevertheless, I have no expectation of calling at Urbana, unless something more definite and tangible should be laid before me. I do not feel impelled to go in search of place in that way; and I believe a dignified reticence in such a case represents the proper course of conduct. You know they offered me a professorship at Illinois in 1909 (Dean Harker having first visited me at Stanford); but they were not holding out more than about \$ 4,000 at that time.

I am laying this letter before you only because I know that you will be genuinely and frankly interested in seeing how things are going with me. I know, too, that you will agree with me in thinking it best not to mention this Illinois matter at this time to anyone. As there is, obviously, no definite proposition, any rumor along that line could but serve to injure me.

There is no hurry; but whenever you happen to write, I should be pleased to receive Pomeroy's letter back.

With all good wishes, believe me,

Cordially your,

Wesley N. Hohfeld

Letter 15:

From Hohfeld to Pound

Date: 06/19/1913

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound:

The latest announcement of the Harvard Law School has just reached us; and; from my interested and searching glance at the faculty list, I noticed that you are now, in name as well as in fact, the incumbent of the chair of general jurisprudence. It is needless to say that in this I greatly rejoice, and that congratulations are both hearty and sincere. I have felt, from the beginning, that you were the only man in the country for the professorship in question; and it is a great satisfaction to observe that the general fitness of things has triumphed as so early a day.

Your last good letter acknowledging mine concerning Fordham, etc. was received a day or two ago; and I wish to thank you for your usual kind expressions and thoughtful suggestions.

By the way, again referring to the said professorship, I notice that you are now to give two full courses on Roman Law and Theory of Law respectively. I am hoping that before long you may add legal history to your repertoire; for I am, and have been, thinking considerably of spending 1915-1916 in further study at Harvard. You see, in that year, I should be entitled to a “sabbatical half year”; and no doubt by forgoing my salary I could secure leave of absence for the balance of the year as well. Of course my ideas are tentative, but they already have a good hold on me.

With best wishes, believe me,

Sincerely yours,

Wesley N. Hohfeld

Did you notice our friend Kocourek’s pungent critique of “What is the Law?” (Illinois Law Review for June 1913). His discussion – while talking the Bingham article rather too seriously – confirms my impression that he has a mighty good head on his shoulders.

I spoke very strongly for him back here; but the time didn’t seem to be quite ripe for such an acquisition here at Stanford. But if you have been making a

good “jurist” of Huston, the failure to get Kocourek will not be quite so serious as otherwise.

Letter 16:

From Hohfeld to Pound

Date: 07/15/1913

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound:

Your good letter telling of the Michigan visit came a few days ago; and so I wish to thank you, - for what you didn't mention as well as for that which appears on the surface. For I know your "dynamic friendship" must have become a factor in my favor as soon as opportunity offered. All that you say is of course very interesting, - quite consistent, too, with the tenor of a letter received from Bates not long ago.

In spite of it all, however, I should think that a good vacancy could more readily occur at Yale than at Ann Arbor. Surely it cannot be long before some more of Yale's "honorable" drop off from the faculty list. In fact, if I have read the law gossip notes of the periodicals correctly, one of them John K. Beach appears to have been my recently appointed to the Supreme Bench of Connecticut. I can't help feeling that I should have a good chance there were my name once fairly presented and considered. I know from what you have already said that you have been keeping your eyes on the situation there of late; and that is the biggest factor in my favor that I know of!

By the way, I didn't even tell you, did I, that we offered James a place just before last Christmas. He said, however, that he couldn't get away for the second semester, and gave no intimation of his availability at any later time.

I am considering whether he has now gone elsewhere; for my good friend, Ballantine, tell me he has just been appointed to a professorship at Wisconsin, and that he (Ballantine) is to give a course there in jurisprudence and related topics. He was a classmate at Harvard, and it was I that secured him his place as "Dean" at Montana. In his recent letter he asked me what he should use as the basis of the above-mentioned course; and I was happy to be able to inform him of one Pound's Readings, 2nd Ed. I haven't the slightest doubt that he will follow my advice; for it is just what he needs, although he hadn't yet heard of the volume. He suggested, for example, that a course based directly on a work like Salmond or Holland would very likely prove too bloodless for average law school students.

So, as I pointed out, your book meets that difficulty by combining the abstract and the concrete, - the analytical and the historical. The availability of your work, indeed, makes me itch to give a course along similar lines here at Stanford. I congratulate you on its imposing and attractive appearance.

Have you seen my little effort in the Michigan L. Rev, - June number? I expect to send you a reprint, if ever any such materializes.

If ever you have the time to waste in glancing through “supplemental note 10”, I should be very glad to know what you think of the problem there indicated and of the historical data marshaled. You of course know better than I how Blackstone remarked that with greater liberality of attitude, the Statute of Westminster II. might have been the warrant for such expansion of Common Law doctrine as to make unnecessary the elaborate development of equity and a second system of courts. By the other hand, Langdell and Ames have always insisted on the distinction between procedure in personam and procedure in rem, - with the implication that the common law courts were intrinsically powerless to adopt any similar procedure.

I have always thought that Langdell and Ames greatly overworked this distinction and overestimated its importance as the supposed animating factor in the superiority and growth of equitable doctrines. More particularly, too, as I have barely intimated in my note - Why couldn't the law courts power of arrest on mesne process i.e., by the unit of capias ad respondendum, have been extended and moulded to supply the personal duress or coercion whenever it might be necessary? Jenks, his less recent history, indicates how firmly, by the use of fictions, this matter of arrest was extended by the Common Pleas, the Kings Bench and the Exchequer to cover ordinary actions of debt. And, besides, there was the old writ of prohibition (virtually an injunction) standing as a model for further performances of a like nature. Does, or does not, all this indicate that the fundamental difficulty lay in the conservative and halting attitude of the judges? – so characteristic of present times?

Over against this suggestion lies the intimation given in the passage I have quoted from Kerly (not sure about this) – viz., that the judge's position was so weak that the more drastic procedure would not have been respected, - that only the chancellor was able to issue personal commands that would be respected and enforced.

I should be more than delighted to have you solve this puzzle for me; and my next class is equity would be equally pleased to have your opinion and explanation laid before them.

Of course, in one of the other notes, I was indebted to your “Readings” for abstract from Goodwin’s Equity, and for the secular _____(1 word) of Edgar. I remember that you showed me your copy of Goodwin when we were in Chicago. Frankly, however, I consider the most illuminating part of the whole article consists of my quotation from your address on the “Organization of Courts”. It represents the most pregnant suggested for a good long time!

Cordially yours,
Wesley N. Hohfeld

Letter 17:

From Hohfeld to Pound

Date: 07/28/1913

Leland Stanford Junior University (Stanford University, Cal.,)

Dear friend Pound:

The complimentary copy of the “2nd edition” has just been received; and I hasten to thank you in full measure for your courtesy. It so happens that I had already purchased a copy from the Boston Book Company; but the one now come e manu scriptoris will be more than less welcome, for I shall now indulge the luxury of two copies, - one for my office and one for my home. I do indeed feel honored to be in your “mailing list”; and I am sentimental about it that I greatly miss your autograph in the volume just received. Next time you write, be good enough to enclose the appropriate words and signature on a slip that I may paste in.

Yesterday Vance of Minnesota, and Gilbert of Iowa (both now teaching at Berkeley) were my guests here at Stanford together with their “respective” wives; and when Vance was inspecting my office and books – especially those on jurisprudence and history, etc., - he immediately lighted on my bound volume of “legal essays” by Pound, and was very much interested. He and Mrs. Vance are both charming people, as you doubtless know; and evidently he is establishing a good school at Minneapolis, a number of their men getting as high as \$5,000 – so he tells me. It has been interesting to learn from him of his capture of Eldon R. James. A fine appointment!

In a letter received yesterday, Ballantine (now of Wisconsin) tells me he expect to adopt your book of readings as per my recommendation. As I wrote you in my last note, it fills his wants exactly.

I was speaking with Boke of University of California the other day as to why they hadn’t gotten you out for the summer season. He said they had tried – so the dean of the summer session had told him – a couple of years ago but had failed. Perhaps you had to go to Chicago that year; and I am fearing that such may also be the case for the summer of 1914. If you were to be at liberty for that time, I am sure that a word from me to Boke and McMurray – their two leading men – would clinch the matter; for we are all anxious to have you visit our state and see

how bad we are! You could find it, I am sure, a most delightful way of spending six weeks of your vacation. The weather is always fine – perfectly cool and delightful; and you would find it a very different weather from a summer in Chicago. [If you will look in the July issue of the California Law Review, you will see what a bad fellow MacMurray, Professor of Law at University of California thinks you are; and he is a very competent judge. See first Editorial note.]

I must not take more of your time, - Have to say that I am surely coming east to attend the A.B.A. meeting, etc.; and I shall look forward to seeing you in Cambridge.

Very cordially yours

Hohfeld

Letter 18:

From Hohfeld to Pound

Date: 08/23/1913

Hotel Belmont – New York (Forty- Second St. and Park Avenue)

Dear friend Pound:

Your more than kind letters of recent date have just been forwarded to me here in New York City. I refer to the one enclosing your autograph for my “Readings”, and also to that of the 3th relating to law school prospects. It would be impossible for me to express adequately my appreciation of your legal and consistent interest in these matters. Your confidence and encouragement are a constant source of inspiration to me.

Tonight I shall pay a visit to another very good and loyal friend, Nathan Abbott. He has just returned from a vacation outing to the Tennessee Mountains. It is these reunions with those whom I admire as men and value as friends that make such an eastern trip as mine worthwhile. The attendance at the Bar Ass’n meeting is a mere incident.

I shall probably leave here sometime this Monday, the 25th; so I am looking eagerly forward to seeing your good self in Cambridge.

In the meanwhile, believe me, as ever,

Sincerely yours,
Wesley N. Hohfeld

Letter 19³⁸⁰:

From Hohfeld to Pound

Date: 10/23/1913

Box 1273 Stanford University

Dear Friend Pound:

Your recent article entitled “Courts and Legislation” came day before yesterday, and I have just finished reading it carefully, having taken my first opportunity to do so. That being the case, I wish to thank you for this latest remembrance and I must also express my appreciation of the paper itself.

You have suddenly done another good piece of work in this essay, and I only wish that it might have the wide reading that it deserves – not only by academic men in law and political science, but, even more perhaps, by judges and lawyers and by newspapers and magazine editors. You have such a marvelous judicial way of balancing the various factors involved in the problem and such an unusual clarity of expression that even said laymen editors could not fail to be enlightened. And surely there is need for such calm and comprehensive discussions as yours to take the place of the common demagogic utterances of the time. This is why I have so often wished that your volume of essays might be combined into a convenient volume for general circulation. It would be a “big seller” and render a great public service. It is just possible that your forthcoming book on *Sociological Jurisprudence* might, by *title* at least, seem less attractive to *laymen* than a volume of so-called essays with specific titles and issues not so familiar to the general reading public.

You will be interested to know that the Fordham people have recently renewed their invitation to me in relation to a \$ 4,500 professorship. There is something very attractive about the proposition – chiefly because of the wonderful opportunity to build up a practice similar to that of Kales; and also because (if one can’t live in California) New York seems to be about the next best place. As you may know, in connection with *In re Sprekels*. I had to go very deeply into the

³⁸⁰ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

New York statutory system of trusts, powers, and perpetuities, that system having been the precursor of our own; and so I should have a substantial nucleus of information on which to begin in New York. Then, too, I believe they would give me both *trusts* and “third year” *property* as teaching subjects. So you see there is something really fascinating about the proposition, and I am not quite sure how I ought to decide. The classes are held from 4:15 to 6:15 in the afternoon, so that the bulk of one’s day would be free. As regards numbers, the school has grown far more rapidly than any other in New York, and Abbott believes the opportunity a good one as regards even future increases of salary.

The letter came about three weeks ago, and I am still in doubt. They have told me to take my time, as to the vacancy in question will relate to the next academic year. What do you think about it?

I noticed with interest about a month ago the appointment of H.W. Rogers as a judge of the U.S. Court; and I suppose he has resigned from Yale, though I haven’t heard anything about it. I wonder who will be the lucky man there.

You will think it “looks suspicious” when you see an article of mine in the next issue of the Yale Law Journal. But it is more of a coincidence than anything else. I had just about completed the article and was wondering whether to send it to Harvard or to Columbia Law Review, when an invitation to contribute arrived from the Yale Law Journal – a rather urgent invitation in fact, as they are doubtless “hard up” for contributions. So I thought I might just as well send my effusion to them, as to any of the other people.

My visit to the east and to Montreal meeting have left very pleasant remembrances – something to live upon during the next months. I shall hope to see you again next year. With all good wishes, believe me.

Cordially and sincerely yours,

Hohfeld

Letter 20:

From Hohfeld to Pound

Date: 11/24/1913

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound,

Your very kind and convincing letter of advice deserved an earlier reply than this; but I have waited until reaching and communicating my final decision to the Fordham authorities.

In view of your words I shouldn't have hesitated any longer, save that the later negotiations, while not absolutely definitive, made it seem extremely likely that I could have \$ 5,500.00 as salary provided that I carried seven hours of day work and four of evening work, the latter however, to duplicate the day work. Perhaps the whole thing would have equaled about nine hours of regular day work, as a little less. Looking at the matter on that basis, I have nevertheless finally determined not to accept; and I have first written to that effect. As I have already intimated, your own earnest and generous counsel has made it far easier for me to reach that result. The one thing that made me hesitate is the fact that, as I wrote you before, if ever I leave California, I should far rather be in New York than anywhere else, and, at all events, on the Atlantic coast. In saying that, I have in mind the intellectual, social, and humanizing influences and advantages of the Atlantic Coast cities, and also the accessibility of Europe. In other words, I refer to "living conditions" rather than to academic considerations.

I have been glad, to observe at p.60 of the November World's Work that you are recognized as "a great law reformer", and that W. Harrison Moore (in his article in the Journal of Comparative Legislation) refers pleasantly and appreciating to your writings.

On the other hand, did you notice that newer and impertinent article of Fouler in the last issue (November) of the Columbia Law Review? He seems to take the position, inter alia, that a devotee of "sociological jurisprudence" couldn't successfully cross-examine a witness! He is evidently obsessed of the notion that every broad student of jurisprudence and legal institutions is one who knows "a little of the laws of every country except his own".

While it is a matter of secondary importance (save for getting together that library of jurisprudence, etc.), you will be genuinely interested to know that, in a talk with President Banner, he assured me that I would rapidly moved up from from \$ 4,000 to \$ 5,000 here at Stanford – probably \$ 4,500 for next year. It is at least gratifying that eight and a half years of work are appreciated in one's home "beat". Such appreciation and the warmth and gratitude of one's students, new and old, certainly constitute the best reward of the teaching profession.

With best regards, believe me,
Very sincerely yours,
Hohfeld

Letter 21:

From Hohfeld to Pound

Date: 01/22/1914

Leland Stanford Junior University (Stanford University, Cal.,)

Dear Pound:

There is no special reason for writing at this time save to say “hello” in Western style!

I had hoped to be honored by one of your “stirring” letters ere this; but I can readily understand how busy you must be, with all your articles, addresses, committee, work, etc., - not to mention your court work. Referring to the latter, I didn’t know whether I ever specifically referred to that brief in the U.S. Supreme Court. I read it, however, from cover to cover as soon as it came, finding the main print of very compelling interest. I did not overlook the peculiarly “Pound” references as to “judicial empiricism” and to the development of commercial law on the continent. Some of these things, I am very sure, would be quite beyond the learning and thought of the type of practicing lawyer with whom we are most familiar.

As a mighty good friend of mine you will be genuinely interested to know that things are going well with me at the end of the line Woodward has recommended me for \$ 4,500 which (with sabbatical allowance) amounts to about \$ 4,900; and there have been substantial assurances from the President that he will “come through”.

Then, too, as you will soon see, you are nearly a “man-prophet”; for, as it happens, I have had simultaneous offers from Michigan and Columbia – only they were for the coming summer and nothing more. Our good Dean Bates, about a month ago, asked me to give Trusts – five weeks of nine hours, for \$ 500. While this was still before me, Columbia delivered a much stronger punch, \$ 1000 for six weeks. The courses will be Negotiable Paper and Insurance. I have never taught these subjects; but, as it happens, I have kept reasonably fresh in them. And of course Insurance as regards many of its fundamental aspects, such as subrogation, contribution, concealment, and variation of risk, is essentially like Suretyship, which I gave for the first time in Chicago in 1908. The latter is one of

the prettiest and most interesting subjects I have ever taught; and I am hoping that Insurance may have many of its virtues.

At any rate, this summer business will drive me to the East once again without bankrupting me; and so I shall have the pleasure of seeing you before many months are gone by.

With warm regards, believe me.

Will you be at Chicago?

Sincerely yours,
Wesley N. Hohfeld

Letter 22³⁸¹:

From Hohfeld to Pound

Date: 04/04/1914

Stanford University, California

Dear Friend Pound:

It is now nearly two weeks – how the time flies! – since you so kindly responded to my wire for advice. Possibly you were surprised to learn that I could have any doubts in the face of such a good offer from Yale; and probably you will be even more surprised, if not shocked, to be informed by this letter that I actually decided against acceptance: that was just a week ago. The explanation, however, is comparatively simple: in view of chances swiftly taking place here at Stanford the Yale proposition didn't really include a big enough salary to justify a change.

A year ago I shouldn't have hesitated a moment to accept a \$ 5,000 offer from Yale. But even in such a short interval as that a big change has come over the financial and educational policy of our trustees – especially in relation to the law school and the medical school. Only a few months ago they issued a statement to the public declaring that the professional schools were to receive special attention and support, and were to be gradually raised to the level of the best similar institutions in the east. Of course this was extravagant but, *when the issue was forced upon me*, it proved very relevant in view of the fact that the Yale Law School itself has a good hard road to travel before it can come up to Harvard, Columbia and Chicago, especially if they expect to limit themselves to \$ 5,000 a year. A very narrow policy, it seems to me, if they really mean to make the best of their wonderful opportunities for development.

When the first Yale offer of \$ 4,500 came, the Stanford authorities – Dean Woodward and President Branner, – had already recommended me to the trustees of \$ 4,500 for next year. So of course I promptly declined the offer. They immediately came back with a proposition of \$ 5,000; and this, I assure you, gave me one of the biggest mental struggles of my life. The pressure brought upon me

³⁸¹ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

to stay here, both by the President and by Dean Woodward and every other member of the law faculty, was such as to make me feel that, as a mere matter of public service. I couldn't be any more useful elsewhere than at Stanford. And, as for salary in the future, both Dean Woodward and President Branner gave their personal promises to get me \$ 5,000 here just as soon as possible – within a year from now, in all probability. You will see, therefore, that with such substantial assurances for the immediate future, I really had to treat the Yale and Stanford financial inducements as if they were approximately the same. If Yale had offered me a distinct financial inducement I shouldn't have hesitated at all.

But in the absence of such, I felt that certain advantages were with Stanford. They require *eight* hours teaching a week at Yale as against only *seven* here at Stanford. I shouldn't regard this as important save that, as you know, I am interested in investigation and writing; and I wish to do more and more of the latter as time goes on. Along the same line, it is clear that a change to Yale would have meant further denial of time and energy which, here at Stanford, are now released for writing and research. Of course, I should have had to take on some new courses, and there would have been the need for adjustment to my new "social" surroundings. All these would have taken time from my writing and from a casebook project that I have in hand. Of course, as I have already intimated, these things would have retreated to the rear had there been sufficient compensatory advantages at Yale, especially as regards salary.

For the same reason – that is my desire to get some writing done – I am strongly contemplating getting released from the Columbia summer teaching so that I can have all my summer time clear. I hope you will approve this, I have done so much summer teaching in the past that I have done less in other directions than I should originally have expected. The clear, uninterrupted summer stretch I have found altogether the best for work that is worthwhile.

I feel almost as if this were my *ἀπολογία*³⁸² for, *prima facie* at least, you, my very good friend, will probably think that I have acted unwisely. I am, myself, by no means certain.

In any event, I wish, here and now, to express to you my deep appreciation and gratitude for your constant encouragement in my work and for your persistent

³⁸² Palavra grega que significa DESCULPA, PRETEXTO.

effort in my behalf whenever opportunity has been presented. To me there is no greater satisfaction in life than having as a loyal friend and advisor one for whom I have such genuine and unbounded admiration.

With all good wishes, believe me,

Very sincerely yours,
Wesley N. Hohfeld

Letter 23³⁸³:

From Hohfeld to Pound

Date: 07/12/1914

Stanford University, California

Dear Friend Pound:

Doubtless by this time you think me very negligent as a correspondent. All I can do is to plead the poor excuse “press of business” and throw myself upon the mercy of the court.

Probably your last letter to me related to my original declining of the Yale proposition; and, I can assure you, it was largely your kind words that ultimately made me reconsider when correspondence with Yale showed that the position was still open to me. Your letter made me “homesick” for my eastern friends, if I may use that expression. Yet it was a difficult conflict of emotions that I went through; for, on the final test it was not easy to leave here as I might, as a mere academic proposition, have thought. As you know, I was born in this state, and I have lived here all my life, - save for the few years at Harvard during my student days. My relatives are all in the city of San Francisco, including my parents, who, of course, are well advanced in years. Then, too, many business interests and professional opportunities and prospects have had to be considered. Finally, the life here at Stanford – through somewhat “pastoral” and isolated – has a great charm; and the loyal backing of Dean Woodward, President Branner and the other members of the department made it seem almost ungrateful to leave. As I wrote before, I have been assured by all of the latter that my salary here would be raised to the Yale figure in a very short time; it would have been done this year save that practically one man rules the Board of Trustees, and he refused to meet the President’s recommendation. It is, however, a practical certainty that he would gradually come up to the level suggested by the academic authorities. The whole course of past events shows that this is so.

³⁸³ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

All these difficulties and influences confronting me, I finally decided to accept the *permanent* Yale appointment, - with, however, a year's leave of absence very generously granted me by Woodward, Branner and the trustees: so that, as it were, my problem will solve itself. You see, one of the difficulties was to know just what the Yale surroundings and life would mean to me in the way of new associations, daily work, and general enjoyment of things. Actual experience will determine all these questions for me. Of one thing I do feel certain: that Yale Law School has a great opportunity and future ahead; and of course it appeals to one's ambition and professional interest to participate – though even in a moderate and modest way – in the new development. [I fear my mind is getting on my Sunday dinner for which I am already late; guess I had better finish after it is over].

July 15: well, the dinner was duly finished, but not this letter. I realize, however, that I must get it off soon, if it is to reach you in Cambridge before you leave for Chicago.

One of the things that made me finally decide to try out the Yale position was a big concession in regard to courses. As a consequence, I won't begin to teach so much new work as the original proposition called for, and my plans in other directions need not be so seriously altered.

I am to have:

Equity (Ames I & II)	3 hrs. through the year
Conflict of Law	2 hrs. through the year
Evidence	2 hrs. through the year
Future interests (Gray V)	2 hrs. through the year

I have taught the first three subjects, but not the fourth, *Future Interests*. However, I am getting that subject by special request in Place of *Persons*. For a long time I have been wishing to teach *Future Interests*, although – to be sure – the subject consists of heavy material. If I stay at Yale, I shall hope to keep this course permanently.

Now that it is all settled so well, I am very happy, and I look forward to some pleasant times in the east. That I shall be able to see you occasionally is a matter of the greatest satisfaction.

Sometime ago I heard Professor Jones of the University of California Law School say that McMurray was to invite you to lecture in their 195 summer session; but I haven't heard anything further. I hope this may be so; for I am sure you would have "a fine time". There may be no "Sans Souci", but there would be good substitutes. I am sure to come out here next summer to see "the folks".

I suppose you know that Clarke Whittier was appointed here about three weeks ago to take Judge McClain's place. Page, as you doubtless know, was given an offer; but he was a bit slow and indefinite in his telegrams and the faculty here became a little discouraged as to getting him. In the meantime, Whittier (who had been asked to take some of my courses temporarily) asked for the permanent position. He comes at \$ 4,000 – just what McClain was getting.

I hope I may have the pleasure of hearing from you soon again. You have the great luxury of a secretary to whom you can dictate: I think I could be better correspondent under such favorable circumstances. With all good wishes, believe me,

Sincerely and cordially yours,
Wesley N. Hohfeld

Letter 24:

From Hohfeld to Pound

Date: 08/04/1914

Stanford University, California

Dear Pound:

Your recent letter was duly received a very few days ago and I wish to thank you for your kindness in taking time to write to me in spite of the many other matters justly claiming your attention. It is always a very genuine pleasure to hear from you.

I note what you say concerning the exercise of patience in relation to conditions at Yale, and I shall be very sure to bear your suggestion and advice in mind. Indeed, I have from the beginning realized the necessity of being conservative in regard to standards, examinations, etc. One can do good wherever he is only by being guided by practical idealism.

I am certainly looking forward with the keenest interest and pleasure to seeing you and the other Harvard men in the near future; and I shall also hope for the pleasant opportunity of making a few trips between New Haven and Boston during the coming year. If you have any new or special points in jurisprudence in general, or in relation to the "real personality" of a corporation, I hope you will hold them in reserve for a big stein of beer and a little chat between us.

Although I am aware that you have contributed at least twice to the Yale Law Journal in recent years, I have recently, in making some suggestions to the new Editor-in-Chief, told him to go after you for another article. I am going to do what little I can to help the fellows elevate the Yale Law Journal to something like the Harvard Law Review; and I know that you will help me in that direction. I have given the Editor-in-Chief the names of a number of men besides yourself, such as Costigan, Kales, and Cook.

You and Huston, who is a mighty pleasant and companionable fellow, must be having an enjoyable time, along with the others, at Sans Souci and other good places in Chicago. I wish I were there to join you occasionally.

You will notice that just at present I have the luxury of a good stenographer and that this letter is being dictated. If such were always my good fortune, I could be a better correspondent.

With best wishes for the remainder of the summer, I remain,

Cordially yours,
Wesley N. Hohfeld

Letter 25:

From Hohfeld to Pound

Date: 12/13/1914

495 Orange St., New Haven

Dear Pound:

Just a line to thank you most cordially for the "Essays in Legal History" which arrived in due course about a week ago. I have already perused with eager interest the two essays by Pollock and those by Vinogradoff and Hazeltine. It is needless to say that as a gift volume and token of friendship from you, the volume will always be far more prized as member of my library than would otherwise have been the case.

Things move in here very pleasantly indeed. My students are now well started in their several courses, and their attitude is very cordial and cooperative in every way.

My faculty associates are also very pleasant. Indeed here in New Haven and in New York whether I go occasionally, one has a splendid opportunity of mixing with men, an opportunity almost entirely lacking in the far best. Last evening, for instance, Governor Baldwin invited me to dinner at his house along with the dozen members of the "Lawyers Club" of New Haven. It is very agreeable to come in contact with men of the best caliber hereabouts.

I have gotten all the records that you so kindly played for me when I was last in Belmont. Whenever you get to New Haven – and I wish that might occur very soon – I hope to be able to play some records for you and Mrs. Pound. I am a spendthrift along this line. I am very partial to that little gem by Alda, also to the beautiful duet from La Traviata by Hempel and Amato. These are sui generis!

A week ago I had a fine time in New York City – a musical comedy at the Lyric, Damrosch's Symphony Orchestra at the Aeolian Hall, and a visit at Columbia University. I attended classes of Abbott, Stone and Gifford and met many of the other men. Smith, Moore, Kirchwey, Burdick and Redfield. Stone is a fine fellow – frank and honest. With my best wishes,

Sincerely yours, Hohfeld.

Letter 26:

From Hohfeld to Pound

Date: 01/07/1915

495 Orange St., New Haven

Dear Pound:

Sorry I didn't catch a sight of you to say good-bye! I did have the pleasure of Beale's company, however, - off and in - between Chicago and Albany. The meeting was certainly very enjoyable both for its intrinsic features and for the opportunities for good fellowship.

On my way back, I made the most of my opportunities in New York City - attending Metropolitan for Manon Lescaut, Magic Flute, and Madame Butterfly. Wish you had been along! Galski and Goritz carried important facts in the Magic Flute.

Permit me to thank you cordially for suggesting my name to Callahan Co. in re case book on Trusts. Before settling on a publisher, however, I should be pleased, if you can tell me, to know how you men at Harvard are now doing in this and to publication of case books, etc. It occurred to me that whatever that Harvard Press did for you folks, the Yale University Press might possibly do for me - and that, probably, all things considered, such an arrangement would be financially more desirable. If you could let me know the best way of working things out at Harvard, I should have a good basis on which to proceed here., though I should not, of course, have to mention any confidential details.

I don't know just when I shall get near Boston again; but when that ever occurs, it will be solely for the purpose of another good visit with you; and I shall hope to be able to carry out my threat to take you to a "show" or concert, - in which perhaps Mrs. Pound may be willing to join us.

Yours sincerely,

W.N.H

P.S. You ought to see the fine new office that Dean Rogers has just had built for me, on the main library floor, immediately adjacent to the books. Has beautiful light and fine views! Heretofore all the offices have been two flights below.

Letter 27³⁸⁴:

From Hohfeld to Pound

Date: 01/15/1915

Yale University, New Haven, Connecticut

Dear Pound:

Thank you very much for your kind and prompt response to my first card. The letter was written at the post office somewhat in a hurry – as I suddenly realized that I had to hasten my reply to Callaghan & Co. Your information and suggestions are of great value to me.

Things go on very pleasantly here, and I am enjoying my new office at *library floor*, with four large corner windows and fine view, to the fullest extent. If in the near future I don't get some work done it will therefore be my own fault. Prior to securing the new office it was virtually impossible to do anything - conditions were so adverse. Judge Rogers, you see, is very kind indeed. I enjoy my association with him and the others very much.

With all good wishes, sincerely and cordially,

Hohfeld

³⁸⁴ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

Letter 28³⁸⁵:

From Hohfeld to Pound

Date: 03/15/1915

Yale University, New Haven, Connecticut

Dear Pound:

I have received *two* good letters from you recently, and it is hard to realize how negligent I have been in not making earlier reply.

As regards your former Nebraska friend, concerning whom your second letter was written, permit me to say that I had spoken to both Dean Rogers and to Secretary Edgerton. So they will do whatever is possible for him, including the giving of a scholarship, very likely, if they become satisfied of his qualifications in the law. I don't know whether he has specifically asked for one or not.

In relation to your comments *in re* course of study, spreading over too much ground etc., I fully agree with you. I do believe, however, that three years of college work and four of law and jurisprudence would represent a better proportion of effort than the present allotment. The medical course is now four years; and at Stanford, they require in addition on year of hospital work *before* the degree will actually be conferred.

However, it is quite true there is room for improvement here at Yale in the direction you indicate. There should be four hours of class work *per week* and some course might well dropped altogether. But we are just now in a transition period both as regards courses and as regards men. It will require some time to perfect matters, but improvement is going to be rapid enough. Yale has a fine opportunity to develop the right sort of law school. Professor Corbin here is unquestionably one of the most able, scholarly, and successful law teacher I have ever met: I regard him as being fully as strong as any man at the University of Chicago Law School. He is moreover, a very fine companion, and a good judicial mind for the discussion of law problems: the polar opposite of men like Whittier.

³⁸⁵ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

Dean Rogers is a very fine man, with excellent ideas and ambitions for the development of the school. He is broad-gauge, just, and strong in the pursuit of his policies. I have grown very, very fond of him personally.

Well, I cut the ropes binding me to Stanford about five weeks ago. President Hadley, Dean Rogers, Professor Corbin and others all urged me heartily to stay; and, as I had enjoyed the change greatly, I decided to remain here permanently. There are good prospects of salaries being raised here to \$ 7,000 before long; and a very definite movement has been initiated for that purpose as explained in Dean Rogers report incorporated in President Hadley's report for 1913-1914. Apart from that possibility, there would have been no financial gain in my remaining here, as Woodward had again recommended me for \$ 5,000 a year at Stanford, and it was practically certain to be given for the coming year, had I been willing to remain at Stanford.

I regret very exceedingly that my paper had not yet been published by the Association. Cook assured me that it would be published *immediately*; and I have received various additional statements from him from time to time; but so far, for reasons altogether inexplicable to me, the article has not reached actual print. I say that I regret this; for, between you and me, I wrote *primarily* for publication, and only *secondarily* for the reading at Chicago. I regarded the latter as a necessary incident, but I wished and expected to reach a larger audience: hence made my discussion complete and detailed enough to be intelligible to college presidents and others who might not be well versed in the law. Why Cook has been so painfully inefficient I can only imagine, but that in itself does no good!

Am hoping to visit again in your vicinity before long. When are *you* coming to New Haven as my guest? I could put you up very comfortably, and I really wish you would give me that very great pleasure.

In the meanwhile,

Auf Wiedersehen,
Hohfeld

I understand it is now a libel in England to say of untruthfully another that he is "German". 49 Yale Law Journal, 5.42.

Letter 29:

From Hohfeld to Pound

Date: 04/04/1915

Yale University – School of Law – New Haven, Connecticut

Dear Pound,

Several days ago the “Readings in Roman Law” and the “Interests of Personality” arrived in due course and served to remind me in the most vivid way possible of that bond of friendship between us which is ever a source of pleasure and encouragement to me. I am genuinely proud to be on your mailing list and to have, as I believe, a more complete set of your writings than anyone else save your good self. Those who visit my office here invariably become interested in the Sämmtliche Werke of Roscoe Pound, as they occupy a prominent and handy place on my shelves. Many, many thanks!

I had read the article on “Interests of Personality” as it appeared in the Harvard Law Review. As regards the Roman Law, 2nd ed., I haven’t had a good opportunity to look it over; but I look forward of having that pleasure as soon as the pressure lets up a bit. Now I do wish you were here at Yale so that I might take your courses in Roman Law and Jurisprudence. That is a rather selfish way of expressing the matter; and, of course, my wish is really based on more comprehensive grounds.

I had hoped that I might get up your way even before this; but some postponement has been necessary. Within a week or two, however, I may be able to see you once again before the long summer interval supervenes.

As you have always manifested such a kindly interest in my Stanford work, I think you may be interested to see how it was “wound up” for good not quite two months ago. Two letters from Woodward and one from a former student will, I think, make it evident why I had such a hard time to “pull up stakes” and come to Yale during this “transition period”. Whenever you happen to write again; I should be pleased to have the letters back.

How goes your Victrola? Have you discovered any specifically interesting records? If you haven’t heard them, try Alma Gluck’s “Le Nil” and Scotti’s “La Mandolinata”.

With all good wishes believe me as ever,

Sincerely yours,
Hohfeld

Letter 30:

From Hohfeld to Pound

Date: 06/10/1915

Box 277 Yale Station – New Haven

Dear Pound,

About three days ago Huston's fine book came to hand, pursuant to an order that I had given months ago; and yesterday there came a second copy – much, of course, to my surprise. By bare possibility this second one is a “complimentary”, though there is nothing to indicate that such is the case.

I have looked the work over with much interest; and it is now a great pleasure to testify to its excellent qualities, and to congratulate you on having one of your students turn out so creditable a piece of work. The latter is very justly and appropriately dedicated to you; for as a whole it is obviously represents your thought and analysis; and on practically every page the firm guidance of the master mind is apparent. It is also clear that the fact that a few others have been working along more or less similar lines of thought in no way detracts from the usefulness of Huston's book or the credit to which it is so justly entitled. On the contrary, it has always seemed to me that in our common pursuit of the truth and in our endeavor to work out juristic problems, it is more than fortunate to have several different minds thinking somewhat independently thereon and, in a general way, cooperating with one another and giving mutual aid and comfort in the conflict with adverse critics or doubters. That has always been, and always shall be, my own attitude.

For myself, I wish that I had more time free to do a little production work for publication. With eight hours of class work required here, - and at present a good part of my work new,- it is rather hard to do much that is worthwhile along that line. But I shall look for better things in the future; and in the meanwhile I have no complaint to make. Though in some way the change to Yale has meant a considerable loss of time, it has, as a whole, been very interesting and stimulating to me. They are about to make my Lines Prof. of Testamentary Law, and so I shall have Wills, as another new course next year.

On the proposition that burdens of pleading and proof are determined, in tendency at least and apart from historical courses, by considerations of justice

and policy and convenience rather than by a priori notions as to what is “affirmative” matter and what a “negative”, see the excellent opinions of Holmes, J., in *Burnet v. Desmone* (1912) 226 U.S. 145 and *Tinker v. Midland Company* (1914) 34 Sup.Ct. Rep. 252. As promised to Thayer about a week ago, I sent these citations to him yesterday, as they are by far the best to be found in the books or the purpose in view.

On my way to New Haven last Wednesday, it happened that Frankfurter had been assigned to the chair just in front of me; so I had a very pleasant visit, and practically the first opportunity to form definite impressions. He is certainly a most likeable fellow; and more than that, he fully measures up to the high tributes that were paid him when he was appointed to Harvard. Not the least attractive and hopeful thing about him are his great breadth of view and his appreciation of jurisprudence in relation to our future development. It must be a great satisfaction to you to have him as a co-worker.

[By the way, quite confidentially, what are your impressions as to Robert A. Taft as a possible teacher of law? He was editor-in-chief, and highest man in his class, was he not? Is he an animated personality, sufficiently forceful to make a successful teacher? His name has been barely mentioned as a possibility here.]

With all good wishes,

Ever faithfully,

Hohfeld

Letter 31:

From Hohfeld to Pound

Date: 07/15/1915

Law Department of University of Michigan – Ann Arbor, Michigan

Dear Pound:

This is a very tardy reply to your last good letter; but you see the letter came just when I was under the heavy pressure of various matters relating to my departure from New Haven for the summer vacation: so it was easy to postpone the luxury of writing to my friends until a somewhat later and more convenient date. I left on the 23rd ult. and arrived in San Francisco on the 9th. So you will see that I had a very round-about journey home, with considerable visiting on the way. I spent a great deal of time in Texas, visiting a number of relatives on my mother's side, including a number of very interesting cousins of both sexes. In fact, I saw one of the latter married at the great King Ranch of about a million acres in extent. I stayed about a week at this ranch, which I think is about as large as any in the country; and I covered a good part of it from day to day in automobiles, looking over the various kinds of stock represented, inspecting fences and the like, and all the while trying to catch some of the Gulf breezes, so as to keep moderately cool.

The "Ranch House" is, in truth, a \$ 300,000 Spanish Castle; so you may gather some idea of the luxuries and attentions with which I was surrounded during my week's visit at this place. The ranch is owned by Mrs. Henrietta King, now about eighty-three years old, but her daughter and likely successor to the place is married to my mother's uncle; so I felt quite at home after a very little.

I want to take this opportunity of thanking you most cordially for faithfully remembering me with a complimentary copy of Huston's book. You will recall that I had a suspicion that the extra copy came from you; but as there was no autograph your letter was required to confirm the notion.

Regarding Perkins, in whom I became much interested through your high recommendations, I may say that I tried to get some of the other men to look further into his case with reference to our vacancy; but as the time was already somewhat late and as negotiations had already been under way with a certain

other man by the name of Trowbridge, the latter secured the appointment as Assistant Professor. He was graduated from Yale College and Yale Law School about ten years ago; and, since that time, he has been in practice of the Law School I should, of course, have greatly preferred a man thoroughly trained under the case method; but with several members of our governing board there is a distinct preference for a Yale-trained man to fill any vacancy that may occur.

I most sincerely wish, for very selfish reasons, that you were teaching this summer at Berkeley instead of Ann Arbor; for I am sure that we could have had some fine times together at the exposition and at other interesting places in San Francisco. As it is, I suppose you are having a good time where you are, for you know how to extract the joys of life from whatever environment you may have. I suppose, too, that you see a great deal of Woodward, who knows how to be a genial and interesting companion. I hope that you and he are becoming fast friends. When you see him please give him my kindest regards; and the same request applies as regards Bates and Drake, if either of them is around.

I expect to do considerable work this summer in the San Francisco Law Library; but I shall reserve most of my evenings and various special occasions for the good times lying around loose in the Exposition City.

With cordial regards to Mrs. Pound and yourself, believe me,

Sincerely yours,
Wesley N. Hohfeld

Letter 32:

From Hohfeld to Pound

Date: 09/19/1915

OVERLAND LIMITED – Extra Fare Train – Chicago – San Francisco

Dear Pound:

On the 17th instant I was profoundly shocked to read a brief dispatch in the San Francisco Chronicle telling of the death of Dean Thayer.

I need not tell you, who more than any of the other Harvard men know how great my admiration for Mr. Thayer was, how deeply grieved I felt at this sad news, and how great is my sense of personal loss. From the beginning of my acquaintanceship with him, first through correspondence and subsequently through personal chats, I have felt that he was a man of most lovable character and a legal scholar whose solid abilities were equaled only by his rare intellectual sincerity and modesty.

It is seldom I have been so deeply affected by the death of any one belonging to our ranks in the teaching profession. Knowing how deep was your attachment to the man, I can well understand what a blow this sad event must be to you, as well as to the other members of your faculty.

As you will observe, I am again on my way East to settle down for another year's work at Yale, and I venture to add that if anything, I have greater enthusiasm this year than I did last. Possibly this is because I have had an unusually fine summer, well balanced as between work and play. The work has constituted in goodly measure of my efforts on a case-book, though I have also found time for other odd jobs along legal lines. I enjoyed reading Huston's book, and managed to get my review completed. I see no reason why it should not appear in the November issue of the Yale Law Journal.

Hoping that I may have the pleasure of hearing from you before very long,
I remain.

Sincerely yours,

Wesley N. Hohfeld

Letter 33:

From Hohfeld to Pound

Date: 10/17/1915

The Graduates Club – New Haven, Connecticut

Dear Pound,

Your last good letter came to hand more than a week ago, and I have been awaiting adequate opportunity to make response. Of course I need not say how great was my pleasure in hearing from you again and in receiving new evidences of your helpful friendship and confidence.

What you say about Thayer is just what I expected from you; and I am certain that your views are shared by substantially all who had the good fortune to know him at all well. The enclosed letter from my good friend McMurray shows how widespread is the appreciation of the loss suffered by the cause of legal education through the genial dean's untimely death. The reference to his unstinted approval of your epoch-making work at Harvard affords additional reason for sending you the letter at this time. May Thayer's words serve as an inspiration to you and cause you to persevere in your all-important contribution to legal education and development.

I was of course much interested in your account of the summer at Michigan. I am especially glad to learn of Woodward's cordial expressions. When he first came to Stanford in 1907, Huberich was acting Dean and it was quite uncertain who would become permanent head. In recognition of Huberich's unprecedented energy and success in fostering the growth of the Law School I openly sympathized with Huberich's aspirations to become permanent dean. This fact, coupled with a certain tendency toward petty jealousy in Woodward part – a tendency existing along with many excellent qualities – served for a while, I think, to make Woodward's attitude a little different from what it might have been; - Though I am not positively aware that he was ever disloyal to me when he was abroad: he certainly was not when at home. If he was, his criticism would necessarily have been along purely personal lines, for every other avenue was absolutely foreclosed as a matter of fairly general knowledge within the teaching profession. It is my hope and belief that, as he came to know me in later years, his personal attitude was steadily improving: in fact I am certain that at heart he hold

no grievance or criticism against me, and that, apart from occasional jealousy, his feelings toward me have for a long time been genuinely and unconditionally cordial. If for the reason last indicated he makes any qualifications along personal lines, in referring to me, such method – the only one open to him – is exactly matched by his practice in referring to certain legal scholars in the country by the side of whom he himself is but a pygmy. Fortunately for me, on such a contingency, I can point to the strong and loyal friendship of such men as Chancellor Jordan, President Brannen and Vice-President Stillman, and my former leans Abbott and Hulerich. Through Gifford, the former was one of the two men chiefly responsible for my being called to Yale, you of course being the other. Fortunately also for me, I can now point, I am sure, to the same sort of friendship and confidence in me on the part of Judge Rogers and Professor Corbin here at Yale. They are both fine men; and the latter, with whom I have become intimately acquainted, is one of the best scholar and most charming men I have ever met. So much then as to his little matter of “personal privilege”, to which I shall never again advert.

Thank you with all my heart for what you say concerning Bates intention to invite me to the Michigan University for Summer Session. He had already done so in the spring of 1914, when, however, I declined because of the still better offer from Columbia. What I should do this time I couldn't positively say: I should try to persuade myself to accept in spite of some initial inclination to reserve the summer months for research and writing, and in spite of the absence of any ambition to go permanently to Ann Arbor.

I am so happy in my work here at Yale that no University in the Middle West could tempt me away. Though I have had to overcome traditions and obstacles here at Yale, that is all of the past: they are all completely and finally overcome; and I have never had greater success in my work or, as the realization of its purpose and meaning has come to the students, any greater expressions and testimonials of appreciation. With so quick a transformation in the spirit and the methods of work here and with every prospect of very substantial progress in the near future, I shouldn't think of moving Westward again. I have enjoyed my eastern experiences and associations to the fullest extent; and I am duly thankful that, in spite of problems to be solved, I decided to leave Stanford and give Yale a

trial. In reaching that decision, your own constant encouragement to come East was most helpful.

One of my students here, Mr. Fields, speaks in most enthusiastic terms of his course in Equity under you at Ann Arbor.

I look forward to accept your invitation to visit Cambridge and Belmont.

As soon as I get some pressing matters off my hands, I shall make the contemplated visit with you a reality.

With cordial regards to you and Mrs. Pound, I remain as ever,

Sincerely and faithfully yours,

Wesley N. Hohfeld

Letter 34³⁸⁶:

From Hohfeld to Pound

Date: 10/22/1915

The Graduates Club, New Haven, Connecticut

Dear Pound:

Your splendid paper on "Legal Rights" came this morning; and I have been teaching it this afternoon.

Your friends have known for a long time, of course, of your very considerable thinking along the line involved in your discussion, but it is now a special boon and service that you have rendered in setting forth your views at such generous length and with such richness of detail.

Your printed contribution will now serve to further the cause of analytical jurisprudence in the law schools of this country, - that is, more than anything previously published. In addition, I know from my own experience that you yourself will find it a great convenience and saving of time to have your views for ready reference by your students.

Having said so much, I cannot now refrain from thanking you, with all my heart, for your more than generous references to my own imperfect utterances in the general subject. I have perhaps been my own severest critic of my work along the lines indicated; and I feel that you have been more generous and flattering in your approving comments that the circumstances really warranted. There is, however, no one whose approval I should be prouder to have; and while I shall accept your kind words in a modest spirit, I shall nevertheless feel encouraged thereby to contribute further mites from time to time in the future.

So far as your article tends to fortify some of my own positions, there is presented somewhat of a coincidence in relation to the "Huston" review that I intend to give shortly to the Yale Law Journal. I had intended to give it to the Journal for the first issue; but since glancing at Costigan's befogged and befogging comment in the Illinois Law Review, I thought I had better revise my discussion so as to make brief reply to his confused statements, that is, as regards

³⁸⁶ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

rights *in rem* and rights *in personam*. Perhaps also some other review may appear requiring special attention. How remarkable it is that so many people – even law teachers – are content to juggle with terms and ideas that they don't understand. Returning now to your article, it has given me many new and helpful ideas; and this is particularly true of your historical treatment in the latter part of your discussion. As regards your comment in “disabilities” and “abilities”, I shall certainly ponder your criticisms and suggestions gratefully and carefully. As yet, however, I am not sure that, so long as we release [?] the conception of “power”, we are not obliged to “find” a correlative for it, - though possibly some better word than “liability” could be discovered or invented. Just at present I am inclined to believe that “liability”, though very loosely and ambiguously used in these cases, corresponds to the conception in question more nearly than any other in the books. So also as regards “disability”. No one could fail to recognize its use in connection with such expression as “the privileges and disabilities of coverture” (Harvard Law Review Index”, and other similar expressions connected with the law of persons. But in such expressions isn't the term used in a wide and generic sense comparable to the wide and generic meaning of the term “right” itself? And are we not justified in any careful discussion and survey in confining the term “disability” to its more literal meaning of “inability” or “absence of power”?

This is but a suggestion, and, as I have before stated, I shall think of the matter with an open mind. In any event, it is but a subordinate part and issue in your entire discussion.

With all good wishes, believe me, as ever,

Sincerely and cordially your,

Hohfeld

Letter 35:

From Hohfeld to Pound

Date: 11/06/1915

The Graduates Club – New Haven, Connecticut

Dear Pound,

Your last good letter, referring once again to Woodward also, in a “P.S.”, to “Legal Rights”, came duly to hand and gave me great pleasure.

It is good to receive this strong confirmation of what I suggested in my own letter, - that in his heart he had nothing of which to complain, and that therefore his feelings were entirely cordial. By a strange coincidence the enclosed letter from W. arrived by the same as yours; and its cordiality and warmth served out to accentuate what your own letter stated.

While it is good to have Woodward as a friend – for many of his excellent qualities of heart and mind have always commanded my sincere admiration -, it is better still to have a friend such as you, the kind that will take the trouble to straighten out matters like this and to let a man know exactly where he stands. I hope that I may always be worthy of having friendship as loyal and helpful as this!

I was much interested in your P.S. concerning “Legal Rights”. It will be pleasant to talk over some of these fascinating problems some day when we have a good visit together, as of old. I hope this may occur in about two weeks.

Frankfurter sent me a copy of his casebook on Interstate Commerce. It looks to me like an excellent and useful piece of work – just such as I should have expected from so able and scholarly a man; and of course I was much pleased to be remembered in this way.

Things go on very pleasantly and smoothly here; and I can hardly realize how much time has already gone by. With all good wishes, believe me. Yours
sincerely, Hohfeld.

Letter 36:

From Hohfeld to Pound

Date: 11/24/1915

Yale University, School of Law, New Haven, Connecticut

Dear Pound:

Your last good letter was promptly received and deeply appreciated, as always in the case of messages coming from your domain.

I have noted with interest your negative statement in regard to the Deanship; and this, along with other matters that I have observed, leads me to hope for the exactly right appointment to that high office. In that connection I may say that I thought the article in the New Republic for Nov. 13th was very much to the point as regards substance, and also that it was written with unusual understanding and skill. Men capable of profound enough insight to write such an article are only too rare on the editorial boards of our newspapers and periodicals. Along the same lines, I was also much pleased with the article in the Harvard Alumni Bulletin; I was indeed glad to have the message of the New Republic brought so close home, - that is to the very doors of authority.

In view of what you have previously written to me concerning the situation at the University of Michigan, I know that you will be interested and pleased to learn that I have just accepted Dean Bates's invitation to give the course on Trusts there during the second term of the next summer session. While, as previously stated to you, I should ordinarily have been very reluctant to accept any position of this kind, it was easy to make an exception in this case because of the fact that I have taught Trusts for so many years that a course in this subject will not in any way interfere with my completing all of the other work that I had already mapped out. Bates is indeed such a charming and likeable fellow that it is hard, even on purely personal grounds, to enter a refusal to any reasonable request that he may make of a man.

It is rather likely that I shall attend the meetings of the Conference on Legal and Social Philosophy at Columbia during the coming Friday; and in that event I shall hope to see you at that time, and to have a good visit as of old.

With warm regards believe me,

Sincerely yours,

Hohfeld

Did you see our good fortune?

More than a million to Yale – one third of income exclusively for law school.

We are _____ (one word) of new epoch!!!

Letter 37³⁸⁷:

From Hohfeld to Pound

Date: 07/17/1916

The Graduates Club, New Haven, Connecticut

Dear Pound:

I deeply appreciate your recent kind note, for I know full well how busy you must have been for a long time back. Even as you indicate, we have ground for mutual sympathy on that score. I myself have had an eight-hour docket-four full, advanced courses-including my new course; and in addition I have been extremely busy with several collateral undertakings. But the most energy, and time-consuming feature of *the whole year* has related to administration and faculty changes, reorganization of schedules and courses, shifting among the men giving them, etc., etc. And you can't begin to realize the difficulties involved!

Swan is making a great dean, and his distinguished success as teacher and scholar is assured. He displays all of his fine qualities and splendid abilities as man and scholar that I learned to admire and respect when I knew him at Harvard.

It is good of you to refer so pleasantly to our acquisition of Cook, for whom, as you know, I have always had high admiration and regard. With Cook and Swan added, and Corbin also (who is every inch the equal of the former), and Edgerton a man of excellent possibilities (now that he will have a "decent" schedule and be relieved as soon as possible of secretarial duties), it seems to me that we have an obvious advantage over Columbia and Chicago, and that the latter will have extreme difficulty ever to catch up!

Of course I have had Cook and Kales on my list for calls ever since coming here. I am sorry that we lost the latter; but if we *must* lose, there is no one, Roscoe Pound, to whom I should gladly, lost than to you, who have always been so fair and generous to the members of the teaching profession, one and all. If even in slight measure some moderate progress here shall and you in doing even bigger things than otherwise at Harvard. I shall only rejoice; for, after all, we are after the same fundamental things, and the large loyalty to these bigger

³⁸⁷ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

opportunities being before the law schools as a whole transcends all else. Once again, the utmost success to you!

As you see, I am still in New Haven, as my work at Ann Arbor does not begin till the 31st. As Page will not be there for the second term, I shall barely see him (possibly) for a day or two after I arrive. I remember well his interesting paper at Chicago and is pleasant presentation thereof. I only wish I might see more of him. We shall have future vacancies to be filled from time to time; and I am keeping him well in mind. I wish he would write an article in one of the law reviews; too little along that line is being done by the law teachers; what's the matter with them? At any rate I can judge a man's attainments is that way in forming opinions for appointments; and I do wish Page and the other promising men in the profession would show what they can do. In response to a letter asking me for suggestions to fill the Chicago vacancy, I took pleasure in mentioning Page favorably along with others.

Hoping that you are enjoying some of the delights of "vacation" days and thus you are not working too hard. I remain,

Yours sincerely,
Hohfeld

Letter 38:

From Hohfeld to Pound

Date: 11/22/1916

Yale University, New Haven, Connecticut

Dear Pound:

I have been intending to write to you for a long time; but, as there has been no pressing necessity for doing so, it has been easy for other thing to gain the upper hand and prevent the fulfillment of my desires in that regard.

Now, however, that you have declined an official invitation to visit Yale on Football Day, I am impelled to express my regrets, if not also to find fault with you, for no reciprocating a bit in the interchange of visits between Cambridge and New Haven. I realize, of course, that you are very busy with a number of projects; but this fact can in no way diminish my disappointment as regards your inability to join the goodly company that we expect to have with us on the day in question. I am told by Dean Swan that Mikell, Bohlen and Keedy of Pennsylvania, and Stone, Gifford and Moore of Columbia, will be at the little luncheon that is being arranged for.

I had some very pleasant experiences during my visit in Ann Arbor during the summer. It goes without saying that I heard many pleasant and cordial references to yourself from the younger group of men on the faculty there.

Hoping that you are not overworking, believe me,

Cordially yours,

Wesley N. Hohfeld

Letter 39:

From Hohfeld to Pound

Date: 12/01/1916

Yale University, New Haven, Connecticut

Dear Pound:

Several reprints of Dr. Holdsworth's recent article in the Yale Law Journal having come into my hands, I have thought that you might be interested to have one. I am therefore taking pleasure in sending such to you under separate cover.

With warm regards, I remain,

Sincerely yours,

Hohfeld

I am afraid I shall not get to Chicago this month; but I hope to see a strong Yale delegation there.

If ever I can get to Cambridge, I shall certainly look yourself if you're not too busy; but just when this may be. I can't foretell!

Letter 40:

From Hohfeld to Pound

Date: 05/20/1917

The Graduates Club – New Haven, Connecticut

Dear friend Pound:

If kind thoughts and fond wishes were letters you would have had many from me during the year. But the same or similar conditions that you mention as to yourself have operated here at this end of the line. Besides that, knowing that you have been busier and burdened more than ever this year, I have more or less “subconsciously” felt that it would be an imposition to thrust letters upon your which you in turn might feel compelled, if not obliged, to answer. (Cf., however, your own report of the case of W. de Campo Alto, super ??? de Palo Alto).

Well, I am really very glad to receive your kind message and invitation. I know of course the good warmth of your western hospitality, and I shall hope to get up your way before long. Will you be around Cambridge during the summer? There is greater freedom ahead for me then, of course, and somehow a visit when “shop” is entirely closed as regards business will seem more restful and attractive than when all is in full swing.

Though we have not exchanged our usual quota of letters I have heard an occasional word of you from Kales, who was down here two or three time – including football day – when you declined to come and accept a little Yale hospitality. I have also had the pleasure of observing the development of your centennial plans, and the movement for additional endowment. As I have watched all these and other matters at the Law School progress as they have, I have become ever more firmly convinced that your election there as dean was the one master stroke in behalf of the schools security and prestige. Your centennial plans now make this even more evident; and again I say, all success!

Of course we too, here at New Haven, have ambitions for our Law School and for further endowment to carry forward broader work than has generally been attempted in the past; No doubt you have seen our “program”, etc., and no elaboration is necessary here I hope that the Yale Law School may prove gradually to be something like a friendly institutional competitor in the best sense of the word; for, as Harvard has been the spur to many other Law Schools – and

not the least to Yale – I hope now to see Harvard spurred to yet greater efforts and bigger achievements through our own ambitions and efforts here. Possibly the latter shall prove all too feeble to be perceptible in that way: time alone will tell! But it is at any rate, in this spirit that I truly hope to see reaction of mutual character and advantages from this time forth.

The administration here has gradually come to give us full and, indeed, enthusiastic support – as of course is evident from the four appointments recently made. And I know you will be glad to learn that they have not overlooked some of the “old guard”, - to which I of course belong. My salary has been made \$ 6,000, with definite assurance of early progress to \$ 7,500. This, however, in itself means but little to me; for my heart is solely centered on the development of the school along larger lines of effort.

Without seeking to impose obligation, please let me say that I shall hope to hear from you before long and at greater length. But that must be only as opportunity is given you. The small boy, I believe; defined a friend as “any who knows all about you and likes you still”. Probably he might to have added “even if you never write!” I feel at any rate that our friendship is of that brand and that it will endure with or without diplomatic notes!

I am, as it happens, stealing the time for this hasty word from my promised article to the Law Journal. Whether I shall be able to complete it in time – quaere.

With kindest regards to you and Mrs. Pound and many thanks for the invitation.

I remain sincerely and cordially yours,
Hohfeld

Letter 41³⁸⁸:

From Hohfeld to Pound

Date: 08/16/1917

The Graduates Club, New Haven, Connecticut

Dear Pound:

It so happens that I took a vacation trip to California for six weeks, leaving New Haven on June 24th and returning August 14th. So your kind note, received yesterday, came at the right moment to “cheer me up” for the work I plan to do during the rest of the summer. Not that I can accept your all too kind words at par value: they are far more than I or my little work deserve. But they are a sincere token of your friendship and encouragement; and that is enough! Thank you from the bottom of my heart!

I cannot even claim the merit (so far) of having sent you the copy of the Yale Law Journal to which you refer. You see, the June issue appeared after I had left New Haven, - indeed, about two weeks later-; so I have heretofore had no opportunity to follow precedent and send you a “complimentary”. You may be assured, however, that, among the very few copies that expect to send to “those who care” was to be one for Roscoe Pound. Moreover, I shall make sure to send you one even now, just for the pleasure of doing so.

I should be very glad to receive any criticisms and suggestions that may occur to you. Very likely I have made some slips – for, weary, and worn as I was by the end of the year, I forced myself to throw the two articles together in the last seven or eight days of June.

As I explained in my last letter to you, I know what the “administration burden” means – yes sir, I do! You are at least working with a well oiled and smooth-running machine, with a century-old fly-wheel of tremendous momentum.

Things here now, however, are in fine shape; and I look for greater freedom for my personal efforts and labors during the coming year. Permit me to hope that you also may have constantly increasing opportunity for your great work as a legal scholar and author.

³⁸⁸ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

I have heard of your invitation to Bates and his “partial acceptance”. You know how great are my admiration and friendship with him. I sincerely hope therefore that he may have the fullest measure of success and happiness at Harvard. I congratulate you on drawing such a solid and sincere man to your ranks.

I venture to add that, in my judgment, it is a good thing for Harvard to depart from the tradition of taking only such men as hold a Harvard degree or, at the least, have studied for a time at Harvard. This larger attitude will, I am sure, meet with commendation everywhere, and, in the end, strengthen the school. In making the last six appointments here at Yale, we have tried to give due weight to the principles of variation and eclecticism, without sacrificing anything in unity of purpose.

How soon do you expect to complete your book? I have looked for it for some time.

Regarding visits to Cambridge and Belmont, let me thank you for so cordial a renewal of your invitation. Now that I am again in New Haven after so generous an interval, I am expecting to hold myself to work as much as the spirit will permit. But, as there qualifying words indicate, I shall no doubt take occasional days off; and so I shall almost surely get up to see you if you are to be around for the balance of the summer. Let me know as to that.

In the meanwhile my cordial regards to you and Mrs. Pound.

Sincerely yours,
Hohfeld

Letter 42:

From Hohfeld to Pound

Date: 09/12/1917

The Graduates Club – New Haven, Connecticut

Dear Pound:

On binding up the last installment of your “Essays” I find one or two of your last addresses, etc. missing. No doubt this is due to your new secretary, over whom I have as yet had no opportunity to exercise any personal influence.

I miss at least “The Limits of Effective Legal Action” and “The End of Law as Developed in Juristic Thought” I and II.

Have you got these copies; if so you know how much I would appreciate them. So as to keep my collections of Pound complete.

With all good wishes,

Cordially,

Hohfeld

Letter 43:

From Hohfeld to Pound

Date: 12/03/1917

Yale University, School of Law, New Haven, Connecticut

Dear Pound:

I hope that the “complimentary copy” of the November Yale Law Journal reached you in due course, and it is chiefly in that connection that I now wish to write a few words that I meant to convey to you at the time that I sent the Journal. That is to say, I want to express the hope, somewhat selfishly, that you will have something to say in the Law Journal by way of response to the interesting article of Dr. Isaacs. It is a rather mean way to try and force an article from you for the Journal, and I do not suppose that this particular instance is one of premeditation on the part of anyone; but, I may add that speaking for myself, I should be willing to indulge in even so mean a method as this, now or later, if it be necessary, in order to have the pages of the Journal honored by a contribution from your pen. Judging by what I have heard the student editors say repeatedly, both during last year and since the opening of the present term, they would be delighted to receive anything that you might contribute. Why don’t you now seize the psychological moment for complying with these wishes and hopes on the part of the student editors?

Indeed, don’t you think that the Yale Law Journal is the most appropriate vehicle of communication that your juristic contributions could now employ, seeing that the said Journal has as one of its specialties the field of Jurisprudence, including, of course, sociological jurisprudence?

Cook tells me that he saw you at New York at the time of the Bar Association meeting, and that leads me to wonder why, on your various visits between Cambridge and New York, you do not stop off here at New Haven to pay your old friends a call? You see, in reality, you have far less excuse for not visiting New Haven than I have for not visiting Cambridge, because everybody is sure to have to go to New York, whereas one could hardly think of a reason to go to Boston and vicinity except for the luxury of visiting one’s friends. I am very sincere in hoping that you will reform in this matter as you have never returned any of my calls, and I am almost getting “touchy” in the matter. I hope that you

will bring Bates along with you or see that he puts in an appearance in some way or other. Looking now at the other side of things, I may say for myself that since the opening of the term I have not left New Haven. No, not even to go to New York City; I am becoming, it would seem, a veritable provincial. However, I continue to hope that things will change hereabouts so that I may glimpse Cambridge and Cambridge friends before very long. Even as I dictate these words, I cannot refrain from thinking in rapid sequence of the scholarly atmosphere of your Law School office, the wonderful fellowship that develops at that Boston tavern that we used to consult for lunch, and your hospitable home at Belmont, with the quiet meal, the good cheer furnished by Mrs. Pound, and the rounding-off with a well selected program on your Victrola.

If I had seen Lorenzen before he left for Cambridge, I should have sent personal greetings to you, but the fact is I did not learn even of his intention to leave until he had actually gone. He is wonderfully fine fellow, very able and learned, and intellectually sincere and honest to the core. He has fitted into the faculty here unusually well, and I know that every one of us feels it a great good fortune to the School that we were able to draw him away from his friends at Minneapolis. Borchard and Dunn, I may add, have already made great places for themselves here at the School and are contributing a great deal to the scholarly and academic vigor of the School's activities.

Please be sure to remember me kindly to Mrs. Pound, also to Mr. and Mrs. Bates. Hoping soon to receive a breezy message directly from headquarters, I remain

Sincerely yours,
Hohfeld

Letter 44:

From Hohfeld to Pound

Date: 01/21/1918

Yale University, School of Law, New Haven, Connecticut

Dear Pound:

I hope you will forgive me for not answering sooner your very kind note of recent date, renewing your invitation to call at Cambridge and Belmont and also containing many other evidences of your good friendship. I meant to answer much sooner than this, but in ways that you can readily understand from your own experience days and days have slipped by without intended result.

Today I am almost under the weather with a cold, so I am afraid that I am not in a position to attempt any very cheerful or lengthy message. I may say, however, that everything connected with my work goes on here at New Haven as pleasantly as I could possibly hope for, and I have never been more interested or more cheerful as to the outlook for things in the future. All this in spite of the fact that the number of students here at Yale is, of course, under present circumstances very limited.

I have not had time to read Dr. Isaac's article in the Harvard Law Review very carefully, but of course I have not failed to see one or two of the things occurring toward the very beginning. Whether his purpose in regard to the omission of sociological jurisprudence was to josh you or me or both I do not know, but my original paper which cited your work on sociological jurisprudence in one of the footnotes made it very plain that in my view your special lines of work and thought and also the leading matters of so-called philosophical jurisprudence would fall under the heading of critical, or teleological, jurisprudence.

Have you read Stone's Review of Billson on Equity? If so, can you tell me on which side of the fences he really is and also why? His statement that the proposition of no conflict between law and equity is sometimes "correctly made" as regards the administrative agencies connected therewith was evidently intended defensively as a forced explanation of what he himself said in 12 Columbia Law Review 756. That his language in that place, however, will not by any possibility bear such a peculiar limited meaning is too clear to require argument. This is all

the plainer when one considers that in the very review where the passage in question occurs he had referred to Maitland's Equity and shown a familiarity with that book. It is also clear that he was familiar with the writings of Langdell. How, therefore, a man under all those circumstances could use such sweeping language, savoring obviously of substantive rights, understanding one of Maitland's words (Maitland expressing used the term "substantive"), with only a very limited purpose to make clear that the various courts did not fight each other with writs of prohibition and writs of habeas corpus, it is altogether impossible to see. Indeed, as we all know, even in its very restricted meaning the statement would not be (historically) true. So far as Stone is concerned it seems to be a most remarkable case of desiring to embrace a new love without first throwing over the old.

Here I am filling space with serious things because, as I said at the outset, I could not write a cheerful letter if I tried. So I shall close for the present, hoping before long to be able to write again, or better still to see you in your regular haunts at Cambridge and Belmont.

With kindest regards to you and Mrs. Pound, I remain,

Sincerely and cordially yours,

Hohfeld

Letter 45:

From Hohfeld to Pound

Date: 04/10/1918

Yale Law School – New Haven, Connecticut

Please hold details of my illness etc. strictly confidential.

Dear Pound:

Your last good letter to me related to Isaacs article in the Harvard Law Review, at the close asking me whether I knew anything about him and his work. I am not personally acquainted with him. I recall, however, that as “Acting Dean of Cincinnati Law School”, he attended the December, 1914 meeting of Law School Association and that he did not fail to voice his views during the open discussions. As regards appearance; his racial features are very strongly defined.

I should have written this poor “communication” much sooner save that for some weeks I have been out of commission with a mild case of “grippe” (my first sickness in 17 years) and a more troublesome case due to a dead tooth in my mouth. I was first in Elm City Presbyterian Hospital for some weeks. I came down to New York City (not knowing of any satisfactory N.H. man), and put myself under the care of the man considered the best along these lines that I have mentioned – infection from dead teeth, etc. The Dean of Yale Med. School recommended him as best man in the country. In New Haven there was no one at all to whom one could really turn with confidence. The New York specialist does all his work at Mount Sinai Hospital; and so this has necessarily become my headquarters. It is a comfortable hospital.

I am getting along well; and – fortunately – there will be no bad after-effects. In fact all possibility of harm from dead teeth will be stamped out for good.

I feel very comfortable, but it is tedious from day to day. Let me hear from my friends by letter, or, if in vicinity, by personal visit.

Give my warmest regards to Bates and other friends in the faculty; and be sure to remember me most kindly to Mrs. Pound.

Sincerely and faithfully yours,

Wesley N. Hohfeld

P.S. Please hold details absolutely confidential. You know how easy it is for these to get scattered everywhere and to be distorted.

Letter 46³⁸⁹:

From Hohfeld to Pound

Date: 06/09/1918

Yale University, School of Law, New Haven, Connecticut

Dear Pound:

I seldom write letter of any kind these days, as I am advised by my physicians not to do so, but to spare energy of every kind and in every direction. But I could not resist attempting at least a poor response to such a fine message as yours of the sixth. I know you will generously allow for defects of handwriting and other elements involved! Really it would be difficult to tell you how much good your friendly words did me. Letters and visits from friends serve to help break the monotony of things.

You express *very natural* surprise at the enduring nature of my illness; but I have no reason to feel impatient or disappointed for from the beginning all three of the doctors connected with the case, including Dean Blumer (confidential of the Yale Medical School – consulting physician) warned me that complete recovery would be very long coming. His (Blumer's) word was "months". So I endeavor to keep patient and to *eat* enough good food to fight on foreign antagonists. For your information as one of my exceptional friends perhaps I ought to add that there is positive scientific proof based on *blood analysis* that I am steadily improving. They say, too, that when these germs are stamped out, it will be for good and my general health as strong and good as ever. I expect to be on duty next fall as "frisky" as ever. Even now I feel fine from day to day and get considerable pleasure reading law review articles, etc.

In spite of the latter, it is, as you say "tough luck" to have to quit all regular things for so long a time.

For one thing I regret exceedingly that I must forego my contribution to the Wigmore Festival Volume. I was going to write on "The Basis of the Conflict of Laws"; but I must now postpone this indefinitely.

³⁸⁹ Carta retirada do anexo do livro italiano: LOSANO, Mario G. *Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld*. Bologna: Società Editrice Il Mulino, 1977.

Far more, however, I regret my inability to complete, as I hoped to this academic year, my essay on Fundamental Legal Conceptions appearing partly in 23 Yale Law Journal and partly in 26 Yale Law Journal. A substantial part of 27 Yale Law Journal (Easements) could be used. It could be published (as many have urged me) as a complete essay practically in its present form. But I have my further material all collected and I am determined to have it completed – the earliest possible day! Being human, I feel impelled the more to do this under the inspiration and encouragement of men like Hall and Bigelow [“it is the best thing ever written on jurisprudence”. Of course (seriously) I don’t myself believe anything so extravagant!].

I received a fine letter from Judge Holmes when 23 Yale Law Journal came out and another only few months ago.

I enclose (with request for return) a letter from Ferson. He is a total stranger to me. This is only a sample of scores of requests for continuation and publication – especially as the supply of the original issue (at least of 23 Y.L.J.), after selling for a long time for \$1 has long since been exhausted. [Pen don’t work].

So you see what an “awful” deprivation it is! – i.e. that is for me to be frustrated.

So far as the Wigmore volume is concerned I am at least comforted by the fact that Yale will be represented so very worthily by Lorenzen and Borchard. They are both splendid scholars *and writers*, as you already know. [Pen giving way].

I do not fail to notice your cordial renewal of invitation to Belmont and Cambridge. This is mild torment! What I can do this summer is hard to know. But surely by the fall I shall be on hand as of old. I only wish you would pay me a visit some time. I could put you up most comfortably at our University or, as it is called here, Graduates Club, and you would be surprised at the fine walks and drives around here.

Sincerely and faithfully yours,
Wesley N. Hohfeld