

ELIMINATING THE DISPARITY BETWEEN THE BUSINESS PERSON'S NEEDS AND WHAT IS TAUGHT IN THE BASIC BUSINESS LAW COURSE

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"Not all business law faculty think the same thing when they use the term legal environment."¹

INTRODUCTION

"Legal environment" has become a popular term used to describe an approach to educating students in the law courses taught in the business school. In some ways it is a term that dichotomizes business law teachers into two camps: legal environmentalists² and traditionalists.³ The environmentalists may be perceived as youthful Davids out to slay Goliath, while the traditionalists as stalwarts are

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This project was funded by The Ohio State University, College of Administrative Science, Small Business Administration Fund. We wish to thank Robert Georges, Associate Dean of the College of Administrative Science, The Ohio State University, for his support during the tenure of this project, and Mitch Dysart and Albert Frydland for their valuable technical assistance.

¹ Dunfee, Brennan & Decker, *The Business Law Curriculum: Recent Change and Current Status*, 18 AM. BUS. L.J. 59, 60 n.5 (1980).

² "Legal environmentalists" generally opt for an emphasis on breadth of coverage; public law; managerial interaction with the legal system; and the characterization of law as a dynamic process influenced by historical, social, economic, and political forces.

³ Traditionalists opt for a rule-oriented approach and an emphasis on private law topics such as contracts, sales, negotiable instruments, and business organizations.

bent on clinging to a decaying carcass. These depictions, however, are unfair caricatures.⁴

Business educators have as a common goal the desire to impart relevant knowledge to students. The goal of the business law educator, whatever else, is certainly to equip a student with the necessary legal awareness to operate wisely within the business sphere. Here there is basic agreement. The question becomes what equipment is needed for the task?

The move to "environmentalize" the basic business law course⁵ is partly rooted in a desire to narrow the gap between legal studies as taught in the business school and the knowledge necessary to function properly in the reality of a business environment. The "move" emanates from three sources: the educational accrediting associations, business law educators, and persons in business. There is a clear dictate to environmentalize the legal studies curriculum from the American Assembly of Collegiate Schools of Business (AACSB), the major national accrediting association for business schools.⁶ In response to the demand to environmentalize, the business law profession has generated a number of "environmental" textbooks⁷. Because of their experience with the business-law interface, business people also have something to contribute in this area.⁸ Both business law educators and the accrediting institutions need to keep a responsive ear to business peoples' preferences in order to interpret business

⁴ See Wolfe, *Expressing the Educational Objectives of Business Law: A Proposed Method and Framework*, 12 AM. BUS. L.J. 1, 13 (1974) (suggesting that the distinction is based upon a difference in educational objectives: the traditionalists focus on the cognitive domain while the environmentalists focus on the affective domain).

⁵ See Dunfee, Brennan & Decker, *supra* note 1, at 74-75. The authors found that: (1) the environmental approach is emphasized at the graduate level; (2) there is a trend toward environmentalization in the undergraduate programs at schools which have graduate programs; (3) the two-year schools continue to follow the traditional business law approach.

⁶ ACCREDITATION COUNCIL, AMERICAN ASSEMBLY OF COLLEGIATE SCHOOLS OF BUSINESS, POLICIES, PROCEDURES, AND STANDARDS 27 (1981-82). ("a background of the . . . legal environment . . . with ethical considerations . . .").

⁷ J. BLACKBURN, E. KLAYMAN & M. MALIN, *THE LEGAL ENVIRONMENT OF BUSINESS* (Richard D. Irwin 1982); R. CORLEY, R. BLACK & L. REED, *THE LEGAL ENVIRONMENT OF BUSINESS* (McGraw-Hill 5th ed. 1981); T. DUNFEE, J. BELLACE & A. ROSOFF, *BUSINESS AND ITS LEGAL ENVIRONMENT* (Prentice-Hall 1983); B. FISHER & M. PHILLIPS, *THE LEGAL ENVIRONMENT OF BUSINESS* (West 1983); R. HOWELL, J. ALLISON & N. HENLEY, *THE LEGAL ENVIRONMENT OF BUSINESS* (Dryden Press 1984); M. LITKA & J. INMAN, *THE LEGAL ENVIRONMENT OF BUSINESS* (John Wiley & Sons, Inc. 3rd ed. 1983); A. RINGLEB & R. MEINERS, *THE LEGAL ENVIRONMENT OF BUSINESS* (West 1982).

⁸ See F. PIERSON, *THE EDUCATION OF AMERICAN BUSINESSMEN* (1959).

legal environment and translate it to a meaningful classroom experience.⁹

The first purpose of this article is to develop a model syllabus for a basic business law course. The information necessary to formulate the syllabus is based on a survey (Survey I) of business school graduates designed to determine what subjects they perceive as most valuable. A similar survey was conducted by Professor John Donnell¹⁰ (hereafter referred to as the Donnell survey) and replicated about ten years later by Professors William Elliott and Arthur Wolfe¹¹ (hereafter referred to as the Elliott and Wolfe survey). Secondly, this article seeks to identify topical treatment disparities between the preferences of business people and the topics actually covered in the business law courses.¹² This determination is based on a comparison of the results of Survey I (business persons' preferences) with the results of a second study (Survey II) which surveyed AACSB member business colleges to determine business law course content. We conclude that adoption of the model syllabus would aid in closing the gap between the business person's preferences and what is currently taught in the basic business law course.

SURVEY I

Methodology

Survey I consisted of a mailing of 1000 four page questionnaires to previous business school graduates of The Ohio State University selected randomly from alumni association files. Thirty-one of these questionnaires were returned for lack of a proper address and 211 were usable, resulting in a response rate of 21.8%. Unhappy with this rate of return, we sent a second mailing to the same graduates requesting a return from those who had failed to respond. The total response rate from both mailings was 47%. We feel that our data reflects the views of an average business school graduate of The Ohio State University, a large midwestern state university.

Survey I contains three significant sections. The first section requests general background information. This includes questions

⁹ See R. GORDON & J. HOWELL, *HIGHER EDUCATION FOR BUSINESS* (1959).

¹⁰ Donnell, *The Businessman and The Business Law Curriculum*, 6 AM. BUS. L.J. 451 (1968).

¹¹ Elliott & Wolfe, *The Need for Legal Education by Persons in Business*, 19 AM. BUS. L.J. 153 (1981).

¹² For an article documenting the changes which have occurred in the business law curriculum from 1972 to 1982 and exploring future trends, see Dunfee, Brennan & Decker, *supra* note 1.

designed to elicit responses about employment data, nature and size of the respondent's firm, respondent's education and his or her level of exposure to business law courses. The second section consists of 39 distinct legal topics. The respondents were asked to rate those topics according to their perception of the topic's importance to the business law curriculum. There were four choices: extremely valuable, valuable, some value, and no value. Section three contained a list of law related transactions and called for the respondent to characterize the incidence of contact with these transactions; There were four choices: frequently, occasionally, rarely, or never.

The respondents demonstrated a wide diversity of occupations and positions, primarily in business. Fifty-seven percent were employed by business firms with more than 500 employees and forty-eight percent worked for employers with more than 1000 employees. The median size of the firm in terms of net income was more than \$5 million annually. Sixty-two percent of the firms represented had at least one in-house attorney and the firms were scattered throughout the United States.

Table 1
Size of Firm

<u>Employees</u>	<u># Responses</u>	<u>%</u>	<u>Annual Net Income</u>	<u># Responses</u>	<u>%</u>
under 25	105	23	under \$100,000	61	15
26-100	43	9.5	100,001-500,000	59	14.5
101-500	48	10.5	500,001-1,000,000	21	5
501-1000	35	8	1,000,001-5,000,000	46	11
over 1000	<u>220</u>	<u>49</u>	over 5,000,000	<u>224</u>	<u>54.5</u>
Total	451	100	Total	411	100

The undergraduate major mix of the respondents was distributed among the common business majors.¹³ The largest major was recorded as marketing (26%), followed by accounting (21%); finance and management (14%) were tied for third; economics (6%) and labor and human resources had the smallest representation (3%). Most of the respondents (73%) were employed in a job related to their major. Ap-

¹³ The distribution of majors among the respondents does not reflect the national distribution for those earning a baccalaureate in business, which according to one source breaks down as follows: Management (36%), Accounting (22%), Marketing (12%), Finance (6%), Economics (8%), Labor & Human Resources (1%), and "Other Business" (22%). NATIONAL CENTER FOR EDUCATION STATISTICS, UNITED STATES DEPT OF EDUC. STATISTICS Table 5-0500 (1980-81). For an explanation of how this disparity affects the overall results of our survey, see *infra* note 15.

proximately sixty-nine percent of the respondents received their baccalaureate degree more than ten years ago, and forty-five percent were employed in their current or related job for more than ten years.

Table 2
Education of Respondents

Major	# Responses	%	Years Since Received Under-Graduate Degree		
			# Responses	%	
Marketing	120	26	less than 3	11	2
Accounting	97	21	between 3-5 years	56	12
Finance	66	15	between 5-10 years	76	17
Management	65	14	between 10-20 years	150	33
Economics	26	6	more than 20 years	163	36
Labor & Human Resources	15	3			
Other Business	41	9			
Other Non-Business	58	13			
Total	488	107*	Total	456	100

*The total percentage exceeds 100 since some respondents had more than one undergraduate major.

Table 3
Employment of Respondents

Years Employed in Present or Related Job	# Responses	%
less than 3 years	71	16
between 3 and 5 years	64	14
between 5 and 10 years	110	24
between 10 and 20 years	122	27
more than 20 years	84	19
Total	451	100

Of the 456 respondents, all but 15 took at least one course in business law, with the mean being two courses. Ninety percent took a law course at the undergraduate level. The overwhelming majority (77%) said that their business law courses were helpful in making business decisions.

Table 4

Business Law Courses

Number Taken	# Responses	%	Level Taken	# Responses	%
1	148	33.5	Under-graduate	398	90
2	157	35.5	Graduate	99	22
3	70	16	Law School	33	7
More than 3	66	15	Continuing Education	25	6
			Other	5	1
Total	441	100	Total	560	126*

*The total percentage exceeds 100 since some respondents took courses at more than one level.

In examining the results of the survey, it is important to keep in mind that the average respondent is a person who was exposed to business law courses within the business school curriculum, and to business and its environment for over a decade. The average respondent holds a middle-level management position, although at least 23% hold upper-level management positions.¹⁴ The survey was not targeted at this group, but its members were the people most prone to respond to the survey.

Table 5

Distribution of Job Positions

Job Position	# Responses	%
Upper Management	104	23
Middle Management	140	31
Non-managerial	89	19½
Professionals	60	13
Education	12	2½
Military	12	2½
Unknown	39	8½
Total	456	100

¹⁴ This is to be contrasted with the respondents in the Donnell and Elliott-Wolfe surveys, where 79% and 97% of the respondents, respectively, were upper-level management people. Elliott & Wolfe, *supra* 11, at 159.

Survey Results

The survey results showed the ten most valuable topics¹⁵ (see Table 6) to be divided between traditional and nontraditional topics. Traditional topics included contracts, business organizations, negotiable instruments, the sale of goods, real property, debtor-creditor relations, and product safety and liability. Nontraditional topics included regulatory powers, business ethics, and antitrust. The law of contract formation heads the list as the most valuable topic. In the Donnell¹⁶ and Elliott & Wolfe¹⁷ surveys the law of contract formation also ranked relatively high. The importance the respondents attached to contract formation is not surprising. Contracts are the thread which enable business to weave commercial patterns. Businesses enter into contracts frequently and the frequency of its occurrence tends to influence the value business people attach to the topic. This is confirmed by Table 7, where referring to or interpreting a contract heads the list as the most frequently encountered transaction.

Table 6

Survey I

Ranking of Business Persons' Selected Value of Topics for Inclusion in Business Law Course(s)

Rank	Topic	Value Score*
1	Contract Formation	1.547
2	Business Organizations	1.654
3	Scope of Regulatory Powers	2.027
4	Negotiable Instruments	2.029
5	Debtor-Creditor Relations	2.071
6	Sale of Goods	2.119
7	Business Ethics	2.142
8	Antitrust	2.175
9	Real Property	2.196

¹⁵ The variation in the distribution of respondents' majors, (see Table 2) from the national average distributions of majors (see *supra* note 13) does not appreciably affect the validity of our survey for the ranking of the top ten topics. There are no statistically significant differences between the responses of the individual majors and the overall means for all respondents when testing to three standard deviations from the means, except for two topics selected by those majoring in labor and human resources: employment discrimination and unfair labor practices. With only 3 percent of the sample coming from this area, these topics' means only minimally effect the overall results.

¹⁶ In the Donnell survey the law of contract formation ranked second. Donnell, *supra* note 10, at 456.

¹⁷ In the Elliott & Wolfe survey the law of contract formation ranked eighth. Elliott & Wolfe, *supra* note 11, at 162.

<u>Rank</u>	<u>Topic</u>	<u>Value Score*</u>
10	Product Safety and Liability	2.260
11	The Judicial Process	2.270
12	Securities	2.283
13	Dealing with Attorneys	2.294
14	Small Business Formation	2.301
15	When to Contact an Attorney	2.353
16	Employment Discrimination	2.384
17	How to Select an Attorney	2.387
18	The Legislative Process	2.416
19	Unfair Labor Practices	2.437
20	Deceptive Trade Practices	2.444
21	Bankruptcy	2.490
22	Product Warranties	2.527
23	Business Person's Role in Assisting Legal Counsel	2.529
24	Workers Compensation	2.546
25	Insurance Law	2.554
26	Arbitration and Mediation	2.567
27	Attorneys Role as Counselor Drafter and Advocate	2.568
28	Advertising Law	2.591
29	Computer Crimes	2.669
30	Government Contracting	2.705
31	The Attorney Client Privilege	2.749
32	Trademarks and Patents	2.767
33	Franchising	2.771
34	The Lawyers Code of Ethics	2.814
35	White Collar Crimes	2.836
36	Environmental Law	2.854
37	History and Origin of Law	2.866
38	The Law of Exporting and Importing	2.925
39	Capacity to Contract	3.012

*The value score is a weighted average with the points assigned to individual responses as follows:

Extremely valuable	1
Valuable	2
Some Value	3
No Value	4

The total points for each topic is then divided by the total number of responses to arrive at the value score.



Table 7

Ranking of Frequency of Encountering Transactions

<u>Rank</u>	<u>Transaction</u>	<u>Frequency Score*</u>
1	Referring to or interpreting a contract to which the company is a party	1.973
2	Communication with an attorney relating to company activities	2.002
3	Interviewing and/or hiring minorities	2.438
4	Met by a government agent seeking to inspect premises or examine the company's books	2.793
5	Arranging financing for a creditor	2.846
6	Drafting agreements involving distributors and customers on behalf of the company	2.848
7	Preparation, media selection, or placement of company advertisements	2.875
8	Determining negotiability of stock, note, check, or draft	2.949
9	Dealing with a governmental bureau after an adverse ruling	3.122
10	Knowledge of company-related crimes committed by any of the company's employees	3.165
11	Involved in business decisions related to bankruptcy	3.175
12	Involved in business decisions related to company mergers	3.192
13	Participation in the arbitration process	3.280
14	Processing workers compensation forms for injured employees	3.411

<u>Rank</u>	<u>Transaction</u>	<u>Frequency Score*</u>
15	Negotiating or settling a claim of a person injured because of the company's defective product	3.546

*The frequency score is a weighted average with the points assigned to individual responses as follows:

Frequently	1
Occasionally	2
Rarely	3
Never	4

The total points for each transaction is then divided by the total number of responses to arrive at the frequency score.

"Business organizations" was selected as the second most valuable topic for inclusion in a business law course. The rise of the corporation as an important economic and political force in our society is apparent.¹⁸ The legal dimensions of corporate behavior and structure are complex. Additionally, virtually all the respondents are a "spoke" in a corporate or other business organization and, as such, are intimately involved with the organization daily. Hence, the high ranking of the value of this topic is not surprising.

The scope of regulatory powers was ranked third. Public law and regulations are a snare to the uninitiated business person. Although the Reagan administration has attempted to cut back on federal regulation of business, any change is likely to result only in a slowing of the growth rate. Additionally, business people must contend with state regulatory agencies and regulations. The regulatory process affects business even more than judicial process.¹⁹ This is obviously the experience of the respondents, who placed the scope of regulatory powers eight positions ahead of the judicial process.

Debtor-creditor relations, which ranks fifth and product safety and liability, ranked tenth, have more regulatory aspects today than ever before. For example the Consumer Credit Cost Disclosure Act,²⁰ the Fair Credit Reporting Act,²¹ the Fair Debt Collections Practices Act,²²

¹⁸ See generally Wolfe, *From Contract to a Structuralist Perspective of Organization and Power Control: Business Law in the Year 2000*, 1 J. LEGAL STUD. EDUC. 25 (1983).

¹⁹ M. WEIDENBAUM, PUBLIC POLICY: NO LONGER A SPECTATOR SPORT FOR BUSINESS (Center for the Study of American Business 1980).

²⁰ 15 U.S.C. §§ 1601 *et seq.* (1976 & Supp. V 1981).

²¹ *Id.* §§ 1681-1681t (1976 & Supp. V 1981).

²² *Id.* §§ 1692-1692o (Supp. V 1981).

the Equal Credit Opportunity Act,²³ the Fair Credit Billing Act,²⁴ and the Electronic Fund Transfer Act²⁵ are a few federal laws that affect the credit relations area.

In the area of product safety we cannot ignore the significance of the Federal Trade Commission in its administration of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act²⁶ and the Consumer Product Safety Commission in its administration of the Consumer Product Safety Act.²⁷

Business ethics placed number 7 in Table 6. We will have more to say about the three-dimensional interplay of business, ethics, and law in part IV of this article.

The bottom ten topical rankings in Table 6 are areas which rarely arise in a business context (numbers 31, 34, 37), do not confront the ordinary business (numbers 30, 32, 33, 35, 38 and 39), or are generally perceived as complex legal specialties (number 36).

Business people have a wide interest in business law topics as demonstrated by their rating of all topics as having at least some value in a business law course.²⁸

MODEL SYLLABUS

Based upon the belief that there should be some correlation between the rating of a topic and the time devoted to the topic in a business law course,²⁹ and based on the information supplied by Table 6 we are able to construct a model syllabus. Like all models, this model will undoubtedly have to be adjusted to accommodate the particular variables confronting those charged with curriculum design. We have assumed a one-semester three-credit-hour course consisting of 40 hours of classroom time. We have included in our syllabus all those topics that have a value score of at least 2.499. This minimal value score indicates that the topic was at least rated as leaning toward valuable. Time allocation assigned to the topics contained within the syllabus

²³ *Id.* §§ 1691-1691f (1976 & Supp. V 1981).

²⁴ *Id.* §§ 1666-1666j (1976 & Supp. V 1981).

²⁵ *Id.* §§ 1693-1693r (Supp. V 1981).

²⁶ *Id.* §§ 2301-2312 (1976).

²⁷ *Id.* §§ 2051-2083 (1976 & Supp. V 1981).

²⁸ This catholicity of interest was also emphasized in Donnell, *supra* note 10, at 453, and confirmed by Elliott & Wolfe, *supra* note 11, at 171.

²⁹ Perhaps it would be useful to conduct a survey to ascertain how business people would allocate time to selected topics in a business law course. Such a survey might contain the following question: "Assume that you are requested to design a business law course consisting of forty hours of classes. How would you allocate the time to each of the following topics? (You may devote anywhere from 0 to 40 hours to each topic; however, the total time devoted to all topics should equal forty hours)".

was determined by allotting an amount of time proportional to the topic's value.³⁰ For example, a topic receiving a value score of 1 would receive twice as much attention as one receiving a value score of 2. In formulating the syllabus some topics were combined; for example, the legal process is a combination of the judicial process and the legislative process. Of course, where this has been done the total time for each topic is also combined.

MODEL SYLLABUS
Survey of The Legal Environment of Business

<u>Topic</u>	<u>Hours</u>
INTRODUCTION TO LAW	
The legal process ³¹	3½
Attorney-Business Client Relations ³²	5
PRIVATE LAW	
Contract formation	3
Sale of goods— Uniform Commercial Code	2
Negotiable instruments	2
Business formation and association ³³	4
Real property	2

³⁰ The time allocation was computed for topics 1-39 from Table 6 as follows:

x_i = value score; y_i = new value score for a topic

n = hours expended on a topic

$$y_i = \frac{4}{x_i}$$

x_i

$$\Sigma y_i = 39.998$$

$$\frac{y_i}{39.998} \times 40 = n$$

$$39.998$$

³¹ "Legal process" combines the judicial process and the legislative process which were ranked 11 and 18 respectively on Table 6.

³² "Attorney-business client relations" combines dealing with attorneys, when to contact an attorney, and how to select an attorney. These topics were ranked 13, 15 and 17 respectively on Table 6. We are aware of the fact that we have incorporated several related and perhaps overlapping topics pertaining to attorney-business client relations in our survey, and that this multiple incorporation ultimately influenced the amount of time to be devoted to the topic. On this basis, perhaps the time devoted should be adjusted downward.

³³ "Business formation and association" combines business organizations and small business formations, which were ranked 2 and 14 respectively on Table 6.

REGULATORY LAW

The scope of regulatory powers	2
Antitrust law	2
Deceptive trade practices	1½
Securities law	2
Labor law ³⁴	3½
Product safety and liability	2
Debtor-creditor relations and relief ³⁵	3½
BUSINESS ETHICS	<u>2</u>
Total Hours	40

The course contents suggest that the course designated as a survey course of the legal environment of business, not unlike survey courses offered in other disciplines. Accounting students, legal studies majors and other students needing more exposure in particular areas could take elective courses designed to accommodate their needs.

A survey course accomplishes several desirable ends. It captures the breadth of interest of the business person and incorporates a wide range of topics within one course. Combining private and public law within one course maximizes exposure to the wide spectrum of business involvement with legal matters. Finally, the course satisfies the AACSB requirement to environmentalize the basic business law course.³⁶

SURVEY II

Methodology

Survey II was designed to determine the content of the business law courses taught at various schools of business at the undergraduate level. Eighty-three schools of business who are members of the AACSB³⁷ were surveyed: thirty-seven were private and forty-six were public schools of higher learning. The survey was directed to the attention of the professor who was most knowledgeable about the business law course contents.

³⁴ "Labor law" combines employment discrimination and unfair labor practices, which were ranked 16 and 19 respectively on Table 6.

³⁵ "Debtor-creditor relations and relief" combines debtor-creditor relations and bankruptcy, which were ranked 5 and 21 respectively on Table 6.

³⁶ In emphasizing breadth, depth of treatment may necessarily be sacrificed in order to accommodate the listed topics within the 40-hour time frame. In order to accomplish this, some professors may de-emphasize a rule-oriented approach while opting instead for an emphasis on concepts, trends, and policy.

³⁷ There are a total of 752 AACSB member schools.

There was a forty-seven percent response rate to this survey. The survey requested the respondent to designate the extensiveness of treatment of the same 39 topics which were the subject of Survey I. The possible responses were as follows: treated extensively, treated moderately, treated briefly, and not treated. Additionally the respondent was requested to indicate if a treated topic was included within a required undergraduate business law course.

Survey Results

The ranking of the topics in order of extensiveness of treatment appears in Table 8. By and large, the most extensively treated topics are the traditional business law topics. All those listed within the top seven are clearly the subject of private law. As indicated previously, numbers 8 and 9 involve components of both private and public law. Pure regulatory topics do not start to appear until rank 11 and have a value score of less than "treated moderately".

The least treated topics like government contracting, exporting and importing, and trademarks and patents are areas of speciality, which do not affect the masses of business people, hence, they are not traditionally afforded widespread attention in the business schools, and certainly not at the undergraduate level. Table 9 lists the percentage of the schools that treat the topic within a required business law course.

Table 8

Survey II

Extensiveness of Treatment

<u>Rank</u>	<u>Topic</u>	<u>Treatment Score*</u>
1	Sale of goods	1.282
2	Contract formation	1.308
3	Business organizations	1.436
4	Negotiable instruments	1.538
5	Capacity to contract	1.692
6	Product warranties	1.821
7	Real property	1.949
8	Product safety and liability	1.974
9	Debtor creditor relations	2.000
10	The judicial process	2.154
11	The scope of regulatory powers	2.231
12	Antitrust	2.306
13	Bankruptcy	2.368
14	Small business formation	2.432
15	Business ethics	2.538
	History and origin of law	2.538

<u>Rank</u>	<u>Topic</u>	<u>Treatment Score*</u>
17	The legislative process	2.590
18	Unfair labor practices	2.605
	Issuing securities	2.605
20	Deceptive trade practices	2.615
21	Employment discrimination	2.658
22	Environmental law	2.784
23	When to contact an attorney	2.897
24	Dealing with attorneys	3.026
25	White collar crimes	3.027
26	Workers compensation	3.077
27	Advertising law	3.079
28	Assisting legal counsel	3.105
29	Insurance law	3.105
30	Franchising	3.128
31	Arbitration and mediation	3.154
32	Attorneys role	3.282
33	Attorney client privilege	3.333
34	How to select an attorney	3.359
35	Trademark and patents	3.385
36	Lawyers code of ethics	3.410
37	Computer crimes	3.632
38	Exporting and importing	3.684
39	Government contracting	3.750

*The treatment score is a weighted average with the points assigned to the individual responses as follows:

Treated Extensively	1
Treated Moderately	2
Treated Briefly	3
Not Treated	4

The total points for each topic is then divided by the total number of responses to arrive at the treatment score.

Table 9
Survey II

Percentage of Schools that Treat Topic
within a Required Undergraduate Course

<u>Topic</u>	<u>%</u>
History and origin of law	92
The judicial process	90
Capacity to contract	82

<u>Topic</u>	<u>%</u>
Legislative process	82
Contract formation	79
Scope of regulatory powers	74
Product safety and liability	67
Deceptive trade practices	67
Product warranties	62
Sale of goods	59
Antitrust	59
Business ethics	56
Business organizations	54
Debtor-creditor relations	54
When to contact an attorney	49
White collar crime	49
Unfair labor practice	45
Assisting legal counsel	45
Negotiable instruments	44
Dealing with attorneys	44
Bankruptcy	42
Employment discrimination	42
Small business formation	41
Arbitration and mediation	41
Attorney's role	41
Issuing securities	39
Worker's compensation	38
Attorney client privilege	33
How to select an attorney	33
Advertising law	32
Environmental law	32
Trademark and patents	31
Real property	31
Lawyers code of ethics	28
Franchising	26
Insurance law	16
Computer crimes	16
Government contracting	11
Exporting and importing	0

COMPARISON OF SURVEYS I AND II

Methodology

Survey I and Survey II may be compared by focusing on the disparity between what business people believe is important and what is actually taught. Survey I tells us the business person's perception of the

value of a topic. Survey II tells us the extensiveness of the treatment of a topic within a business law course. If Survey I assigns a higher ranking to a topic than Survey II, there is a positive disparity. A significant positive disparity suggests that more treatment should be afforded to that subject. If Survey I assigns a lower ranking to a topic than Survey II, there is a negative disparity. A significant negative disparity suggests that less treatment should be afforded to that subject. If the rankings are the same for a topic in Survey I and II, or if the difference (positive or negative) is insignificant, this suggests that the topic is being treated properly. We have selected a disparity of greater than five as significant.

Topics in Need of Greater Treatment

Table 10 lists those topics which have a significant positive disparity. This would suggest that these areas should be afforded greater treatment within business law courses. However, for government contracting and computer crimes, this suggestion may be neutralized by the fact that these topics are in the bottom quartile ranking on Survey I. For these topics the business persons' perceptions lean toward only "some value" for inclusion in the business law course.

Heading the list with a positive disparity of seventeen places is "How to Select an Attorney," "Dealing with Attorneys" places second on the positive disparity table with a + 11 and "When to Contact an Attorney" is not far behind in fourth position registering a positive disparity of 8.³⁸ Based upon the results in Survey I, we have suggested earlier that these topics be included within the Model Syllabus, be subsumed under the heading attorney-business client relations, and be afforded considerable treatment in a survey course.³⁹

Business ethics registered a positive disparity of 8 indicating a significant gap in an area which the AACSB has specifically manifested

³⁸ It is interesting to note that both in the Donnell survey, *supra* note 10, at 454, and the Elliott & Wolfe survey, *supra* note 11, at 162, the "lawyer-client dynamic" was ranked first according to the percentage of the respondents who stated that the topic should "certainly" be included within the business law course. Our surveys identify that this is the area where the largest gulf exists between the business person's preferences and what is taught within the business law course.

³⁹ See *supra* note 32. In Survey I the respondents were asked to indicate if their business law course(s) did not sufficiently treat a topic which the respondent found to have at least some value. The leading "insufficiently treated" topics were How to select an attorney, When to contact and attorney and Dealing with attorneys, respectively. There was no statistically significant difference in response between those who took their business law course(s) at The Ohio State University and those who took their business law course(s) elsewhere. This confirms the results obtained from the comparison of Surveys I and II and indicates that the undertreatment of attorney-business client relations has existed for some time.

concern.⁴⁰ Our Model Syllabus also demands treatment of this topic.

The scope of regulatory powers also was found lacking in appropriate treatment, recording a positive disparity of 8. The law of issuing securities, a regulatory topic, also appears on Table 10. Both these areas appear on the Model Syllabus.

Table 10

**Significant Positive Disparity in Ranking Between
What Topics Business People Feel Valuable
and The Extensiveness of Treatment of
that Topic in Business Law Course(s)**

Survey II Rank	Topic	Survey I Rank	Positive Disparity
34	How to select an attorney	17	+ 17
24	Dealing with attorneys	13	+ 11
39	Government contracting	30	+ 9
23	When to contact an attorney	15	+ 8
15	Business ethics	7	+ 8
11	Scope of regulatory powers	3	+ 8
37	Computer crimes	29	+ 8
18	Securities	12	+ 6

Thus, three areas which demand more attention in our business law courses are attorney-business client relations, business ethics, and regulation. These are also the areas that demand considerable attention in our proposed Survey of Legal Environment of Business Course, which was formed on the basis of the business person's assigned value to the various topics. We will now discuss each of these topics.

Attorney-business client relations. Business people must communicate with attorneys (see Table 7). It is the quality of that communication that is suspect and in need of sharpening. In the business school we are training people who will be purchasing legal services. In law schools, professors train the future suppliers of legal services. Consequently, the lawyer and the business person receive a different perspective in their training. However, each should be familiar with the

⁴⁰ See *supra* note 6.

other's training and language. Business students need to learn about lawyers: their education process, their skills, their roles, their approach to problems. At the same law students should be learning about the roles and attitudes of business people. Failure to do so has undoubtedly led to communication problems. The undertreatment of the attorney-client relationship probably reflects, in part, the paucity of materials available to assist the professor. In the past, perhaps, professors felt that this was a topic best left to "classroom osmosis" and on the job training. However, in the future it is probable that business law professors will rise to the challenge to produce teaching materials designed to aid the business person to better relate to attorneys. Hopefully law school professors will also respond.⁴¹

Exposing business students to attorneys who specialize in business clientele may prove profitable.⁴² This may be accomplished by inviting these attorneys as guest speakers. A panel of lawyers interacting with the students within the classroom may also be a rewarding experience. Role playing in which the professor "plays" the lawyer and the student the business client may be another teaching technique of value. Based upon a hypothetical case the student contacts the "lawyer" who interviews the "client." (Do not forget to discuss fees, whether they be fixed rate, hourly or contingent). The challenge is for business law professors to be creative in their attempts to narrow the communication gap in attorney-business client relations.

The gap in attorney-business client relations may also be attributed, in part, to the traditional separation between the law school and the business school. These groups have so much in common but interact very little. Many universities now offer joint JD-MBA programs. This is a positive step toward closing the communication gap. Unfortunately these joint degree programs have not generally brought the law school and business school professors into dialogue. There is much that each can learn from the other, and pass on to their students.

Business ethics. Business ethics has recently been capturing more attention within the business-law course content.⁴³ Undoubtedly, some of the impetus derives from the AACSB requirement that it be treated within the business program.⁴⁴

Ethics is a discipline in itself and its subject matter has been pondered as long as human existence and recorded thought. There are

⁴¹ See the discussion in Elliott & Wolfe, *supra* note 11, at 165-167.

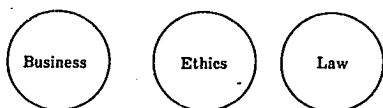
⁴² *Id.*

⁴³ See, e.g., J. BLACKBURN, E. KLAYMAN & M. MALIN, *supra* note 7, at ch. 19; K. CLARKSON, R. MILLER, G. JENTZ, *WEST'S BUSINESS LAW* (West 2d ed. 1983) (discussing ethical matters after each unit of study).

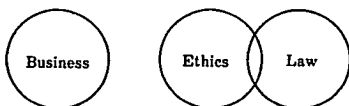
⁴⁴ See *supra* note 6.

many dimensions to ethics and no course should be totally devoid of ethical considerations. Yet some ethical topics are more appropriate for inclusion within certain courses than others. Some ethical topics do not involve business or law and should probably be left for a philosophy course. The inquiry into the meaning of human existence, the human mission and human responsibility are examples of such ethical topics. (See Category I) Other areas involve the intersection of ethics and law and are not directly relevant to the business person. (See Category II) This would include the lawyer's canons of ethics and professional responsibility. These topics are appropriately reserved for law school treatment. Finally there are those topics which involve the intersection of business and ethics only.⁴⁵ (See Category III) An example would

Figure 1



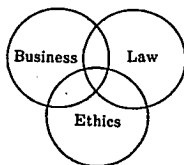
Category I



Category II



Category III



Category IV

⁴⁵ See e.g., T. BEAUCHAMP AND N. BOWIE, *ETHICAL THEORY AND BUSINESS* (1979); L. HODGES, *THE BUSINESS CONSCIENCE* (1963); J. TOWLE, *ETHICS AND STANDARDS IN AMERICAN BUSINESS* (1964).

include a business person's decision to locate a plant in an "underprivileged area" in order to alleviate the plight of the unemployed, or a company's decision to divert some of its profits to employees in the form of bonuses. Perhaps the treatment of these types of decisions is best emphasized in a management or labor and human resources course. But what type of ethical considerations are appropriate within a business law course? It would seem that those which involve the interplay among business, ethics, and law are most appropriate. (See Category IV) Business decisions regarding an employer's desire to remedy past discriminatory conduct against minorities by establishing a quota system slanted toward preferential hiring of minorities involves such an interplay. Another example of such interplay involves the decision to fire an employee for "blowing the whistle" in light of the growing recognition of the tort of "wrongful discharge,"⁴⁶ or a business decision to limit a company's random sampling of products, with knowledge that a larger percentage of injuries, suits and judgments will probably result from this limitation. The challenge to the business law professor is to develop these Category IV teaching materials so that they are relevant to both the business person and consistent with the content expected within a business law course.

Regulations

Federal regulatory agencies that perform functions which may affect a business approach 60 in number. Federal agency growth was most apparent in the 1970's when twenty-one new agencies were added and expenditures on federal regulatory activities increased from \$866 million in 1970 to \$55 billion in 1979. This trend has slowed, but regulatory activity continues to revolutionize the management function. Government regulations strongly influence business decision-making and in many cases radically restrict business discretion. The regulatory environment can also result in business opportunities for the "tuned-in" manager. The requirement for pollution emission devices, for example, opens up new product opportunities.⁴⁷

In an undergraduate business course we cannot treat the massive area of government regulation in depth. However, we ignore the reality of the business atmosphere if we do not introduce the student to the regulatory process and some illustrations by examining some particular agencies, and their structure, power, and activity.

⁴⁶ *E.g.*, *Frampton v. Central Indiana Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973).

⁴⁷ M. WEIDENBAUM, *supra* note 19.

Table 11 lists those topics which have a significant negative disparity. This would suggest that currently these topics are being overemphasized within business law courses. Some traditional topics have continued to be ranked high in treatment by schools of business despite their slippage in value to the business person. This is true for Capacity to Contract, which heads the list with the largest spread of any topic. Business people know not to deal directly with minors, insane people, or those under the influence of drugs. The value of anything more than a summary treatment of this area is suspect especially in light of other undertreated topics competing for time. This is also true for product warranties, an area which no longer is the subject of great uncertainty and hence does not frequently bring the business person into contact with the lawyer. We were surprised that environmental law is included within Table II as an overtreated topic with a negative disparity of 14. Although it is not ranked high in Survey II (22nd), it is ranked extremely low on Survey I (36th), which accounts for the large spread. Environmental law is an area which affects some businesses very greatly and others not at all. For example, a service business is not normally within the regulatory reach of the EPA and other like agencies. More than half of the respondents were in service businesses and it would be quite natural for them to rank this topic low. Also, top level managers are much more likely to relate to this area than others; only 23% of the respondents were within top level

Table 11

Significant Negative Disparity in Ranking Between
What Topics Business People Feel Valuable and
the Extensiveness of Treatment of that
Topic in Business Law Course(s)

<u>Survey II Rank</u>	<u>Topic</u>	<u>Survey I Rank</u>	<u>Negative Disparity</u>
5	Capacity to contract	39	- 34
15	History and origin of law	37	- 22
6	Product warranties	22	- 16
22	Environmental law	36	- 14
25	White collar crimes	35	- 10
13	Bankruptcy	21	- 8

management.⁴⁸ And, finally, those in the business of manufacturing are more apt to be affected by environmental regulatory agencies. A smaller percentage of the respondents were affiliated with non-manufacturing firms than with manufacturing firms.

History and Origin of Law placed second on Table II with a negative disparity of 22. The reason is obvious. The disparity exists because of a low rating by respondents in Survey I. This topic has little or no practical value to the business person. We do not think, however, that business people should absolutely dictate the business law course content. Knowledge about history and origin of law may not mean greater profits for the business person. Nonetheless, a decision to afford some treatment to this topic within a business law course can be justified for the following reasons:

- it places particular areas of substantive law within a historical perspective which makes that law more understandable;
- it affords a framework for evaluating and assessing future trends inasmuch as history, including legal history often repeats itself;
- it broadens the base of knowledge of the business person.

Topics Treated Appropriately

Table 12 lists those topics which have no disparity or an insignificant disparity. This would suggest that currently these topics are being appropriately treated, although those topics rating a disparity of plus or minus 5 are borderline and perhaps should be more closely scrutinized. The topics which rate a + 5 disparity are "Arbitration and Mediation," "Employment Discrimination," "Assisting Legal Counsel," and "Attorneys Role as Counselor, Drafter and Advocate." One traditional topic rates - 5: "Sale of Goods."

Table 12

No Disparity or Insignificant Disparity in Ranking Between What Topics Business People Feel Valuable and the Extensiveness of Treatment of that Topic in Business Law Course(s)

<u>Survey II Rank</u>	<u>Topic</u>	<u>Survey I Rank</u>	<u>Disparity</u>
4	Negotiable instruments	4	0

⁴⁸ This statement must be qualified a bit by noting that 8½ percent of the respondents' job positions are unknown. See Table 5.

<u>Survey II</u> <u>Rank</u>	<u>Topic</u>	<u>Survey I</u> <u>Rank</u>	<u>Disparity</u>
14	Small business formation	14	0
20	Deceptive trade practices	20	0
2	Contract formation	1	+ 1
3	Business organizations	2	+ 1
39	Law of export and import	38	+ 1
10	Judicial process	11	- 1
17	Legislative process	18	- 1
18	Unfair labor practices	19	- 1
27	Advertising law	28	- 1
26	Workers compensation	24	+ 2
33	Attorney-client privilege	31	+ 2
36	Lawyers code of ethics	34	+ 2
7	Real property	9	- 2
8	Product safety and liability	10	- 2
28	Insurance law	25	+ 3
35	Trademarks and patents	32	+ 3
30	Franchising	33	- 3
9	Debtor creditor relations	5	+ 4
12	Antitrust	8	+ 4
31	Arbitration and mediation	26	+ 5
21	Employment discrimination	16	+ 5
28	Assisting legal counsel	23	+ 5
32	Attorneys role as counselor, drafter and advocate	27	+ 5
1	Sale of goods	6	- 5

Arbitration and Mediation and other methods of alternative dispute resolution are undoubtedly topics which will be demanding more attention in the future as we seek ways to reduce the enormous pressure on our judicial system. Perhaps, as arbitration and mediation are used more frequently for settlement of business disputes, the significance of

the attorney-business client relationship will diminish. Nonetheless public law will continue to require attorney-business client interplay.

CONCLUSION

Our surveys reveal that there exists a significant gap between legal studies education in the business school and the needs of the business person. The most obvious disparities exist in the areas of attorney-business client relations, business ethics, and regulation. They are in need of additional treatment in the basic business law course. Adoption of our model syllabus would aid in eliminating these disparities. The continuing search for ways to make course content more relevant to the business person's needs should not be the end of our mission. If, however, we work together towards closing these gaps, a by-product of our efforts will undoubtedly be a narrowing in the gap between the "traditionalists" and "environmentalists", and this will certainly improve business related legal education.