Review Essay

J. E. Smyth, D. A. Soberman, and A. J. Easson, ***The Law and Business Administration in Canada*** (6th ed.). Scarborough, Ontario: Prentice-Hall Canada, 1991.

By the claims of Prentice-Hall itself, this textbook has sold more than 375,000 copies in about the first 25 years of its existence. The promotional literature to the sixth edition points to the book as the accomplished leader—which, of course, it is. It heralds the work as a "time-tested classic" that is "updated for the 90s" and confidently lists some 67 colleges and universities that have used it.

This textbook leads the presently small field of books serving the large Canadian public legal education market. This review examines the state of public business law education in Canada, the array of works that were—and those that still are—written to address this need, the evolution of this textbook over almost three decades, and its strengths and shortcomings. One concludes with the conviction that this textbook may better serve the instructors who use it than it does the students who use it. A textbook in the perspective of a "legal environment of business" may be what is needed.

Public Business Law Education in Canada

Most, if not all, formal postsecondary business degree or diploma programs in Canada contain a business law course. It is often a required course to complete the program. Modern North American society has a voracious appetite for continuing practical education including legal education, which can be applied to one's work or personal life. The legal framework in which one operates, whether that be in business or in the community, has for long been a subject of popular interest.

The difficulty of people in a common law jurisdiction in gaining knowledge of and access to the law has been studied and widely lamented

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(Friedland, 1975; Gibson & Baldwin, 1985).[1] Several studies point out the need for access to public legal information (Brickey & Bracken, 1982; Friedland, 1975). The problem would seem to arise from an "all or nothing" approach to the study of law in our system. The prodigious growth of the legal profession is largely a result of the growth in need for technical knowledge and skills. Law schools, exclusively, have been selected to house the education of these skills and knowledge. One either makes a career decision to go to law school for 3 years to formally train to become a lawyer or one stays on the outside of expertise and depends on lawyers. The choice is whether to be a lawyer or to be a client. One would think the rationale for this dichotomy is that "a little bit of law" cannot be taught effectively or that one cannot be trusted to safely learn only "a little bit of law." Law schools have evolved as the exclusive educational repositories of specialized legal knowledge and technical skill.

Technical skill in the form of lawyers is now in overabundance in Canada, and the technical profession is itself now examining ways to ensure that not too little demand competes for the available skill. Nevertheless, generalized public education in the operation of our legal system and useful-to-know principles in substantive spheres of law are in critically short supply.

Management education has traditionally provided the opportunity for people who did not want to become lawyers to learn about the legal system and law—in other words, to learn a little bit of law, at least as it is applied to business. A law course for business students should be like preventative medicine. The students would not be trained as lawyers, and so the minutiae of black letter rules would be a grossly misguided approach. They should be given the legal framework and principles to enable them to recognize the potential for certain legal problems and to engage counsel. Overall, they should be taught the law in a way that allows them to arrange their affairs to minimize legal liabilities and, generally, to better conduct their business. A textbook that is oriented to set out the ex post facto legal rules for application *after* problems have arisen will have little impact on this target group. At that point, the business person will call a lawyer.

When the Harvard Business School started up in 1908, commercial law was one of three required courses in the curriculum (American Business Law Association, 1990). The subject, the packaging, and the need for this kind of education all remain. Today most of business law programming in Canada is offered through a few courses in a credit degree or diploma structure at universities and colleges and through topical continuing education courses or seminars conducted for the public during the evenings on campuses or in schools based in the community. Rarely are there

educational prerequisites. The introductory business law course is most often a service course open to all university or college students. These students will take the course for a number of different reasons. The one book that most laypeople are using to learn business law is *The Law and Business Administration in Canada* by Smyth, Soberman, and Easson (1991).

The Demise of Competition in the Business Law Textbook Market

The annual Canadian market for lay business law education textbooks is very plump. It is in the order of 35,000 copies and shows no signs of abating. This market is a veritable gold mine for publishers, and many have come prospecting. Smyth and Soberman were in first and early with the inaugural edition of *The Law and Business Administration in Canada* in 1964. During the 1980s, it was followed closely in content and style by John A. Willes's *Contemporary Canadian Business Law: Principles and Cases*, now in its fourth edition and selling strongly. This means that the two most used national business law books both emanate from Queen's University. Prentice-Hall has strengthened its holdings with a readable college alternative to Smyth and Soberman's book in Richard Yates's *Business Law in Canada*, which quickly jumped to two colors and three editions.

The market has not been so kind to other entries. Richard Piner's *Canadian Commercial Law* was published in a softcover workbook format in 1980 and was not a commercial success. *Canadian Business Law: Principles in Action* by George B. Klippert in 1987 offered a novel "moving case study" approach to the material that never really caught on. *Canadian Law*, by Jennings and Zuber, sputtered out of circulation after the fourth edition in 1986. The same happened to *Canadian Business Law: An Introduction to Business and Personal Law in Canada*, by Amirault and Archer, after the third edition in 1986. It had just not penetrated the postsecondary marketplace for public legal education. A softcover by Harold Sterling in 1987 with a catchy title, *Business Law for Business People*, may not have given enough thought to the academic market and pedagogy. As in all books that seek textbook status, the steak must not come without the sizzle. It was dropped without making it to the critical second-edition stage. Most authors and publishers who failed during the last decade have presumably decided that the market is too impenetrable at this time. That is to say, they cannot compete with Smyth and Soberman.

The Evolution of Smyth and Soberman's Book

In 1964, the authors consciously decided to avoid an encyclopedic selection of topics, preferring to restrict scope of coverage (according to the preface) to keep the work compact and "avoid a superficial treatment of subjects that are especially technical." The main concentration is the law of contract for an intended user group of business students in a full-year course. The second edition added torts and negotiable instruments. When the third edition came out 8 years later in 1976, a philosophical introduction to law in social context was added to the general update. The fourth edition was enacted during the Charter year, but helpful treatment of the Charter was missing (Charter of Rights and Freedoms, 1982). Professional negligence and consumer protection were added, as were all important amendments to corporation law in Canada during the interim. The authors state their desire to avoid turning the book into a catalog of detailed rules. Users may disagree on whether or not the authors have succeeded. The fifth edition in 1987, which saw Easson replace the late Smyth, was an otherwise largely uneventful rework. The increasingly important domain of intellectual property was finally added in the current edition in 1991. Much celebration is made of "condensing" the two chapters of negotiable instruments into one, but in the end the reduction amounted to only one page. The book is now approaching 1,000 pages and is locked into a format suggesting that, in the future, the increase in length will exceed the increase in quality.

The Basic Contours of the Book

Smyth and Soberman's book attempts an orderly layout of the traditional law subjects. It, like all books, selects priority subjects for coverage and study with which any given reviewer or instructor might find a mild quibble.

The book starts with an overview of philosophy of law and courts that is too philosophical for the purposes of this kind of book. It raises questions that cannot or need not be answered by the student. For example, take the following chestnuts: "How do modern positivists solve the problem of ascertaining what the law is in a time of revolution?" and "What was the chief significance of St. Augustine's beliefs for law in the Middle Ages?" (p. 21). There is nothing practical to understand or apply. It may confuse the student instead of setting the context for what is to follow. It may mislead the student to expect that the rest of the textbook

will stimulate critical thinking. The various functions, sources, and categories of law would have been more simple and useful.

One particularly disappointing aspect of Smyth and Soberman's book is the cursory treatment of the constitution. The constitutional division of legislative powers in Canada and the Charter of Rights and Freedoms, by contrast, are touched on lightly in chapter 2, titled "The Role of the Courts." The Charter is largely ignored, being treated in a mere eight pages. It is startling that sections 1, 24, 33, and 52 of the Charter and sections 91 and 92 of the Constitution Act of 1867 are neither reproduced nor discussed in this book.

One can understand the reluctance to include Charter cases, due in part to the prolixity of the post-Charter pronouncements of the Supreme Court of Canada. We are, however, now at the point in Charter jurisprudence at which governing principles are settled. One hopes that subsequent editions will rehabilitate study of the constitution of Canada to its deserved status. An introductory course in business law may be the only opportunity that the average student in Canada has to actually read constitutional texts and learn about the constitution with greater precision than anything that is furnished by the media. The book does not even attempt to apply the constitution to issues in the world of business in any systematic way.

Chapter 3, titled "The Machinery of Justice," is well written. It does not, however, include coverage of many indispensable concepts in the legal system such as jurisdiction, burdens of proof, and error of law as the basis for appeal. The authors do not include steps and documents in civil litigation, the collections process, and alternate methods of dispute resolution.

The law of contract occupies 12 of the 33 chapters of the book and well over half of the chapters if one adds in specialty contracts such as sales and insurance. Contracts will always be an indispensable component in any nonlawyer's business education. Nevertheless, the contours of contract are also changing. The contract of employment now deals in a big way with issues such as sexual harassment, benefits, pensions, employment and pay equity, and alternatives to the traditional model. Employment is one of the most relevant subjects for business people; nevertheless, Smyth and Soberman overlook most of these current perspectives. On the other hand, the book dedicates more space to law of negotiable instruments. These rules are very unlikely to be applied in any practical fashion because there is essentially no secondary negotiation of checks or other instruments in Canada.

The book now includes a chapter on intellectual property, which is much overdue. The treatment of commercially valuable information is,

however, too brief in light of recent judicial pronouncements and the importance of this asset for business today.

There is no obvious reason why professional responsibility would warrant a special chapter that is as lengthy as the general torts chapter. Mortgages might better follow interests in land than landlord and tenant law. The subject of credit transactions is left orphaned at the end; it might be integrated into the part on sale of goods or property or, better yet, form the basis of another important topic for the business person: collections.

Overall, the writing is somewhat uneven and the updates are patchy. Judicial decisions are paraphrased and incorporated into the body of each chapter as "illustrations" or as footnotes to statements of the law. This is an effective technique; although some instructors (including myself) would prefer to introduce students to actual judicial texts, modern judgments do not readily lend themselves to such use. They cannot usually be meaningfully extracted for a lay audience. Although the textbook has a palpable Ontario tilt, the authors have ably put a national face on the work to outline the nuances in the law of all Canadian jurisdictions, as a glimpse of the Table of Statutes quickly demonstrates (p. xxvii).

The law ages textbooks very quickly. Consider, for example, that the bankruptcy coverage (chapter 33) is already out of date. In a broader sense, an author of a textbook—particularly an aging one—always struggles to appear fresh and relevant in terms of both content and style. Smyth and Soberman's book, unfortunately, is neither fresh nor relevant in style or content.

With respect to freshness and relevance of style, this book suffers from a bad case of congestion. The visual layout is taxing. It is not particularly reader-friendly with one color, narrow margins, and more than enough black ink. Some heading capital letters have been dropped and examples placed in embolden type in the current edition in an attempt to relieve against the visual ennui and the legalistic starch of each page. Even the cover, which does change with editions, is needlessly formal. Overall, this textbook lacks some of the pedagogical graces and overall applied perspective needed to generate genuine student interest and understanding.

The bibliography and index are thorough and very useful. However, because this is an introductory textbook in what is, for most students, a foreign subject matter, a glossary of new terms used might be appended to the end of each chapter or inserted at the end of the book. This could both minimize the frustration of the student having to limp through new terminology on his or her own and, at the same time, increase reinforcement of new topical concepts.

There are no visuals such as standardized forms or documents for purposes of illustration in the book. The authors may be apprehensive about forms because they have an inherently local usage. One could incorporate, at the minimum, documents filed in the Supreme Court of Canada or in the Federal Court. Are the variants in leases or share certificates across Canada too great to brook in a business law textbook? A law book without forms and documents is like an accounting book without financial statements. This book seems to have followed, to its disadvantage, the implicit historical edict in legal writing that says one should never debase a law textbook with any tables, charts, or other graphical renderings. Nevertheless, the diagrammatic illustration of the relationship between contracts and all agreements and of various property law concepts such as the nature of land as interests and the difference between term and amortization in mortgage practice readily come to mind as examples that lend themselves to a graphical medium with no accompanying loss of influence.

The book is organized along the lines of the cognate courses the lawyer instructor took at law school: torts, contracts, commercial law, property, and business organizations. All are here condensed into one textbook, a one-volume encyclopedia of the core subjects relating to business. Five or six law school subjects are packaged together and offered up to non-LL.B. students. The language is, for the most part, tight and lawyerly. Most unforgivable is the web of tedious rules. Can one live without knowing the six distinct types of endorsement (in blank, special, restrictive, conditional, qualified, and anomalous) of a negotiable instrument (pp. 591-592)? How many examinations will then ask the student to list the six different types of endorsement?

There is much more value in a business law course than to serve as a venue to canvass legal currents. It can be used to facilitate the transfer of business law knowledge to life, to refine other business skills, and to elevate consciousness of business ethics.

It also can be used effectively to teach and practice critical thinking. A legal problem almost never leads to an obvious right or wrong answer; the instruction can be most productive in the margins. One of the principal advantages of a critical thinking orientation in a business law course is that it can be used in other open-textured courses in the management curriculum. The teaching of introduction to business and management, communications, ethics (see Wolfe, 1990), policy, and negotiations can benefit equally by this instructional approach. Critical thinking in business law can be instructive to the big questions and important issues that a student must encounter in studies of an interdisciplinary nature such as management.

There is nothing in this book that particularly facilitates original or critical thinking. There are no learning objectives set out for each chapter. The review questions at the end of each chapter generally draw directly from the discussion in the corresponding chapter. There are no dissenting opinions and little counterweight to the positive law straight up. A number of practice problems and cases do give students necessary exercise in applying the rules but do not stir them to independent thought. There is scarce legal argument and analysis to provoke critical thinking. As students read the material, are they stimulated to critically assess the policy of the law and to really think about it for application in their lives? One accepts the principal intellectual objectives of any textbook are not to require the student to memorize near worthless, hard-to-apply details but to cultivate independent thinking and transfer skills together with a healthy lifelong sense of inquiry in the subject. Those tasks are left to the instructor in the classroom. The advice of Herbert Spencer is well taken: If you teach someone anything, he or she will never learn.

Textbooks, like shrubbery, will overgrow themselves in time and become unwieldy. Authors are good at adding new material but not at pruning out the old material. New material should not be just tacked on to existing chapters; it should be blended with the existing material. New chapters should not be merely wedged into place; they should follow the internal logic of the book.

Smyth and Soberman's book suffers under the drag of its own tonnage. After a few more editions, it will be on wheels. It is now about twice the ideal length. Most introductory business law courses are one semester long. This book is too voluminous for that kind of course. Most students would use only about half of the book. Advanced courses in international business transactions, property, small business, regulatory issues, or corporate law may be more specialized than the balance of the material in this textbook. Its extra length alone gave rise to Yates's college-level *Business Law in Canada*. When Smyth and Soberman's book is updated with new material, a deliberate decision should be made about dropping or retaining each section in the book. This book needs to be pruned in earnest. The foregoing subjects can and should be incorporated into a textbook on the legal environment of business to render it comprehensive yet flexible. It should not take the form of a catalog of detailed legal rules. My view is that the kind of surgery and overhaul required for Smyth and Soberman's book would be so fundamental and radical—going to the very structure of the book—as to denature it. The book has now assumed its own systematic inertia that is not likely to be affected by upcoming editions.

Appeal of This Book to Practitioner Instructors

On the face of it, the book collects all the important legal subjects and puts them into a manageable form for students in an introductory course. No prior knowledge of the law or legal system is expected of the student. For non-LL.B. students who are not trained in the techniques of independent research in a law library and for instructors who do not or cannot put together their own custom teaching materials, Smyth and Soberman's book would seem to fit the bill for an introductory course. It certainly appeals to Canadian instructors of business law who have prescribed it overwhelmingly for their students for more than a quarter century.

On further examination, however, this appeal is shallow. Business law is a marginal subject in Canadian mainstream management education and will always be so. Few business schools in Canada have full-time tenure-track academic lawyers charged with developing and delivering a program of studies in law for business. Most instructors of the one-term introductory course are busy practicing lawyers who come to campus to teach the course once or twice each week. In some cases, they are contracted to teach this course only one or two times. Their loyalty is to their law practice. If they have an office in the business school, it is frequently shared with other instructors. Individual student contact is usually limited.

Teaching for the practicing lawyer is an interesting distraction from the hurly-burly of office routines such as meetings, law briefing, and time keeping. Teaching law to business students is thought of by many experienced lawyers as equal to the challenge of an English major showing third graders how to print on the line. Almost everyone is expected to be interested in learning about the law. Stories from the trenches can go a long way to substitute for pedagogy. Given their professional training, these practitioner instructors teach the subject according to the deductive reasoning techniques employed to train lawyers in the law schools. That is the method of learning with which most practitioner instructors are most comfortable.

Even then, it is not a blank check. Teaching still requires some preparation on the part of the instructor. Given that the rewards of occasional teaching are primarily intrinsic, it is unlikely that the practitioner instructor who has no interest or prospect in full-time teaching will devote the time and energy to develop the course from scratch. Here, in Smyth and Soberman's book, is a tool to which the practicing lawyer can easily relate. It is a good old friend, a book chock full of the traditional legal categories structured in a cadence of language and black letter genre that are so soothingly familiar to an overworked practitioner. Indeed, many of these

practitioner instructors may have used an earlier version of the same book when they took the course they now teach. It reminds them of their law school training and is not all that different from the books they are using to practice law. In the circumstances, Smyth and Soberman's book combines the best of all worlds for the practitioner instructor.

In Praise of the Legal Environment Approach to Business Law

Whitehead (1967) encapsulated the goal of applied business law study as follows:

> Whatever be the detail with which you can cram your student, the chance of his meeting in the after-life exactly that detail is almost infinitesimal; and if he does not meet it, he will probably have forgotten what you taught him about it. The really useful training yields a comprehension of a few general principles with a thorough grounding in the way they apply to a variety of concrete details. In subsequent practice [they] will have forgotten your particular details; but they will remember by an unconscious common sense how to apply principles to immediate circumstances. (p. 26)

It might not normally occur to the practitioner instructor that much of the legal minutiae in the book would have no meaningful value for the non-LL.B. student. For example, who cares whether "a promise by an executor or administrator to answer damages out of his own estate" (p. 271) and "a promise to answer for the debt or default or miscarriage of another" (p. 272) have to be in writing? Likewise, novation (p. 316), equitable assignments (p. 324), statutory assignments (p. 326), assignments by operation of law (p. 330), and "the effect of notice from contending assignees" (p. 328) can hardly be justified today on the basis of their practical value to these students. These issues are inert Blackstonian relics (Blackstone, 1765). Smyth and Soberman point out the essence of pawnbrokers as bailees (p. 511) and distinguish auctioneers from *del credere* agents (p. 523), but is that important information for the student to retain? It is hard to imagine any circumstance in which these nuances would assist a business person to make decisions. Even to know formal characterizations and realities after the fact, which this book serves to provide abundantly, is of dubious utility for business.

Most authors of business law books agonize over whether the format should principally evince a law or a business perspective. Business law itself is poorly conceived as a discipline. A textbook is not expected to be purely a law book nor a business book. Smyth and Soberman's book has always followed the approach that business law meant the law—predomi-

nantly private law—of selected business relationships. The law, therefore, is the centerpiece, which explains the adoption in this book of what is effectively a law school curriculum. Accordingly, it is a law book. It is a book for lawyers, one that is more oriented to the instructor than it is to the student. If the classroom were an organization, the Smyth and Soberman textbook would have it be a law department. It should, arguably, be the firm's management committee, or even middle management. The approach of the textbook is an unacknowledged attempt to educate the student to be a better lawyer than a better business person.

Unfortunately, the students enrolled in this course are not aspiring lawyers. They are business students who, if and when legal complications arise in their business lives, will likely go out and get lawyers to take care of them. They are not majoring in law. In this subject, one is teaching for general management. The students would be foolish, in most cases, to deal with the legal matter themselves on the strength of one course. That is not surprising: Students who take one accounting course would not be put in charge of auditing the books. They might know an audit in the same way that a business law student might know a Statement of Claim.

Instead, a refreshing approach would be to put business at the center of the studies and the law in a business perspective. Business students themselves undoubtably do this and relate in this way to such a course. Students should be exposed to how the law impacts on the business decisions, not how business relates to law.

This alternative approach, which has some currency in American business schools as the legal environment of business, views law as but one, albeit pervasive, external constraint in business (Reed, 1990). This orientation is attributed to Gordon and Howell and their 1959 book, *Higher Education for Business*, which suggested that the rules-oriented topics be dropped in favor of a "legal framework of business" approach. The approach does not study law in business for the purpose of studying law as a different subject. In their oft-quoted study of management education and development, Porter and McKibbin (1988, pp. 64-65) point out two general criticisms of business school curricula: (a) insufficient emphasis on generating "vision" in students and (b) insufficient emphasis on integration across functional areas. They go on to elaborate on the "insufficient attention to the external (legal, social, political) environment" (p. 66):

> This criticism voices the concern that business schools have been overly concentrated on the internal operations and management of business—the traditional functional areas such as accounting, finance, production, etc.—and have generally tended (except in the area of marketing) to neglect the

> necessity for coping effectively with the external environment. It is mismanaged relationships with various aspects of the social, political, and legal environment, say the critics, that have caused some of the most serious problems for American business firms in the last decade. Business schools, so the reasoning goes, have contributed to these problems by not modifying their curricula to keep up with important developments in the external context in which modern-day organizations must operate.

They elaborate further on page 318:

> There needs to be a proportionate increase in attention to the external environment—governmental relations, societal trends, legal climate, international developments, among other areas—for the obvious reason that these events "outside" the organization are increasingly penetrating into the internal operations of the firm and affecting its core efficiency and effectiveness. Moreover, for the next couple of decades, at least, it hardly seems likely that such outside influences will be decreasing. If anything, they are likely to increase.

The major current thrust for this orientation is the accrediting body, the American Assembly of Collegiate Schools of Business (AACSB), of which only two Canadian management schools are full members. The AACSB exercises a great deal of influence over management curriculum, and the standard today is a consciously legal environment approach to business. The AACSB in April 1991 passed an amendment to its Curriculum Content Standard to mandate coverage in "legal and regulatory" issues for undergraduate and M.B.A. programs.

The approach rejects the black letter rules and case-based approach, the effectiveness of which is not even self-evident in law schools, in favor of a descriptive treatment of principles. The "big picture" will afford the students a broader, more functional framework for analysis. "Law is a smorgasbord" (Reed, 1990, pp. 7-8)) to this approach, which can develop critical thinking and a system of values about law and its relationship to business (see also Dunfee, Brennan, & Decker, 1980; Klayman & Nesser, 1984; McGuire, 1986; Moore & Gillen, 1985; Pashall, 1986; Schlesinger & Spiro, 1982; Wolfe, 1987).

A rich variety of relevant topics awaits the perspective approach. Contracts, torts, commercial instruments, property, and business organizations are all in Smyth and Soberman's book, and the relationship of these areas of law to business is indispensable to any business law course. On the other hand, what is the sense of studying contract rules into a state of oblivion? Contract law does contain a certain number of topics that call for a rather time-consuming discussion if they are to be studied properly. Yet they are probably of marginal value when compared to the other things one might be covering in this course.

Examples of other perspective topics would include legal foundations and process; the constitutional basis for Canadian business; the roles of judges, lawyers, legislators, legal scholars, and others in the legal system; lawyer-client relations; alternative dispute resolution procedures; the interaction of business ethics and law;[2] torts in a business context (such as occupiers' liability, accountants' negligence, and intentional economic torts); criminal liability and business; law relating to international business transactions; the civil litigation process; how to collect on one's legal judgment and other aspects of debtor/creditor and secured transactions law; and realms of the regulatory framework such as competition and consumer law, basic principles of business taxation, statutory regulation of the employment relationship, and environmental regulation. New directions such as the effects of the new matrimonial and equitable property regimes into partnerships, franchising, and the personal property security systems should be highlighted. Contracts is regarded as the most useful course by alumni (Yeargain & Tanner, 1990), but one might move away from the traditional free market theory of contracts to a more current fairness-based theory that focuses on developments in unconscionability, standard forms, and exemption clauses. For example, it is no longer useful to dwell on acceptance by steamship and post when modern commerce relies on couriers, cellular telephones, and fax machines.

All of these applied topics should be used to raise awareness in students as a background to business operations so that they may be later identified and incorporated into the business planning process. The student should acquire the skill to foresee some of the legal issues—and possibly consequences—that relate to specific business decisions. The business law principles will be understood well enough to enable the business person to know how to instruct and assist counsel if and when necessary. This is all that one may realistically expect from a lay business law course.

Conclusion

A textbook should be assessed not only for what it does but also for what it does not do. Smyth and Soberman's book teaches law from the traditional law school menu. This approach is not appropriate for business students. Gary Moore stated it succinctly as follows:

> Business persons and corporate counsel have consistently been saying for twenty-five years that, although the basics of contract formation are essential to know, the continued disproportionate emphasis on the details of

> classical contract rules is at best misplaced if not largely irrelevant to the actual needs of modern business managers. (Reed, 1990, p. 22)

Therein lies the failure of this book. It is rooted in rigid black letter treatment of classic law school subjects for students who are not in training to be lawyers. Teaching black letter law will be ineffective to non-LL.B. students and business people because they will never later remember the rules with requisite precision to do anything useful with them. Business students need to see the trees in the forest but not the veins on the leaves. They should not be taught the same things with the same exactitude and methods as should law students who are developing as technical legal professionals.

Instead, students should be generally sensitized to law as it operates as an external apparatus to business. They should be introduced to guiding principles and be nudged along to think critically about them. The textbook should have the world of business as its focus. It should blend and balance the law as an integrated but nevertheless external discipline to mainstream management education.

Textbook content is a market-driven marvel. Publishers compete aggressively to offer approaches and subjects demanded by students or, more accurately, by instructors. Smyth and Soberman's book is very popular with part-time practitioner instructors who are comfortable with its legal format. This textbook, positioned as it is upmarket, has teased away a healthy share of the college market—perhaps for the same reason.

One can argue that the success of this book is due in large part to its long unchallenged historical appeal to instructors, not for its effectiveness for students. Whether a new configuration of business law for lay consumption, such as a textbook that has a legal environment of business orientation, can break this grip on instructors and habit is unknown.

In any event, change is a permanent feature in our rapidly advancing society. The legal perspectives on business is a fresh and exciting prospect for instructors. Schools and students are looking for an alternative approach and change from the Smyth and Soberman tradition. One expects that many instructors and schools, despite the loyalty to Smyth and Soberman in the past, are nevertheless "parking" with it. It has always been around, and it is safe. Their vision, however, is of a new legal environment approach to business law. Only then can there be a market correction.

The Smyth and Soberman textbook has discharged a useful and necessary purpose in the past. Now, was that discharge by waiver or substituted agreement? Or by material alteration of the terms, accord, and satisfaction or novation? In other words, was it discharge by agreement, performance, necessity, or operation of law?

NOTES

1. The Consultative Group on Research and Education in Law of the Social Sciences and Humanities Research Council of Canada (the Arthurs Report) in 1983 also pointed out that few academic lawyers in Canada participate in public legal education (p. 40).

2. At least one American textbook (Clarkson, Miller, Jentz, & Cross, 1992) contains a "focus on ethics" segment in each chapter.

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John P. Kotter and James L. Heskett, *Corporate Culture and Performance*. New York: Free Press, 1992, $24.95 cloth.

Kotter and Heskett set out on an ambitious journey to discover how the culture of a corporation influences the organization's economic performance. Their investigation examines three different theories on the effect of corporate culture:

1. A strong culture creates excellent performance.
2. Only strategically appropriate cultures are associated with excellent performance.
3. Only cultures that can help firms anticipate and adapt to environmental changes will be associated with long-term excellent performance.

The authors begin by examining the relationship between cultural strength and performance. Data were collected from 207 firms representing 22 U.S. industries, and cultural strength indexes were developed for each firm. The sample was chosen to represent a diverse cross section of companies. Measures of economic performance were calculated covering the period 1977-1988 for each of the firms. Relationships between the cultural strength indexes and economic performance were then plotted. Although no rigorous statistical testing was done, the data indicated a