The Content of Consumer Law Classes II

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The Content of Consumer Law Classes II
This paper reports on a 2010 survey of law professors teaching consumer protection, and follows up on a similar 2008 survey, which appeared in Jeff Sovern, *The Content of Consumer Law Classes, 12 J. CONSUMER & COMMERCIAL L. 48 (No. 1 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1139894*. The 2010 survey found more uniformity in topic selection than the 2008 survey. All thirteen professors who taught survey courses reported that they taught common law fraud, UDAP statutes, the Truth in Lending Act, and the Fair Credit Reporting Act, while all but one covered the Fair Debt Collection Practices Act, the Federal Trade Commission Act, and payday lending. In contrast, in 2008 no topics were explored by all the survey professors and three were discussed by all but one. Nevertheless, as in the 2008 survey, the professors varied considerably in selecting other topics. Professors responding to the 2010 survey reported keeping their syllabi current; for example, more than half the professors teaching survey courses covered the Credit CARD Act, enacted only a year before the survey was conducted, while all but two addressed the subprime crisis.

In 2008, I surveyed attendees at the University of Houston Law Center Conference titled Teaching Consumer Law: The Who, What, Where, Why, When and How (the “2008 Conference”) about the topics they covered in consumer protection courses.1 The 2010 edition of the conference (the “2010 Conference”) presented a second opportunity to conduct such a survey; to see whether course coverage had changed in light of the dramatic developments that had occurred in consumer law in the intervening two years;2 and to ask some additional questions. Because only ten professors completed the survey at the 2010 Conference, I posted a notice on the Consumer Law and Policy blog seeking additional responses,4 and emailed some consumer law professors who had not attended the conference to ask that they fill out the survey. Ultimately, I received responses from seventeen professors, including one who completed the survey for both a survey class and clinic class.

The sample may not be representative of those teaching consumer law courses for two reasons. First, it is small (by comparison, the 2008 survey elicited 25 responses, still not a large number), and second, those who took the time to attend the 2010 Conference can be expected to be either among the most committed to teaching consumer protection or newcomers to the field. Nevertheless, the survey may be of value to those teaching the subject or writing casebooks, especially when combined with the 2008 survey results.5 Consumer law professors may find it useful in making coverage decisions to know what others are teaching.

As noted in the 2008 survey report, “Those who are engaged in the subject enough to attend the Conference are also likely to follow consumer protection issues closely and to have given considerable thought to what subjects merit attention in the course. Hence, their coverage decisions are likely to be more informed and to be more worthy of emulation.”6

The Survey Instrument

The 2010 survey, a copy of which is appended, asked that respondents fill out the form only if they had taught consumer protection within the last five years or planned to teach it in the near future and knew what they planned to cover.7 The front page of the two-sided survey instrument asked respondents to indicate whether they taught a survey course, seminar, clinic, or other. It then inquired as to the number of hours that the course met per week. After that followed a list of 51 topics that might be covered in a consumer law class; respondents were invited to check all on which they spent at least twenty minutes of class time (the 2008 survey listed 32 topics and did not specify a minimum amount of time for inclusion in the list). The questionnaire invited respondents to write in any topics they covered that were not included in the list, but only three respondents accepted that invitation (one more than in the 2008 survey). The “write-in” topics consisted of the Military Lending Act, RESPA, wage garnishment, car title loans, car loans and discrimination, and tax refund loans.

The survey’s back page presented respondents with a list of thirteen topics that did not appear in all the consumer law casebooks and asked them to indicate which they would add to their courses if they did not already cover the subject and it was added to the materials they use. It then posed several open-ended questions (e.g., “what other topics would you add and why?” “What would you cut?”; “How do you choose which topics to cover or omit?”) and concluded by inquiring “For how many years have you taught consumer law?” None of these questions appeared in the 2008 survey.

The Respondents and Their Classes

Respondents to the 2010 survey varied considerably in the number of years they had taught consumer law, though nearly two-thirds (11) had taught fewer than ten years. More professors indicated that they had taught the course for two years—five—than stated that they had taught it for twenty or more years.8 The mean number of years teaching the course was 9.6 and the median was six for the respondents as a whole. For those teaching survey courses (“survey professors”), the numbers were 9.2 and five, respectively. No one indicated that they had taught consumer protection for eleven through nineteen years, though one person reported having taught it ten-plus years, which might have fallen into that span.9 Figure One shows the distribution of responses.

Thirteen of the respondents stated that they teach a survey course (the comparable number for the 2008 survey was 14): two that they conduct a seminar (3); and one that he or she taught a clinic (5). One respondent taught a course in Texas consumer law (1), and one taught consumer law in other classes, though both of these reported that they taught many consumer law topics in those classes. Of the survey courses, one met for four hours per week (the number in 2008 was two), six met for three hours (9); two met for 2.5 hours (0); two for two hours (2); and one did not specify. Both seminars met for two hours a week.

The number of listed topics checked off ranged from 9 to 36, with a mean of 21.7 and a median of 22; for survey professors, the numbers were 24.5 and 23, respectively. It makes sense, of course, that survey professors would cover more topics than professors teaching seminars, say. The professor who taught a four-hour course was the one who covered 36 topics.

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Topic Selection

Because nearly all the respondents taught survey classes, the paper will focus mostly on the survey professors, though Figure Two lists all responses.

The 2010 responses indicate more consistency than the 2008 survey, when no single topic was covered by all the survey professors. By contrast, in 2010 four subjects—common law fraud, UDAP statutes, the Truth in Lending Act, and the Fair Credit Reporting Act (“FCRA”)—were covered by all thirteen survey professors. Ironically, one of these, common law fraud, is often discussed elsewhere, in first year torts classes, as well. In addition, all but one of the survey professors explored the Fair Debt Collection Practices Act (“FDCPA”) (though one of those reported covering the FDCPA only in some years), the Federal Trade Commission Act, and payday lending. The seven topics covered by all or all but one of the 2010 survey respondents con-
trasts with the three subjects—common law fraud, the FDCPA, and the FCRA—touched on by all but one of the survey professors in 2008. Eleven of the thirteen survey professors went through unconscionability, bait and switch, subprime lending, and the Home Ownership and Equity Protection Act (HOEPA).

But the increased consistency over the 2008 survey does not mean syllabi were identical. Indeed, considerable variation is still apparent. For example, two of the respondents had only ten of the 51 topics in common; one of these covered fifteen topics the other did not while the other explored twelve subjects the other omitted. Given this disparity in coverage, it almost seems odd that the two classes are both considered courses in consumer protection. Fifteen of the 51 listed topics were covered by four or fewer survey respondents, further testifying to the diversity among syllabi. Given the different curriculum choices professors make, it seems that consumer law casebooks seeking to satisfy the preferences of different professors should include a wide variety of topics even though that means including more topics than can be covered in a single three- or four-hour course.

As in the 2008 survey, professors teaching consumer law report topic selections that seem responsive to current events. For example, seven survey respondents spent at least twenty minutes on the Credit CARD Act, passed less than a year before the professors were surveyed. The subprime crisis also seemingly had an impact on coverage decisions. Eleven professors discussed subprime lending while five covered foreclosure issues (a topic which has become particularly current since the subprime crisis). Coverage of HOEPA increased from eight to eleven professors while seven professors covered state predatory lending statutes, up from five in 2008. Three talked about the Consumer Financial Protection Bureau—which was still in the proposal stage at the time of the Conference. That last is particularly striking since it was only during the last semester before the survey was taken that the Senate considered the CFPB while the parent of the CFPB, Elizabeth Warren, had proposed it just in 2007. In contrast, two doctrines that were implicated in the subprime crisis actually saw declines in coverage. Four survey professors covered the holder in due course doctrine, down from the seven who taught it in 2008 while the number of survey professors covering the Equal Credit Opportunity Act fell from eleven to eight.

The survey also indicates that the professors intend to keep their courses current. Nine survey professors stated that they would add the CFPB to their courses if it were included in the casebook they use; three said the same about the Credit CARD Act; the two survey professors who did not spend at least twenty minutes on subprime lending both wish to do so; four wanted to add foreclosure issues and another two foreclosure rescue scams. When professors add new topics in an effort to keep courses topical, they necessarily reduce the time devoted to other matters, unless the number of hours for which the course meets increases. The survey respondents were obviously uniform in their unwillingness to eliminate some topics, such as common law fraud, UDAP statutes, and TILA (though the survey would not have disclosed if professors devoted less time to them). Professors do, however, seem willing to omit some other topics traditionally included in consumer law courses. Thus, nine survey professors covered cooling off periods and door to door sales in 2010, down from the eleven who taught it in 2008. The number of professors discussing the constitutionality of regulating commercial speech fell from five to three.

Some professors planning to add new material in the future reported their plans for cuts. Some expected to eliminate common law fraud, the privacy torts, and warranty law, explaining that they receive attention elsewhere in the curriculum. But some of the topics identified for elimination are probably not covered elsewhere, including the FTC Act and bait and switch, often regarded as core consumer protection issues.

Some topics that seemingly fit within the rubric of consumer protection did not receive attention from any survey respondents. These include the Consumer Product Safety Commission, the National Highway and Traffic Safety Commission, and student loans. Four professors stated that they would add student loans to their courses if material on that was added to the teaching materials they use, and a fifth wrote “maybe,” but no one expressed a desire to cover either the CPSC or NHTSA. Of course, if materials on these subjects appeared in the casebooks, professors might make a different choice upon examining them.

Responses to Open-Ended Questions

Eleven survey professors responded to the open-ended question “How do you choose which topics to cover or omit?” Perhaps not surprisingly, these answers were as varied as the topics selected by the professors (because many respondents reported more than one reason for choosing topics, the answers add up to more than eleven). The answer that showed up most often—on four responses—was that topic selection was based on current events. Two professors essentially stated that they pick topics likely to be relevant to practitioners; a pair also reported taking into account what students study in other courses. One looked to student interest while another tried to cover “basic areas.” A professor reported a desire to select matters “that give students a historical context for our current laws;” in contrast, another wanted to avoid “obsolete propositions of law.” That last one explained topic selection as follows: “Topics that I like and have litigated cases under. The less familiar I am with the topic, the less time I spend on it.” Another echoed the idea of choosing topics with which the professor was most familiar. Still another wrote “I assess what areas students are mostly likely to run across in their own lives as consumers, based on my practical experience as a litigator and given their reasons why they are taking the course.”

Both professors teaching seminars also explained the basis on which they choose their topics. One wrote “How interesting; relevance currently,” while the other penned “(1) See what topics are hot (2) See what transactions are hitting the middle class (3) See what transactions are hitting the poor/working class.”

The role of statutes in the course was plainly on the minds of some respondents. One expressed a desire to add “instructions on statutory interpretation/how to read a statute.” Another commented that “Starting with heavy statutory material doesn’t work as well.” That respondent elaborated: “Students like to talk about what’s ‘fair’ and ‘unfair’ business practice. They tend to regard it as an ‘advanced contracts’ course. This gives them a sense of continuity.” But another professor took a different tack: “I like to deal more with cases on major statutes and not cases on common law . . . .”

Conclusion

In the 2008 report, I wrote that “given the diversity in coverage by survey professors, it appears difficult to claim that consumer protection law has a canon agreed upon by those who teach it. At most, the canon consists of common law fraud, the FCRA, and the FDCPA.” That statement seems slightly less accurate in 2010, and TILA and UDAP statutes should be added to the list.

I also observed in 2008 that “course coverage decisions appear not to be static.” That remains very much the case. Even in only two years, it is obvious that Consumer Protection courses have evolved and are likely to continue doing so.
Figure 1
Number of Years Each Respondent Has Taught the Course

<table>
<thead>
<tr>
<th>Number of Professors</th>
<th>1 to 4</th>
<th>5 to 8</th>
<th>9 to 12</th>
<th>13 to 16</th>
<th>17 to 20</th>
<th>21 to 24</th>
<th>24 to 27</th>
<th>28 to 31</th>
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<tbody>
<tr>
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<td>1</td>
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<td>1</td>
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<td>0</td>
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<tr>
<td>Survey</td>
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<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Topics

Survey  Misc.

1 Two respondents stated the year they had begun teaching the course rather than the number of years they had taught the subject. In such cases, I assumed that they had taught the course each year since then, which may have exaggerated the number of years they have actually taught the class, since they may not have taught it in each of the intervening years.

2 One person reported teaching the course for ten-plus years and is included here.

3 One person reported teaching the course for twenty-plus years and is included here.

Figure 2
Part 1

<table>
<thead>
<tr>
<th>Number of Topics Covered</th>
<th>Fair Credit Reporting Act</th>
<th>Truth in Lending Act</th>
<th>Fair Debt Collection Practices Act</th>
<th>UDAP Statutes</th>
<th>Common Law Fraud</th>
<th>Unconscionability</th>
<th>FTC Act</th>
<th>Payday Lending</th>
<th>Bait and Switch</th>
<th>Enforcement</th>
<th>Subprime Lending</th>
<th>Arbitrator in Clauses</th>
<th>Home Ownership and Equity Protection Act (HOEPA)</th>
<th>Cooling Off Period</th>
<th>State Predatory Lending Statutes</th>
<th>Credit Card Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misc.</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>13</td>
<td>13</td>
<td>12</td>
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<tr>
<td>Survey</td>
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<td>9</td>
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</table>
CONSUMER PROTECTION 2010 COURSE COVERAGE QUESTIONNAIRE

If you have taught Consumer Protection within the last five years or plan to teach it in the near future and know what you plan to cover, please answer this survey for the “Hot Topics” panel.

I teach __ a survey course ___ seminar ___ clinic ___ other (specify: ____________) (if you teach more than one of these, please fill out a separate survey form for each course).

My course meets for ___ hours per week.

I spend at least twenty minutes of class time on the following topics (please check all that apply and add any additional topics in the space at the bottom):

Arbitration clauses (Mandatory) __
Bait and switch ___
Bankruptcy ___
Class actions ___
Common law fraud ___
Constitutionality of regulating commercial speech ___
Consumer Financial Protection Agency (or Bureau) ___
Consumer Leasing Act ___
Consumer Product Safety Commission ___
Consumer warranty issues ___
Cooling off period rules and door to door sales ___
Credit CARD Act ___
Credit insurance ___
Data security ___
Electronic Funds Transfers Act ___
Enforcement ___
Equal Credit Opportunity Act ___
ESIGN ___
Fair Credit Billing Act ___
Fair Credit Reporting Act ___
Fair Debt Collection Practices Act ___
Foreclosure issues ___
Foreclosure rescue scams ___
FTC Act ___
Comparative consumer law ___
Gramm-Leach-Bliley privacy issues ___
Holder in due course ___

Home Ownership and Equity Protection Act (HOEPA) ___
Lemon Laws ___
Magnuson-Moss ___
National Highway and Traffic Safety Administration ___
Odometer Act ___
Online privacy ___
Payday lending ___
Payment & E-Payment Systems ___
Privacy Torts ___
Preemption of state predatory lending statutes ___
Referral sales and pyramid schemes ___
Rent to Own ___
Shrinkwrap agreements & other contract formation issues ___
Security Interests ___
Spam ___
Student loans ___
State predatory lending statutes ___
Subprime lending ___
Telemarketing ___
Truth in Lending Act ___
Unauthorized credit/debit transactions ___
UDAP statutes ___
Unconscionability ___
Usury ___

The following is a list of topics that are not covered in all the consumer law casebooks. If you do not already cover the topic (and, if it is not already in the teaching materials you use, assuming it were to be added), which of the following would you add to your course (defined as spending at least twenty minutes of class time to the subject)?

Bankruptcy ___
Consumer Financial Protection Agency (or Bureau) ___
Consumer Product Safety Commission ___
Credit CARD Act ___
E-Payment Systems ___
Foreclosure issues ___
Foreclosure rescue scams ___
Comparative consumer law ___
International Transactions (i.e., transactions involving more than one country) ___
National Highway and Traffic Safety Administration ___
Odometer Act ___
Student loans ___
Subprime lending ___

APPENDIX (Continued)

What other topics would you add and why?

If you stated that you would add one or more additional topics to your class, what topics that you already cover would you cut or eliminate entirely and why?

How do you choose which topics to cover or omit?

Any other comments on coverage?

For how many years have you taught consumer law?

* Professor of Law, St. John’s University School of Law and co-coordinator, Consumer Law and Policy Blog. The author thanks Professor Dee Pridgen, whose idea it was in 2008 to employ a written survey, who moderated the 2008 panel in connection with which the survey was conducted, and who also made helpful suggestions for revising the 2010 questionnaire, Richard Alderman, who presided over both the 2008 conference and 2010 conference, and who gave permission to conduct the surveys at the two conferences, and his research assistant, Alexander Bader.


2 Professor Richard M. Alderman, Director of the Center for Consumer Law at the University of Houston Law Center convened the 2010 Conference, titled Teaching Consumer Law in the New Economy, on May 21 and 22.

3 In the two years after the initial survey and before the 2010 survey was conducted, Congress had enacted the Credit CARD Act of 2009, also known as the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified in scattered sections of 15 U.S.C.) and seemed on the verge of creating either a Consumer Financial Protection Agency or Bureau (the Senate had passed a bill to create a CFPA the day before the conference, H.R. 4173, the Restoring American Financial Stability Act of 2010, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173es.txt.pdf, while the House had passed a bill to create a CFPA the preceding November, dubbed the Wall Street Reform and Consumer Protection Act of 2009, available at http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/FinancialRegulatoryReform/hr4173eh.pdf). The subprime meltdown had led to increased media focus on issues connected with subprime lending, including predatory lending and foreclosures. In addition, regulatory agencies had issued a variety of new consumer regulations. See, e.g., 12 C.F.R. Subpart J (identity theft red flag regulations); Final Model Privacy Form Under the Gramm-Leach-Bliley Act, 74 Fed. Reg. 62,889 (Dec. 1, 2009).


5 Disclosure: The author of this article co-authored such a casebook: John A. Spanogle, Ralph J. Rohner, Dee Pridgen & Jeff Sovern, Consumer Law (2007).

Because there was overlap between attendees at the two conferences, combining the totals risks double-counting some respondents. On the other hand, it is likely that even those who filled out the survey at both conferences had made some different coverage decisions by 2010.


7 All of the 2010 respondents indicated that they had already taught the course. The 2008 version of the survey did not contain the five-year limit.

8 Two respondents stated the year they had begun teaching the course rather than the number of years they had taught the subject. In such cases, I assumed that they had taught the course each year since then, which may have exaggerated the number of years they have actually taught the class, since they may not have taught it in each of the intervening years.

9 That person was treated in Figure One as having taught the course for ten years, and another professor who reported having taught the course for twenty-plus years is treated as having taught it for twenty.