

The Content of Consumer Law Classes

By Jeff Sovern*

Abstract

Attendees at the University of Houston Law Center Conference, titled “*Teaching Consumer Law: The Who, What, Where, Why, When and How*,” were surveyed to determine what topics they covered in consumer law classes. Twenty-five responses were received, representing fourteen survey classes, five clinics, and six miscellaneous responses. The responses indicated considerable diversity in the topics covered. No topic was covered by more than 21 professors and each of the 32 topics listed on the survey instrument was discussed by at least four professors. Under the circumstances, it seems difficult to claim that consumer protection classes have a canon agreed upon by those who teach them. The responses, including those in survey courses, indicate that coverage is not static; many professors taught subjects that arose only recently, such as the subprime lending meltdown and statutes enacted since 1999.

Introduction

On May 23, 2008, Associate Dean Richard M. Alderman, Director of the Center for Consumer Law at the University of Houston Law Center convened a conference titled “*Teaching Consumer Law: The Who, What, Where, Why, When and How*” (“the Conference”). This presented an opportunity to determine what topics consumer law professors teach in their courses, information that could be useful to, among others, teachers of consumer law making coverage decisions. Accordingly, I distributed the survey instrument appearing in Appendix One to attendees. This paper reports the results.

The survey results may well not be representative of consumer law classes generally, in large measure because Conference attendees may not be representative of consumer law professors generally. The Conference is disproportionately likely to draw those who are most engaged with the subject, as well as those who are new to the subject and so have the most to learn. Attending the Conference represented more of a sacrifice than some conferences because it took place in the 90 degree heat of Houston, Texas and extended into the Memorial Day weekend, thereby competing with family obligations for some. Nevertheless, the results should be helpful to those teaching the subject. 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.

The Survey Instrument

The 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 32 topics that might be covered in a consumer law class; respondents were invited to check all that they taught. The survey instrument consisted of one side of a page, to increase the likelihood that people would complete it. But that limit forced the omission of some subjects likely to be covered in some consumer protection courses (e.g., lemon laws). To cure this, the questionnaire invited respondents to write in any topics they covered that were not included in the list, but only two respondents accepted that invitation.

In hindsight, the survey instrument was flawed in several respects. First, it did not ask attendees when they had last taught a consumer protection course. It is possible, therefore, that some responders had not taught the course in some time, though it seems more likely that anyone interested enough in the subject to attend the conference would also teach the course regularly. Second, the instrument failed to define what was meant by teaching a topic, leaving it to the respondents to make that judgment. Accordingly, it is possible that, for example, two professors who each spent thirty minutes on a topic might have decided differently whether to indicate that they taught the topic. Third, the invitation to write in topics that the professor taught that were not listed preceded the list itself; consequently, some people who taught additional topics that were not included in the list may not have written them in because they had forgotten the instruction to do so by the time they completed the list. On the other hand, others may simply not have thought of additional topics they covered, or may not have taught any topics beyond the 32 enumerated.

The Results

I received a total of 25 completed surveys.¹ Fourteen professors said they taught a survey course (“survey professors”)² while five taught clinics (“clinicians”). Six responses fell into the miscellaneous category: three respondents taught seminars, one taught

an undergraduate course online, another taught a military CLE course, and the sixth conducted a Texas bar course.³ The results appear in graphic form in Appendix Two.

Survey Professors. The responses indicate considerable variation among syllabi. No single topic is covered by all fourteen survey professors, though three subjects—common law fraud, the Fair Debt Collection Practices Act (“FDCPA”), and the Fair

Credit Reporting Act (“FCRA”)—were taught by all but one. By contrast, each of the 32 listed topics was taught by at least four professors. Ten topics were taught by at least ten professors: common law fraud, the FD-

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CPA, and the FCRA, of course; the Federal Trade Commission Act (“FTC Act”) the Truth in Lending Act (“TILA”), and unfair and deceptive trade practices statutes (“UDAP statutes”), each taught by twelve; the Equal Credit Opportunity Act (“ECOA”), bait and switch, cooling off periods and door to door sales, which were covered by eleven; and unconscionability, covered by ten. An additional twenty subjects were taught by five to nine professors: mandatory arbitration clauses and consumer warranty issues drew attention from nine professors; enforcement, referral sales and pyramid schemes, usury, the subprime meltdown, the Home Ownership and Equity Protection Act (“HOEPA”), and the preemption of state statutes were all covered by eight professors; the Fair Credit Billing Act (“FCBA”) telemarketing, payday lending, holder in due course, and the Magnuson-Moss Warranty Act were all taught by seven faculty members; the Electronic Fund Transfers Act (“EFT Act”), drew six check marks; and the constitutionality of regulating commercial speech, rent to own, the Consumer Leasing Act (“CLA”), state predatory lending statutes,

online privacy, and the Gramm-Leach-Bliley Act, elicited five. The subjects that were covered by only four respondents were spam and credit insurance. As noted above, two survey professors wrote in additional topics. One professor wrote in military lending law, the Department of Defense regulations, and lemon laws, while another noted coverage of formation issues (ESIGN and shrink-wrap), data security cases, auto fraud (the Odometer Act and lemon laws), student loans, and class actions.

Three hours per week seems to be the customary time allocation for the survey courses. Nine professors taught a three-hour course. Two conducted two-hour courses, while one taught a four-hour course. Two respondents did not answer that question.

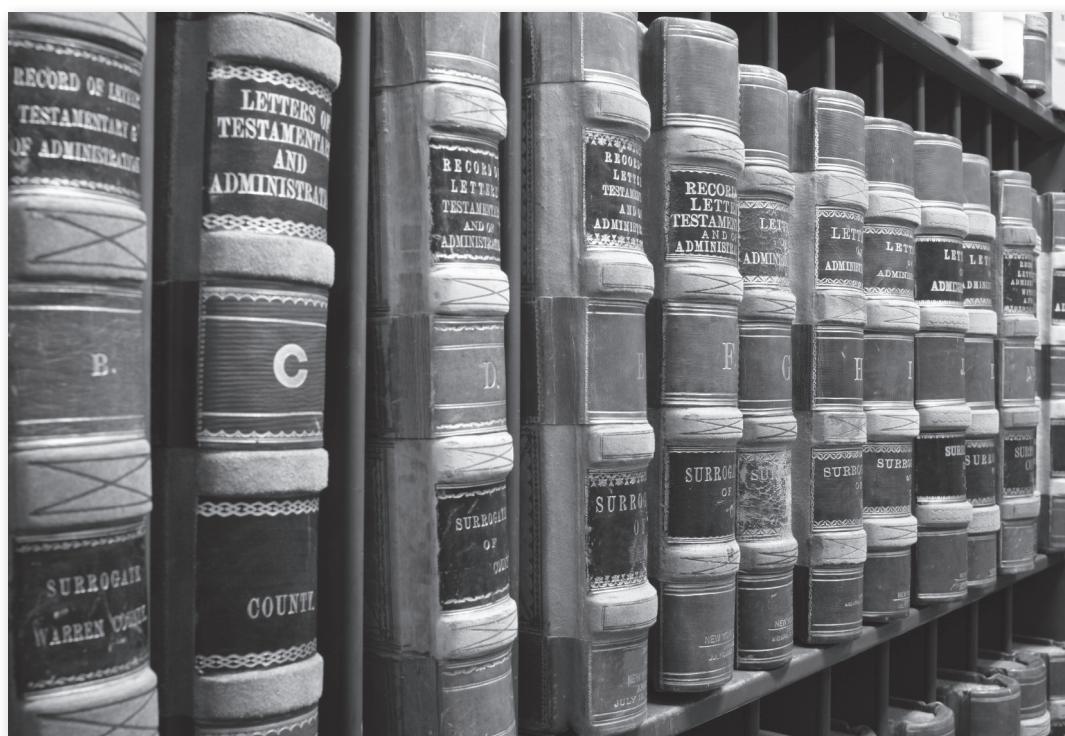
The number of topics covered also varied considerably. The professor who taught a four-hour class checked 27 topics. One professor who had a two-hour class managed only eleven topics while the other touched on 22. The professors with three-hour classes checked or wrote in four topics (thus giving new meaning to the idea of the survey class),⁴ twelve, fourteen, fifteen, twenty, 22, 23, 27, and 31. The two professors who neglected to state the number of course hours covered 21 and 22 topics. That works out to a mean of 19 topics and a median of 21.5 topics.

Clinicians. The clinicians exhibited less variation in coverage among themselves, but that may also be attributable in part to the fact that only five clinicians responded. All five clinicians covered UDAP statutes, TILA, the subprime meltdown, and mandatory arbitration clauses, while all but one taught the FCRA, the FDCPA, HOEPA, payday lending, and unconscionability. Rent to own, common law fraud, ECOA, consumer warranty issues, and bait and switch were all taught by three clinicians while referral sales and pyramid schemes, cooling off periods and door to door sales, holder in due course, state predatory lending statutes, the Magnuson-Moss Warranty Act, the FCBA, and the CLA each elicited two check marks. Only one clinician covered the FTC Act, telemarketing, usury, the preemption of state predatory lending statutes, credit insurance, and enforcement. Five topics were not taught by any clinicians: the constitutionality of regulating commercial speech, spam, GLB, online privacy, and the EFTA.

All Responses. When all three categories—survey professors, clinicians, and miscellaneous—are combined, even more diversity in coverage is apparent. Out of the 25 responses, only three subjects, TILA, UDAP statutes and the FDCPA, elicited as many as 21 checkmarks, and only common law fraud and the FCRA drew 20. The fewest responses—four—were elicited by spam. Eight topics were taught by between fifteen and nineteen professors; eleven by ten to fourteen professors; and seven by between five and nine professors.

Observations

Though the survey sample is small, the results permit a number of observations. First, 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, each of which was taught by thirteen survey professors. It also seems that this disagreement about coverage supplies some precedent for those teaching the course to pursue their individual interests at the expense of topics others might consider part of the consumer law core.

Second, course coverage decisions appear not to be static. All but two of the survey professors taught at least one issue that arose in 1994 or later, such as HOEPA, and many taught subjects that could not have been taught before 1999, such as the subprime meltdown, the Gramm-Leach-Bliley Act or state predatory lending statutes. But professors also teach older issues, such as usury law and common law fraud.

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Some survey professors seem to lack confidence that students will retain information taught in other classes. One of the most-covered topics, common law fraud, is typically taught also in first-year Torts classes while Contracts courses often include unconscionability and some warranty law.

Constitutional Law classes often cover the constitutionality of regulating commercial speech. As might have been expected, coverage by clinicians varied from survey professors, though clinicians showed greater overlap in coverage among themselves than did the survey faculty. The goals of clinicians are of course different from those of survey professors, and clinicians can be expected to conform their coverage to the issues presented in the cases the clinic is handling—though clinicians may also have some discretion to choose those cases and the issues they raise. It is perplexing that only one clinician checked enforcement. That may reflect confusion over what is meant by enforcement.

Individual coverage decisions reflect some interesting choices. Some professors taught consumer warranty issues but not the Magnuson-Moss Warranty Act. Three professors stated that they taught the preemption of state predatory lending statutes but not the statutes themselves (perhaps for the very reason that they had been preempted). By contrast, one clinician covered state predatory lending statutes, but not their preemption. Of course, these may reflect time issues; sometimes a course ends when a professor is mid-way through a topic.

It is striking how few professors added additional topics. For example, later panels at the conference addressed bankruptcy and global consumer law, but no one wrote in those topics on the questionnaire. For the reasons already mentioned, however, it may be that some professors taught those topics but failed to add them to the list.

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1. While more than 70 people attended the Conference, many teach in foreign law schools or had not yet taught a consumer law class. The survey sample represents most of those in attendance who had taught a consumer law course or clinic in the United States.

2. One response did not indicate whether the course taught was a survey course, clinic, seminar, or other, but because the respondent checked 21 topics and the topics selected resembled those checked in the other survey courses, it was classified as a survey course response.

3. Because the survey invited those who taught the course in more than one format to complete a separate form for each format, this may not in fact represent 25 separate respondents.

4. The professor who taught only four subjects listed common law fraud, the FDCPA, consumer warranty issues, and holder in due course as the subjects taught. The response indicated that the course met for three hours a week. This response was the only one submitted by a survey professor that did not indicate that the professor taught the FCRA.

APPENDIX ONE

Consumer Protection Course Coverage Questionnaire

If you have recently taught Consumer Protection 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 cover the following topics (please check all that apply and add any additional topics in the space to the right):

- Common law fraud ☐
- FTC Act ☐
- UDAP statutes ☐
- Constitutionality of regulating commercial speech ☐
- Truth in Lending Act ☐
- Consumer Leasing Act ☐
- Rent to Own ☐
- Bait and switch ☐
- Referral sales and pyramid schemes ☐
- Cooling off period rules and door to door sales ☐
- Fair Credit Reporting Act ☐
- Equal Credit Opportunity Act ☐
- Telemarketing ☐
- Spam ☐
- Gramm-Leach-Bliley privacy issues ☐
- Online privacy ☐
- Electronic Funds Transfers Act ☐
- Fair Debt Collection Practices Act ☐
- Fair Credit Billing Act ☐
- Consumer warranty issues ☐
- Magnuson-Moss ☐
- Holder in due course ☐
- Usury ☐
- Home Ownership and Equity Protection Act (HOEPA) ☐
- State predatory lending statutes ☐
- Preemption of state predatory lending statutes ☐
- Credit insurance ☐
- Payday lending ☐
- Subprime meltdown ☐
- Enforcement ☐
- Mandatory arbitration clauses ☐
- Unconscionability ☐

APPENDIX TWO

