Who Teaches Consumer Law?

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ABSTRACT

This paper reports on a survey of 31 law professors teaching consumer protection law conducted in connection with the Center for Consumer Law & Economic Justice at the UC Berkeley School of Law and the Center for Consumer Law at the University of Houston Law Center's 2024 Teaching Consumer Law Conference. Questions posed in previous surveys at the Teaching Consumer Law Conference focused largely on what topics are covered in consumer law courses. The 2024 iteration of the survey instead explored responding professors' goals in consumer law courses and their experiences with and views on consumer law matters. Among the findings: nearly every respondent saw it as important that students hear arguments the professor disagreed with. While professors generally saw it as important that students learn the legal doctrines, professors as a group saw it as even more important that students learn problem-solving skills, how to work with statutes and regulations, and the policy justifications underlying the rules—suggesting that consumer law professors share the traditional view that a key purpose of law school is to teach students to think like lawyers. Two-thirds of the consumer law professors have represented a consumer in a dispute with a business, while nearly half have represented a business in a consumer matter. Not one professor—not even those who had represented businesses—thought the country had too much consumer regulation while 70% thought it had too little.

Introduction

In May 2024, I surveyed 29 consumer law professors attending the Center for Consumer Law & Economic Justice at the UC Berkeley School of Law and the Center for Consumer Law at the University of Houston Law Center's 2024 Teaching Consumer Law Conference.[1] Two other consumer law professors answered the survey questions after the conference, for a total of 31. Though this is not a large number of responses, it is probably a large share of the number of professors teaching consumer law.[2] The responses shed some light on what consumer law professors think is important when teaching consumer law, as well as some of their own experiences with and views of consumer law issues. Because nearly all the respondents chose to attend a conference on teaching consumer law, they may be more engaged with consumer law courses than some consumer law professors, but for that reason, they may be more inclined to care and think about the issues the survey asked about.

The survey included 22 questions, though not every respondent answered every question. All but one of the questions were multiple-choice; the last question invited respondents to say more about their responses to any of the preceding questions, an invitation only a few respondents accepted. The average time to complete the survey was about 25 minutes. While it is impossible to know how many respondents took breaks from answering the questions, the average response time suggests that respondents gave the questions considerable thought.

Teaching Preferences

As reflected in Figure Four, 13 respondents—or 42%—reported that it is very important that students learn the legal doctrine in their consumer law classes and another 15—or 48%—said it is somewhat important. Unsurprisingly, professors teaching doctrinal courses with an exam were likelier to say that it was very important that students learn the legal doctrine; 64% said it is very important while 36% said it is somewhat important. However, nearly half the professors who teach paper courses also said it is very important, while the others said it is somewhat important. Only one of the six clinical professors saw learning the doctrine as very important while four said it was somewhat important.

As a group, professors thought it was more important that students learn the policy justifications for the rules than the rules themselves. As shown in Figure Seven, 17 thought it was very important to learn the underlying policy justifications, as compared with the 13 who believe it very important that the students learn the rules. Another dozen thought it somewhat important that students learn the policy justifications. Perhaps this emphasis on policy justifications reflects the idea that rules may change, but the policies remain relevant. One professor mentioned that it was more important for the students to retain an understanding of the policies underlying, say, the Truth in Lending Act than TILA's technical rules themselves.

But there were matters that professors thought were more significant than either the legal doctrines or the underlying policies. Thus, on average, respondents thought it more important that students learn problem-solving skills than the legal doctrine in their consumer law classes. Specifically, 23 respondents—or 74%—thought it was very important that respondents learn problem-solving skills, with another half-dozen—or 19%—saying it is somewhat important.[3] The question did not define problem-solving skills, and it is possible, even likely, that those teaching exam courses, paper courses, and clinics all defined it differently. The disparity in views regarding the importance of problem-solving skills is largely attributable to the clinicians, all of whom thought learning problem-solving skills was very important, and to a lesser extent, to those who taught paper courses, of whom 78% called learning problem-solving skills very important. As to the professors teaching exam courses, nine thought problem-solving skills were very important compared to the eight who believed learning legal doctrine was very important.

Similarly, it was more important to professors that their students learn the skills needed to work with statutes and regulations than that students learn the doctrines those statutes and regulations established. Indeed, not one respondent rated that as unimportant, while only one called it neither important nor unimportant; in contrast, 23 saw it as very important, and seven saw it as somewhat important.[4] It may be that professors see the ability to work with statutes and regulations as more important than the legal doctrines because many students who take consumer law courses will not actually practice consumer law after graduating, though they are likely to work with statutes and regulations, a staple of many legal practices. In addition, most law schools give students considerable practice working with caselaw in their first year but less work with statutes and regulations. Consequently, upper-year classes, like consumer law, that are more based on statutory and regulatory law must teach students how to work with statutes and regulations or students will simply not learn those vital skills in law school.

As is true of many subjects, consumer law issues present sharp ideological divisions. Media reports complain that professors attempt to indoctrinate students with only one side of the argument.[5] To see whether this was true of consumer law professors, the survey asked professors how important it is to them that students hear arguments the professors themselves disagree with. As reported in Figure Eight, only one respondent did not see that as important. Indeed, 17 saw it as very important—again, more than those who saw learning legal doctrines as very important—while 13 saw it as somewhat important. Professors may feel hearing both sides is important because law schools teach students how to function in an adversarial system, and effective advocates must be able to anticipate their opponents' arguments. Personally, I don't want the first time my students hear the arguments I disagree with to be in court; I want my students to hear the arguments in class so that they can think about them even if I must make those arguments myself. Or it may be that the media reports exaggerate how often indoctrination occurs in classrooms. And, of course, the survey reports only how professors describe their views, as opposed to what they actually do in the classroom.

As a group, professors thought it was more important that students learn the policy justifications for the rules than the rules themselves.

The survey also asked consumer law faculty whether they would rather teach fewer topics in depth or more topics with less depth. Overall, 42% said they prefer to have their classes evenly divided between more topics and greater depth; 39% said they preferred fewer topics with greater depth; and 19% wanted more topics with less depth.[6] But the overall results mask the fact that professors teaching different kinds of courses had very different preferences. Thus, those teaching exam courses overwhelmingly preferred to have their classes evenly divided between more topics

and greater depth, while clinicians strongly preferred fewer topics with less depth. A third of the professors teaching paper courses preferred more topics, while 56% wanted fewer; only one wanted an even distribution.

In sum, it appears consumer law professors believe that it is more important that their classes teach students how to think like lawyers—how to solve problems and work with statutes and regulations—than that they learn consumer law. The variation in views on depth and breadth of coverage suggests that consumer law professors disagree about the importance of students mastering particular consumer law topics in depth. That is consistent with the finding of previous surveys that consumer law professors differ over what to cover[7]—which in turn suggests that consumer law lacks an agreed-upon core.

Attitudes Towards Consumer Law

The survey asked several questions about the respondents' attitudes toward consumer law. More than 70% of the respondents believe that the United States has not enough or has far too little consumer regulation while just over a quarter think it has the right amount.[8] Not one respondent found the amount of consumer regulation excessive. That view reflects the judgment of those with considerable consumer law expertise and should not be lightly dismissed. However, it may also reflect the paucity of conservative consumer law professors—at least conservative when it comes to consumer protection. Advocates of less regulation tend to be found more in the industry than in consumer law classes. Though I share the view that the country needs more, rather than less, consumer protection, I also believe it would be better if the contrary view were better represented in the legal academy. Even those calling for more regulation would benefit from greater ideological diversity if they had colleagues whose different perspectives might help them identify issues with their writings that others with similar ideological leanings might overlook.

Because disclosure is both a widely used consumer protection device,[9] and also frequently criticized,[10] the survey asked respondents about their view of disclosure. As reflected in Figure 14, no respondents said they thought disclosure is always or never effective. Half thought it was sometimes effective, 13% thought it was usually effective, and just over a third believed it to be rarely effective. ChiChi Wu, an attorney at the National Consumer Law Center, once opined that disclosure is a necessary but insufficient form of consumer protection. Many of the respondents might share that assessment.

The survey also asked why respondents saw disclosure as ineffective. As shown in Figure 15, 70% of the respondents thought that there are two explanations: consumers often do not read disclosures and frequently do not understand them when they do. One respondent believes that the problem lies solely in consumer incomprehension of disclosures while 17% suppose that consumers ignoring the disclosure is the only explanation. Ten percent concluded there was another explanation.

The last question about consumer law faculty attitudes towards consumer matters asked how the respondents believe businesses act when drafting terms that few consumers understand. The consumer law professors were unanimous—the only item on which they were unanimous—in predicting that the businesses would select a term that maximizes the benefit to the business.[11] This may reflect the (perhaps cynical) view that it is rational for an entity to maximize its own benefit if its counterparty is unable to tell which party would gain from writing the contract one way or the other. In the rare case when the consumer understands the term and complains, the business would still have the option of waiving the objectionable term. However, the respondents' unanimous view also suggests that when consumers cannot understand terms, the professors believe a market failure is more likely, so lawmakers should consider intervening in such cases.

Consumer Law Professors Have Represented Both Consumers and Businesses

The survey asked respondents if they had ever represented a consumer in consumer litigation. Two-thirds of them had.[12] The survey also asked whether the respondents had ever represented a business in litigation with a consumer or, in a separate question, whether they had ever drafted a consumer contract for a business. Nearly half—42%—had done one, the other, or both.[13] Recall that every respondent expressed the view that when it comes to terms consumers cannot understand, businesses will maximize their own benefits.[14] That unanimous total obviously included the half dozen respondents who had drafted consumer contracts for businesses.

Consumer Law Professors and Collection Issues

The survey asked respondents if they had had either a medical or non-medical debt go into collection. According to the responses, 42% had. Ten have had a non-medical debt in collection, nine have had a medical debt in collection, and six had both types of debt in collection.[15] If professors who are knowledgeable about consumer law have had such experiences, it becomes easier to understand how consumers with less sophistication about consumer law have had the same happen to them. To some extent, the question is also a proxy for asking if consumer law professors themselves have consumer law problems; obviously, the answers suggest many do.

Consumer Law Professors and Contract Clauses

The survey included three questions about contract clauses, of which two involved arbitration clauses. One such question inquired what respondents would do if they noticed a contract they were contemplating signing included an arbitration clause. More than three-quarters answered that they would agree to the contract even though they objected to arbitration clauses.[16] Only three, or 10%, stated that they do not object to arbitration clauses. Four, or 13% replied that they would search for another business that did not include arbitration clauses in their contracts.

The survey also asked what the respondents would do if the arbitration clause included a right to opt out within a specified period. Many arbitration clauses include such opt-out rights, presumably in an attempt to avoid unconscionability issues.[17] Some courts have, in fact, concluded that such opt-out rights prevent arbitration clauses from being held unconscionable.[18]

Half the respondents said that they would opt out.[19] However, it seems unlikely that many of the respondents would actually follow through with their plan because of the burden it entails. Not only must consumers draft a letter on their own, because firms do not provide forms for opting out, but they must also take the time to mail such a letter, as firms often refuse to accept them via email.

Though publicly available evidence about the number of opt-outs is sparse, it appears few consumers actually opt out of arbitration clauses. While it is possible that consumer law professors represent an exception, it seems unlikely. It is no secret that survey respondents often say they will do one thing when presented with an issue, but when actually presented with that issue, do something else.[20]

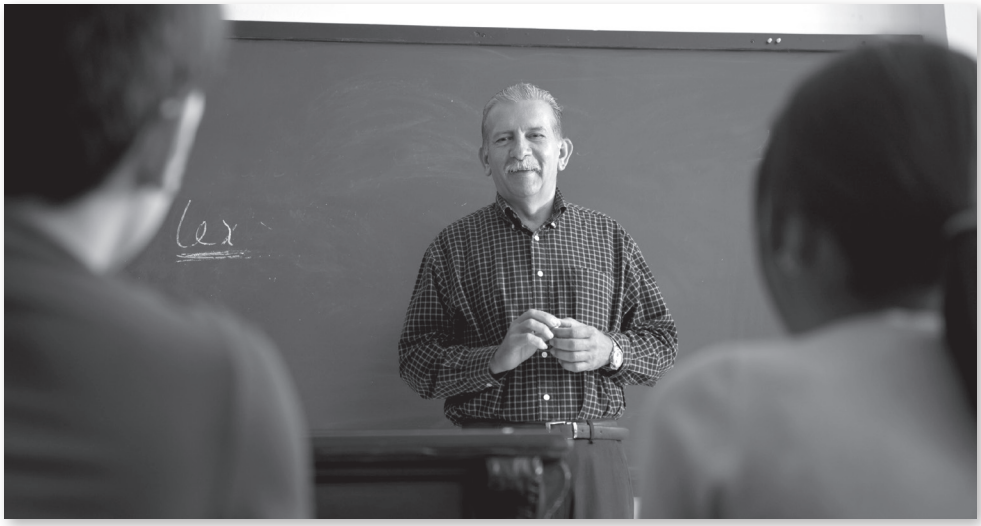
Thirty percent of the respondents said that while they object to arbitration clauses, they would not opt out because it is not worth it. That may be because, even if consumers opt out of arbitration clauses, they probably would not be able to satisfy the numerosity requirement to bring a class action because so few other consumers opt out.[21] Or it may be because they think a dispute with any given business is sufficiently unlikely as to make opting out a waste of time. Or both. Two respondents said they would not opt out because they do not find arbitration clauses objectionable; three said they would not opt out for a different reason, though they object to arbitration clauses.

According to the survey, consumer law professors believe it important that students hear both sides on consumer law issues, including arguments that the professor disagrees with.

The third question about contract clauses asked if respondents had "ever been on the verge of agreeing to a consumer contract but then read a contract term that you found objectionable, other than price, and so decided against agreeing to the consumer contract." Thirteen, or 43%, said that they had. Just over a third said that they had not because other companies would be likely to use the same term. Three said that they did not read contracts and so had not discovered such a term.[22] I confess to some surprise that so many had backed out of a transaction for such a reason. I wonder how typical the respondents are of both law professors and, more broadly, Americans in general.

Conclusion

A survey posed to 31 consumer law professors found that many had represented consumers and nearly half had represented businesses in consumer law matters. Despite this diversity of experience, the respondents were unanimous in concluding that the United States does not have too much consumer regulation. According to the survey, consumer law professors believe it important that students hear both sides on consumer law issues, including arguments that the professor disagrees with—which is inconsistent with media reports about professors indoctrinating students. Many professors thought it more important that students learn problem-solving skills, the skills needed to work with statutes and regulations, and the policies underlying rules than the rules themselves.



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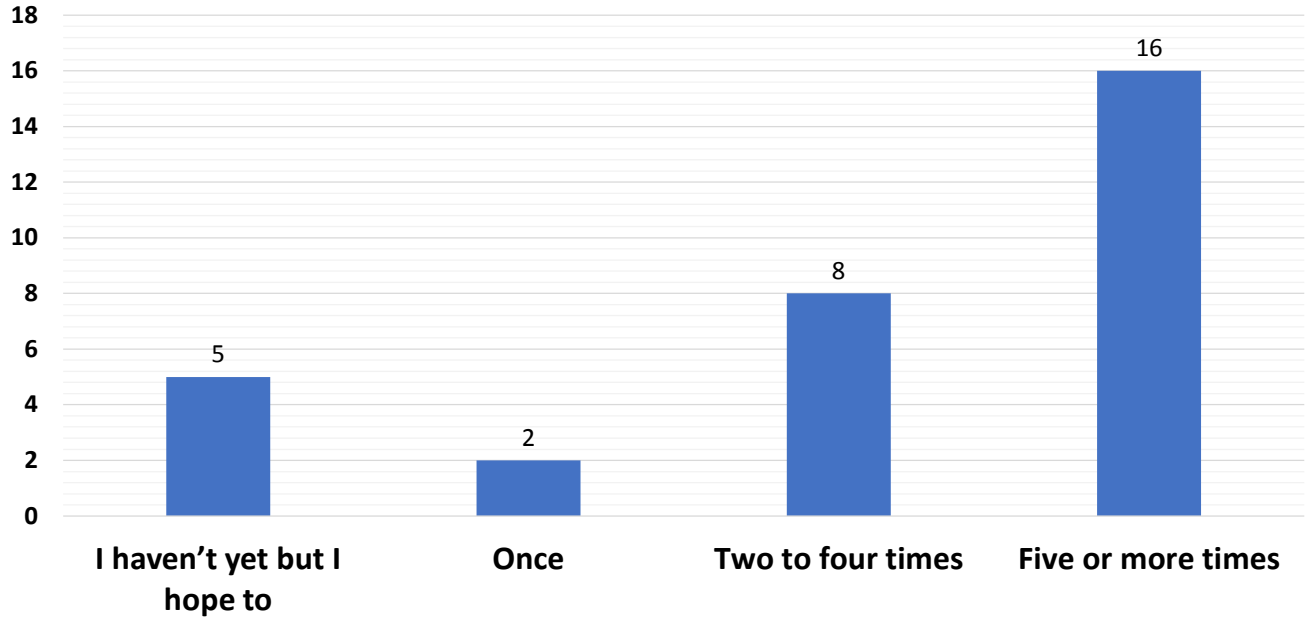

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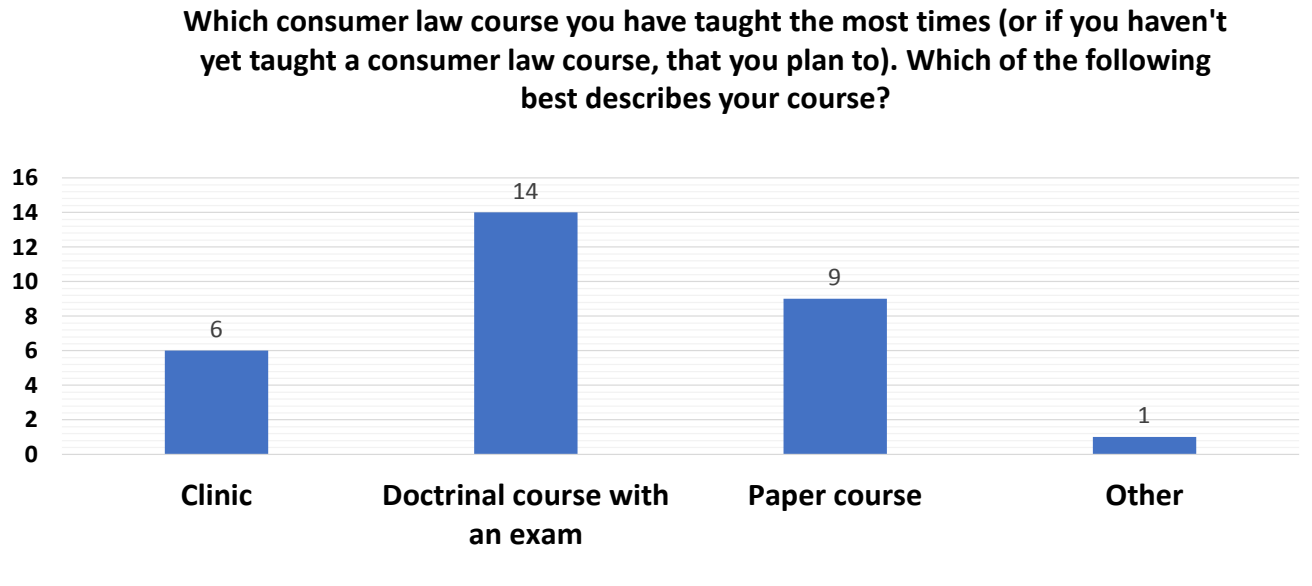

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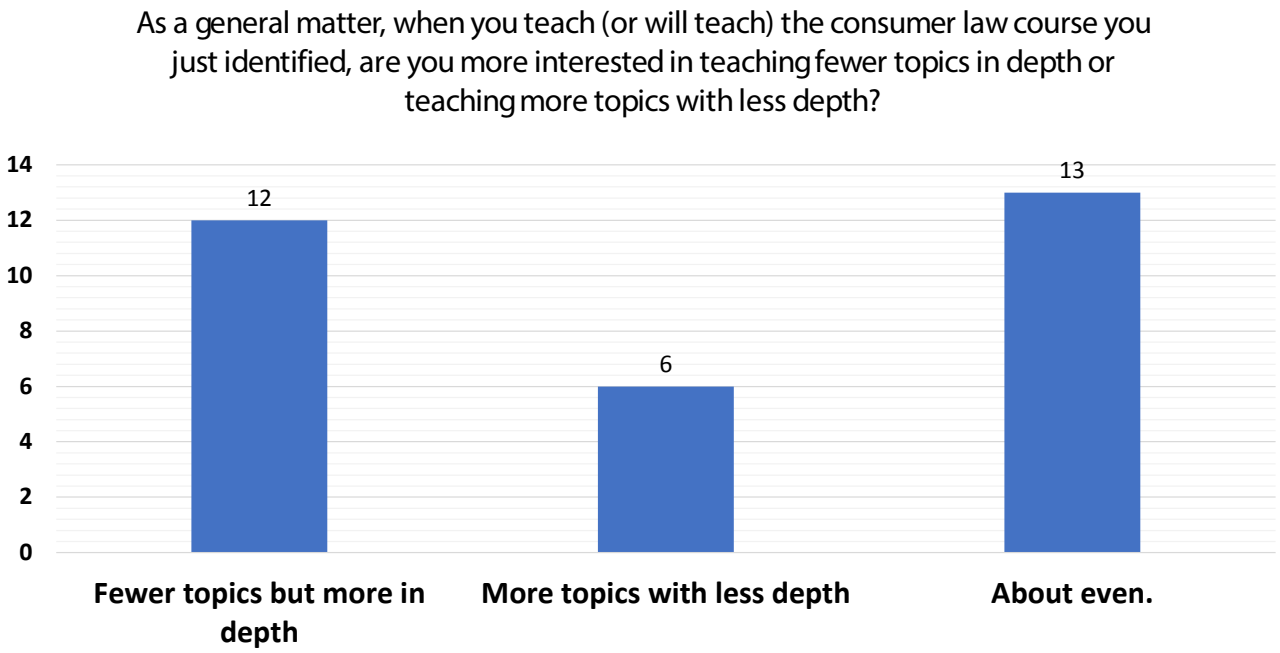

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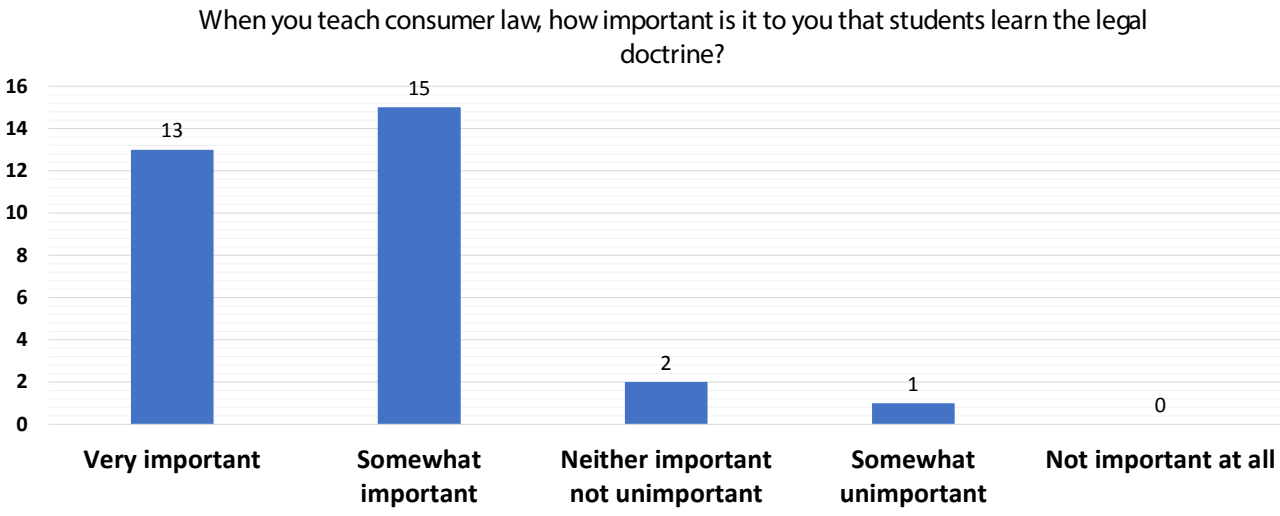

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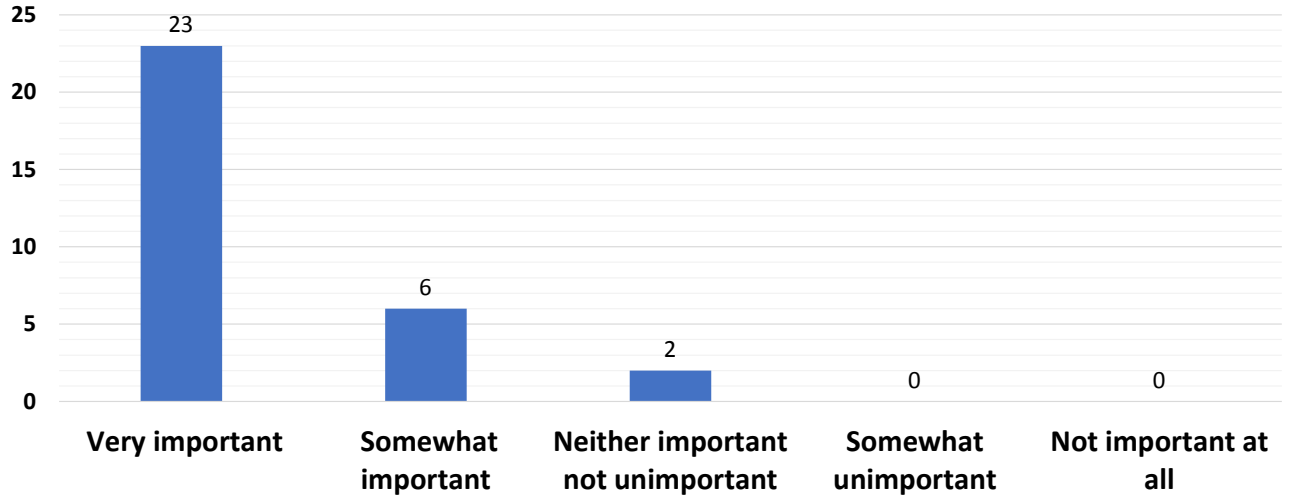

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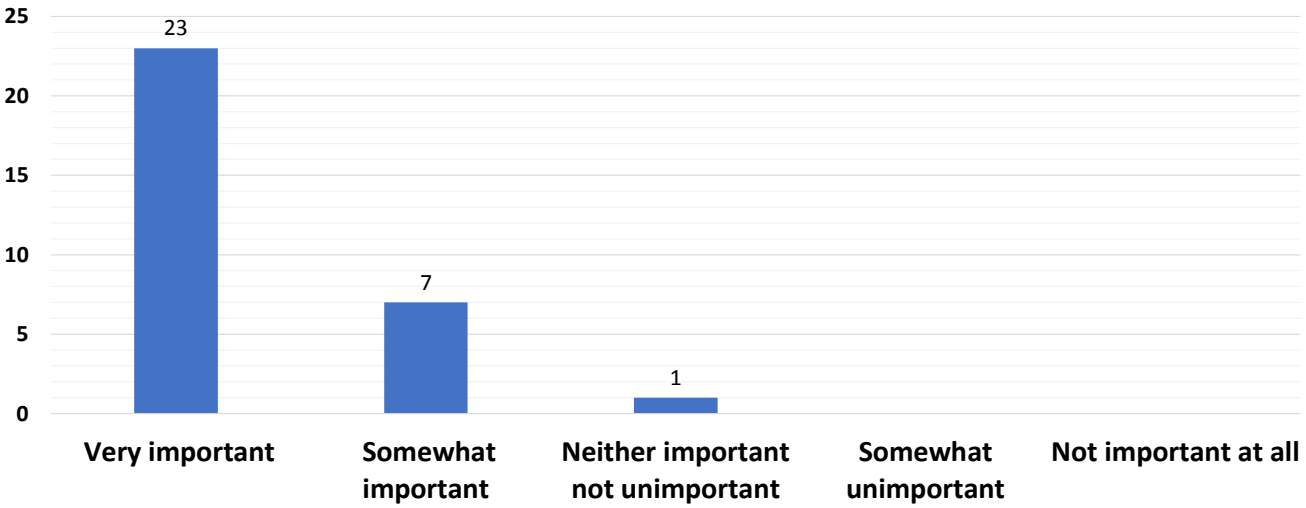

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FIGURE 7

When you teach consumer law, how important is it to you that students learn policy justifications for the rules?

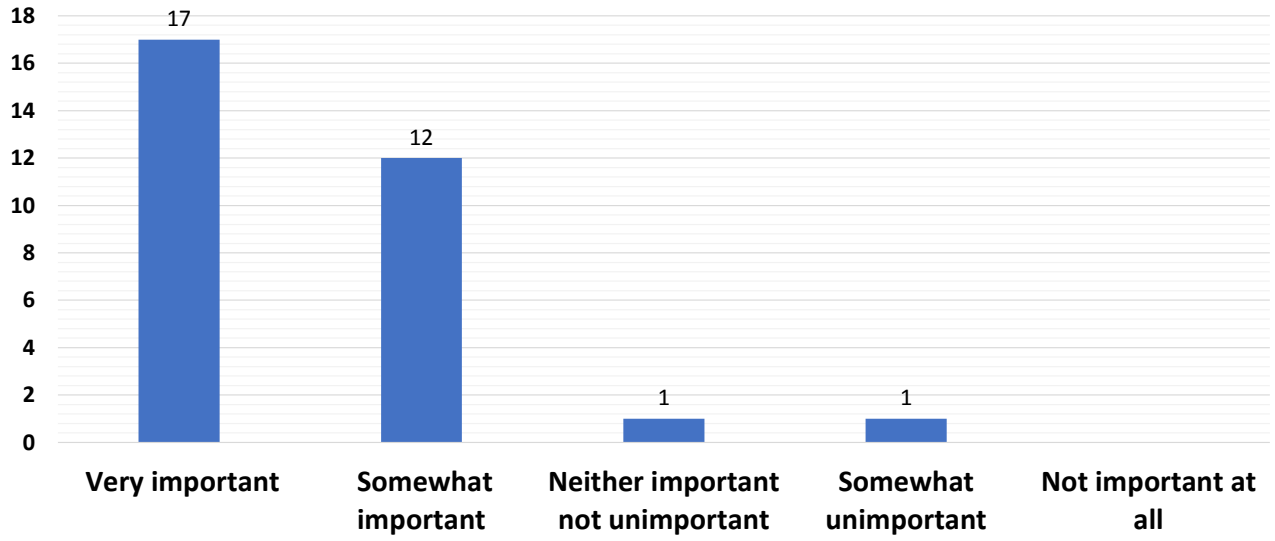
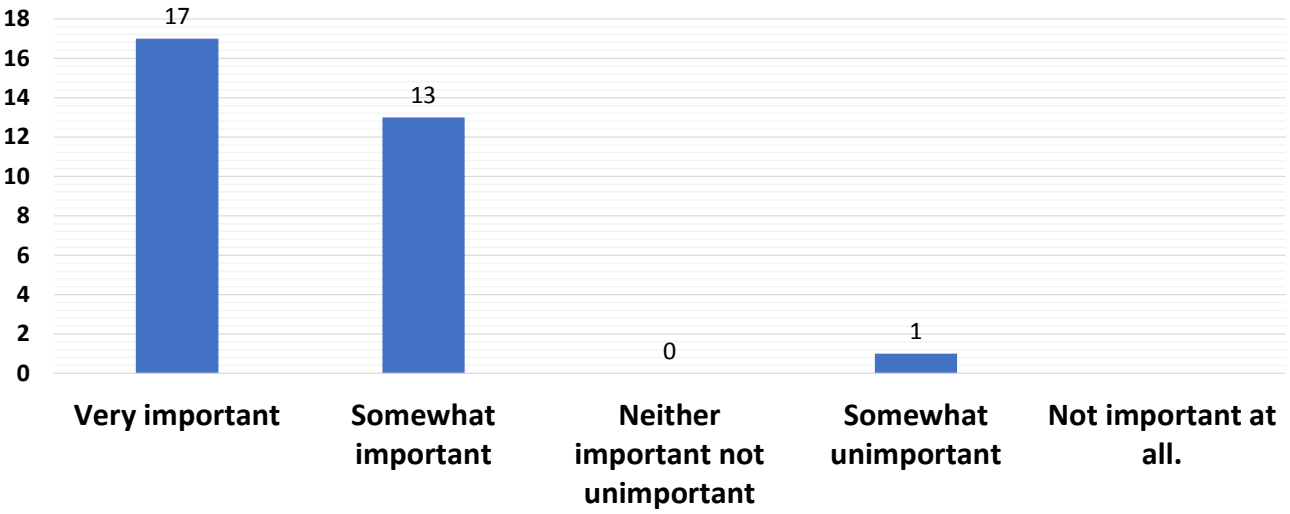


FIGURE 8

When you teach consumer law, how important is it to you that students hear arguments that you yourself disagree with (e.g., if you discuss the pros or cons of payday lending regulation, that students hear both about consumers getting caught in debt traps



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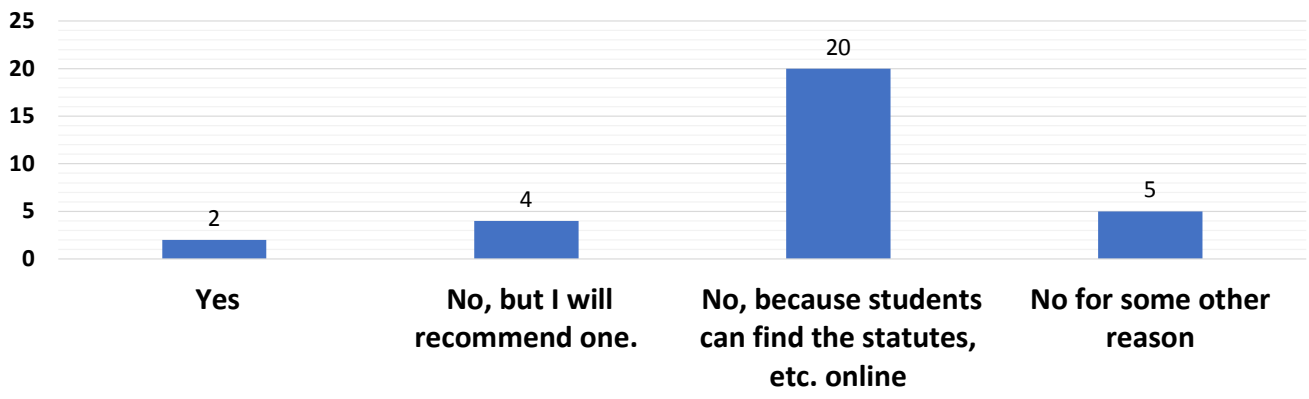

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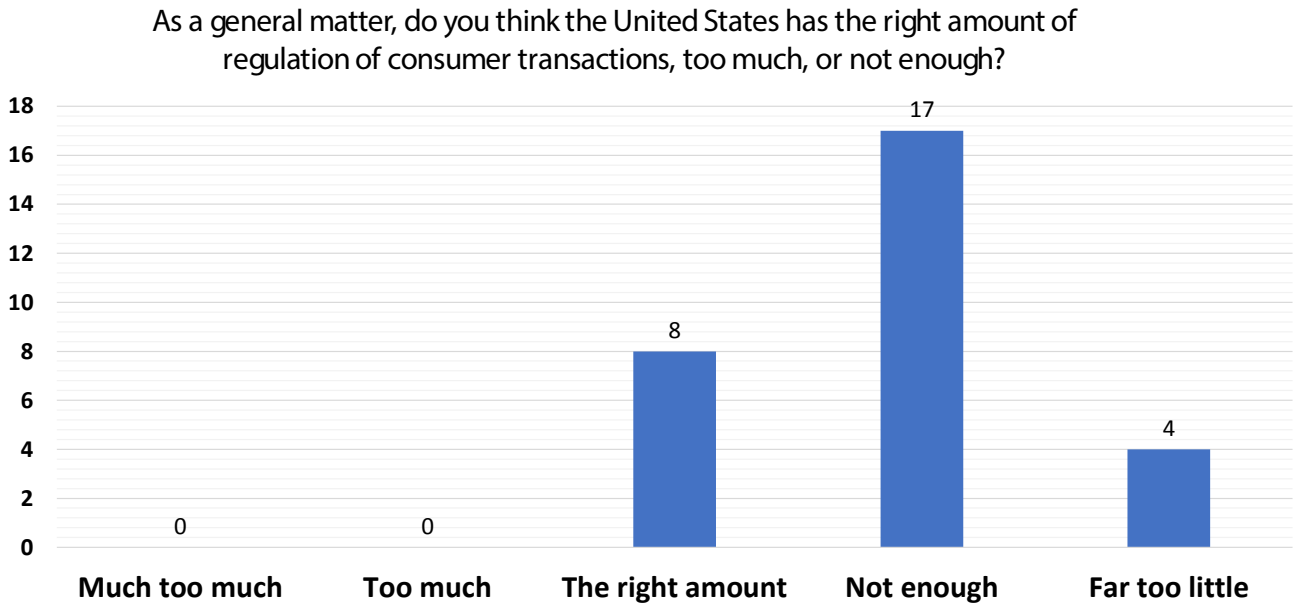

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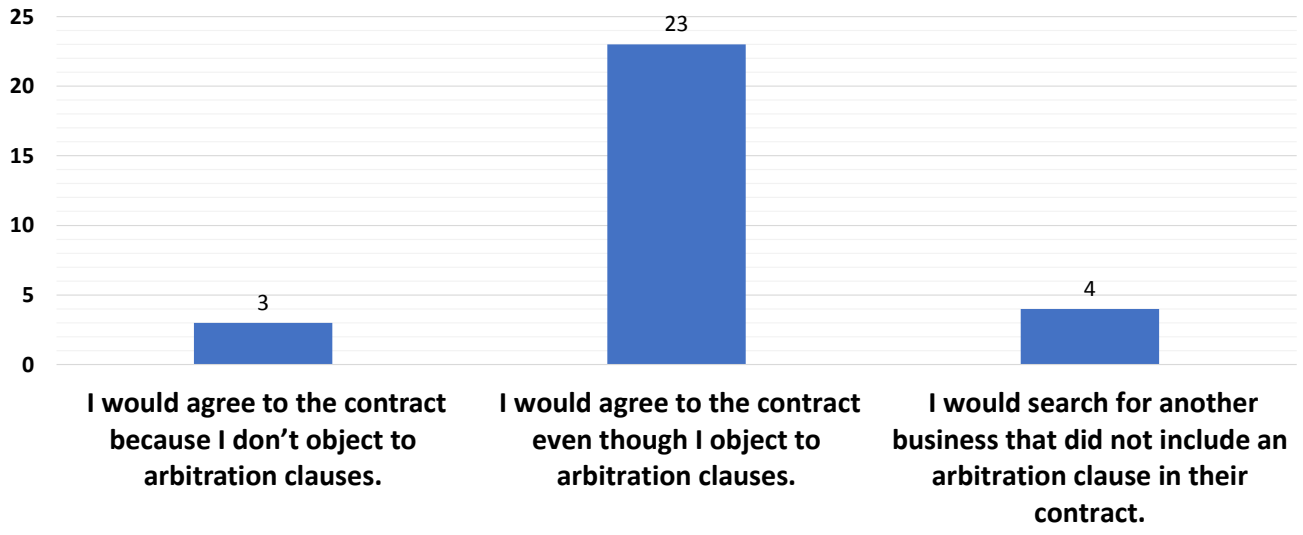

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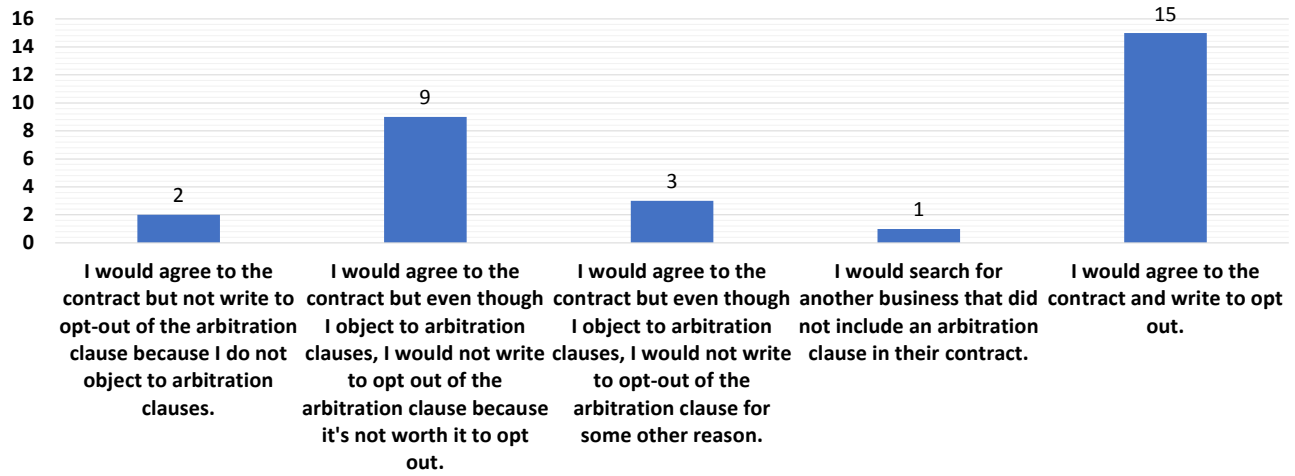

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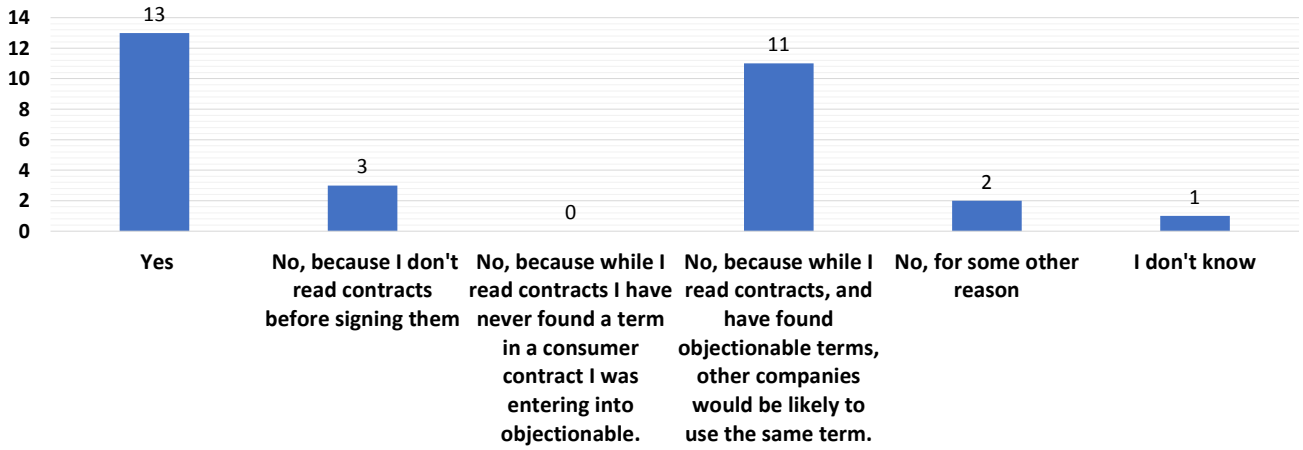

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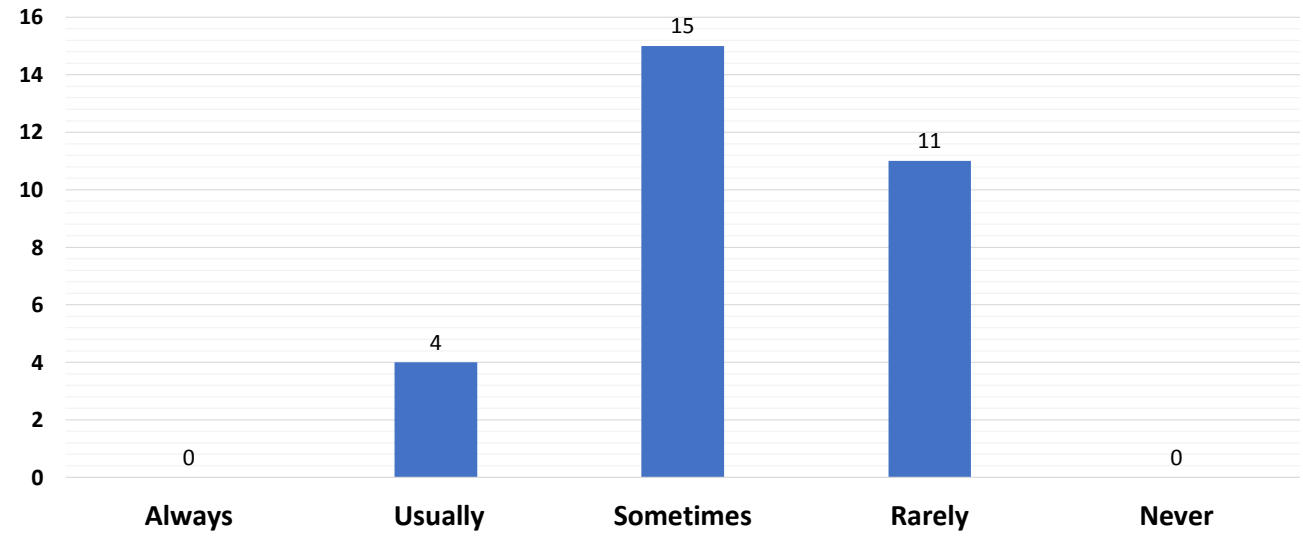


FIGURE 15

If you think disclosure is at least sometimes not an effective consumer protection device, why do you think it is not?

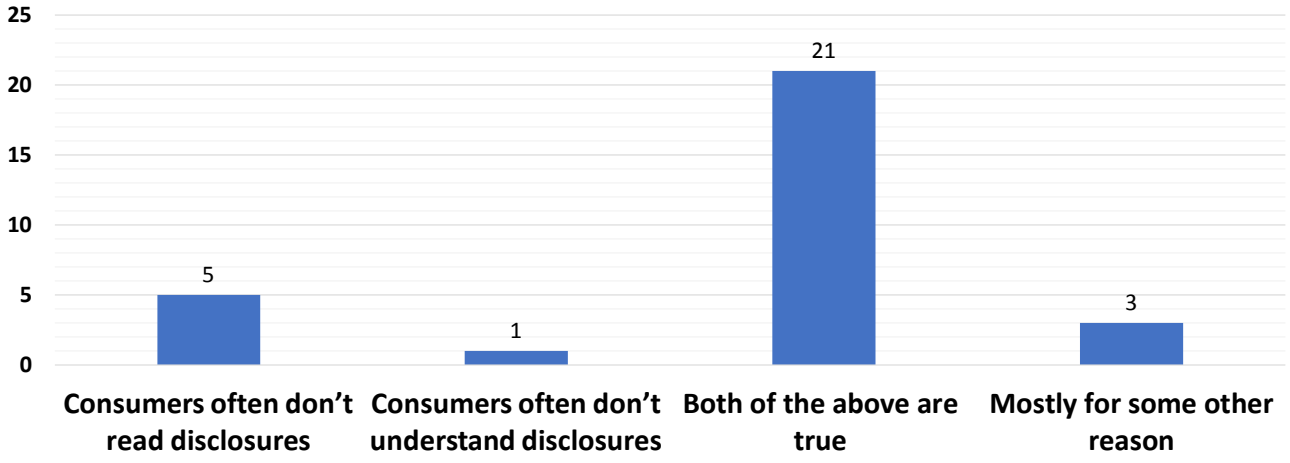
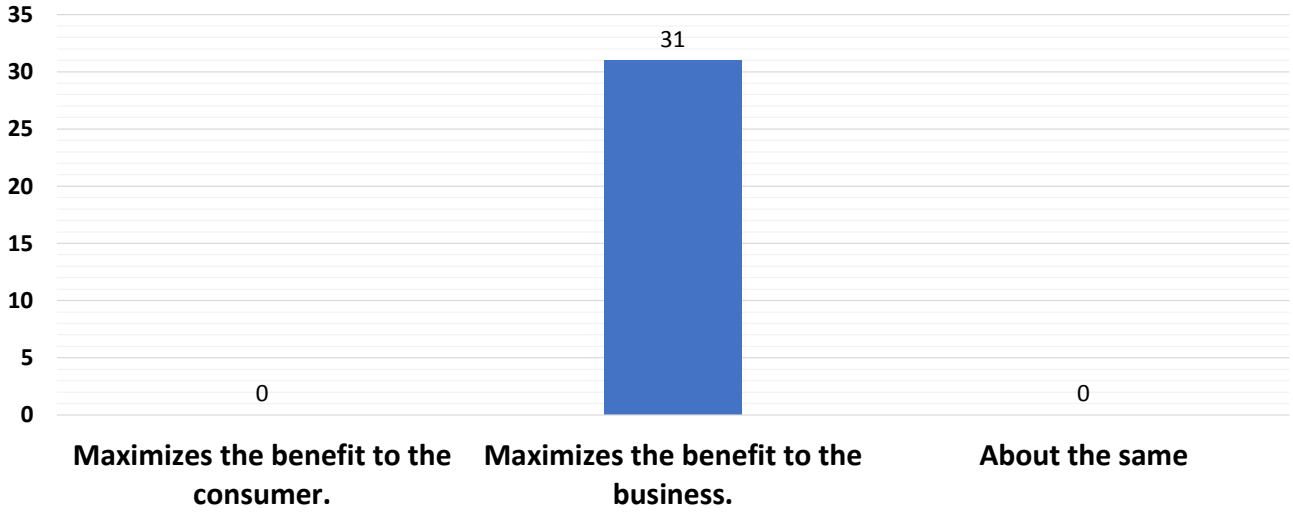


FIGURE 16

When it comes to terms that few consumers understand, would you guess businesses usually choose the contract term for their contract which:



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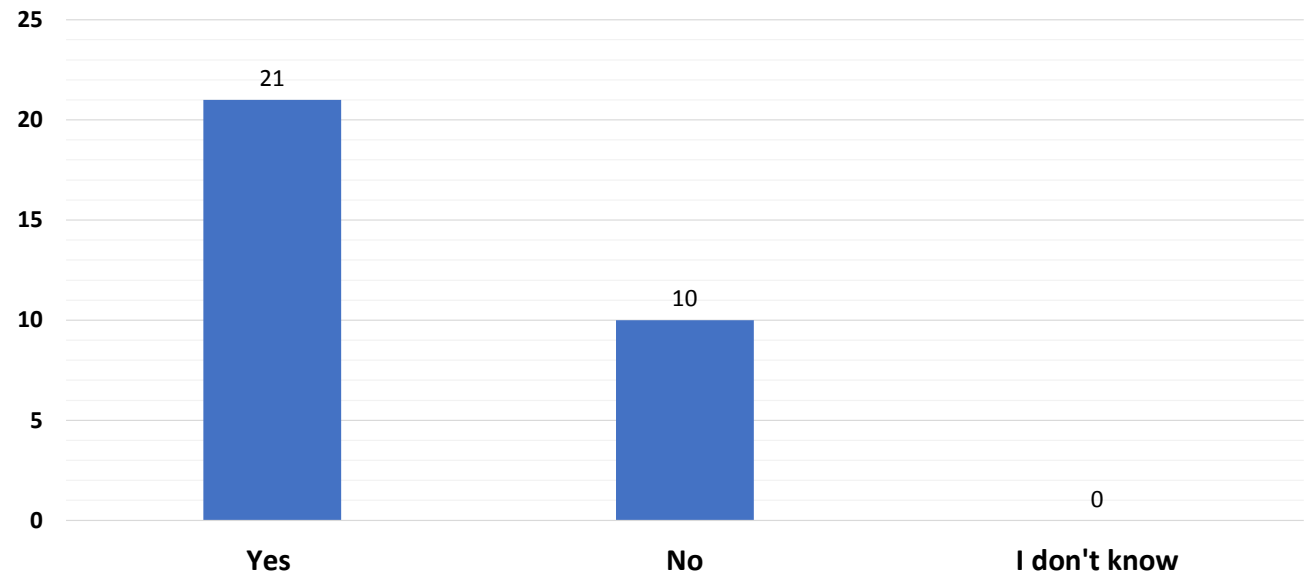

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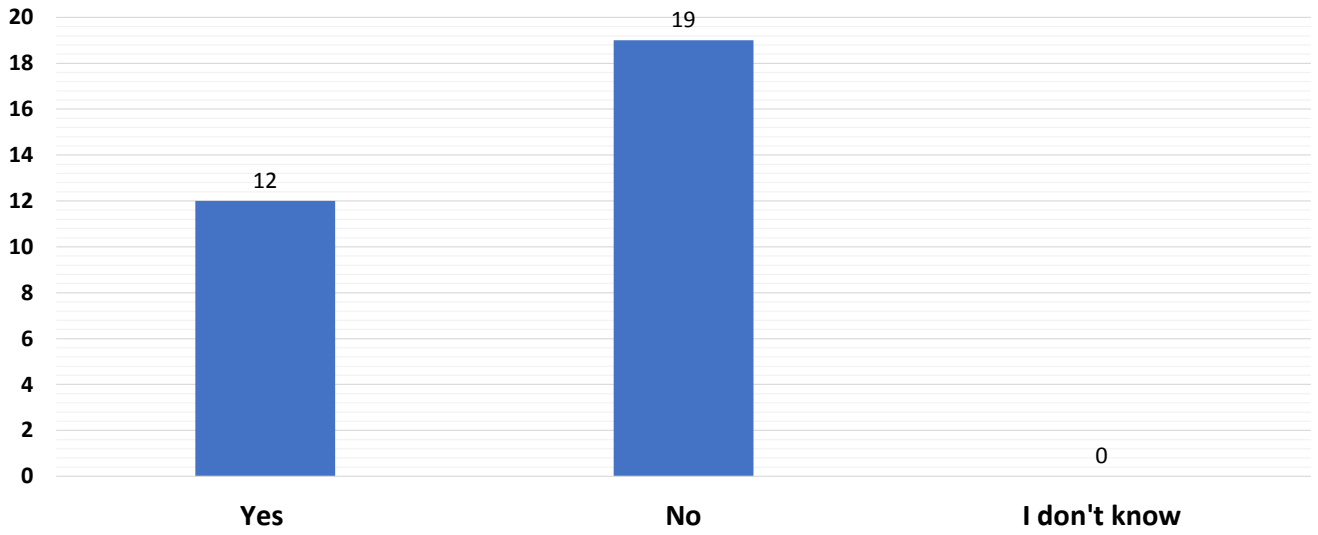

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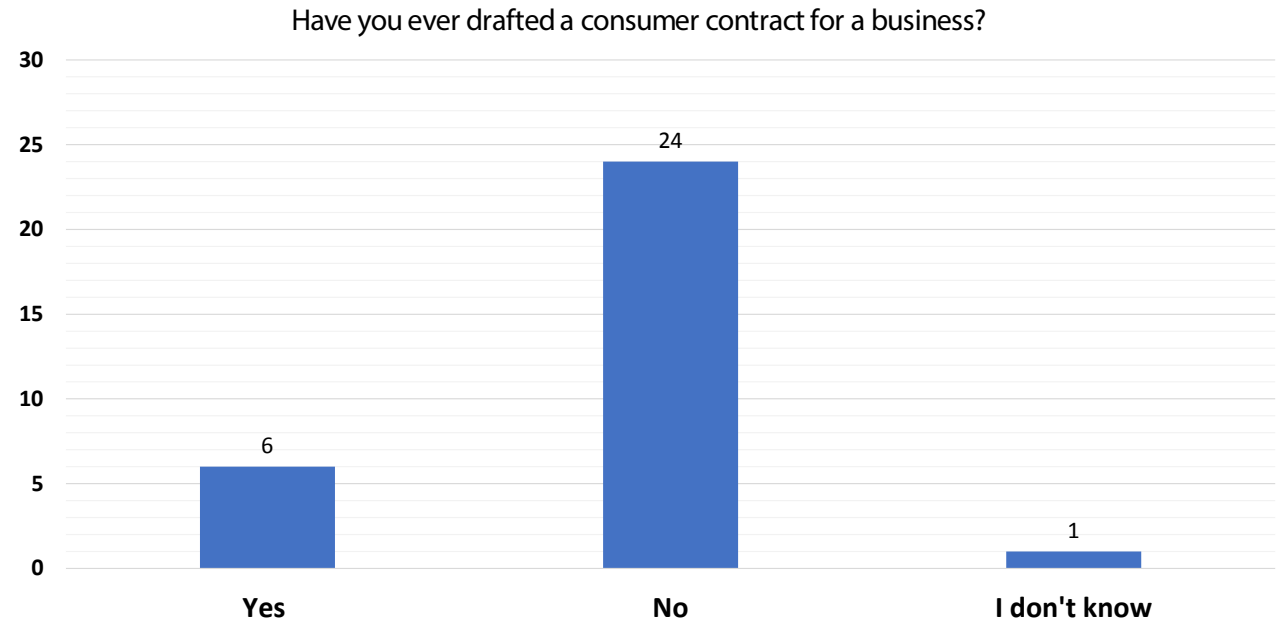

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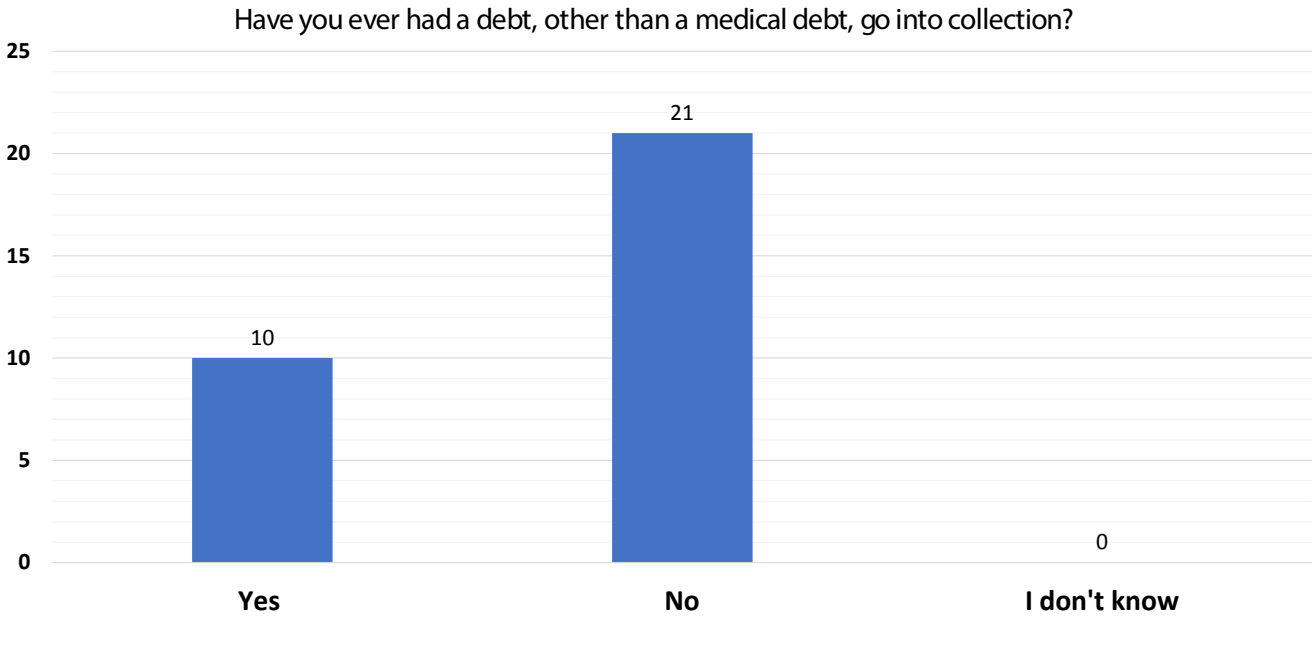

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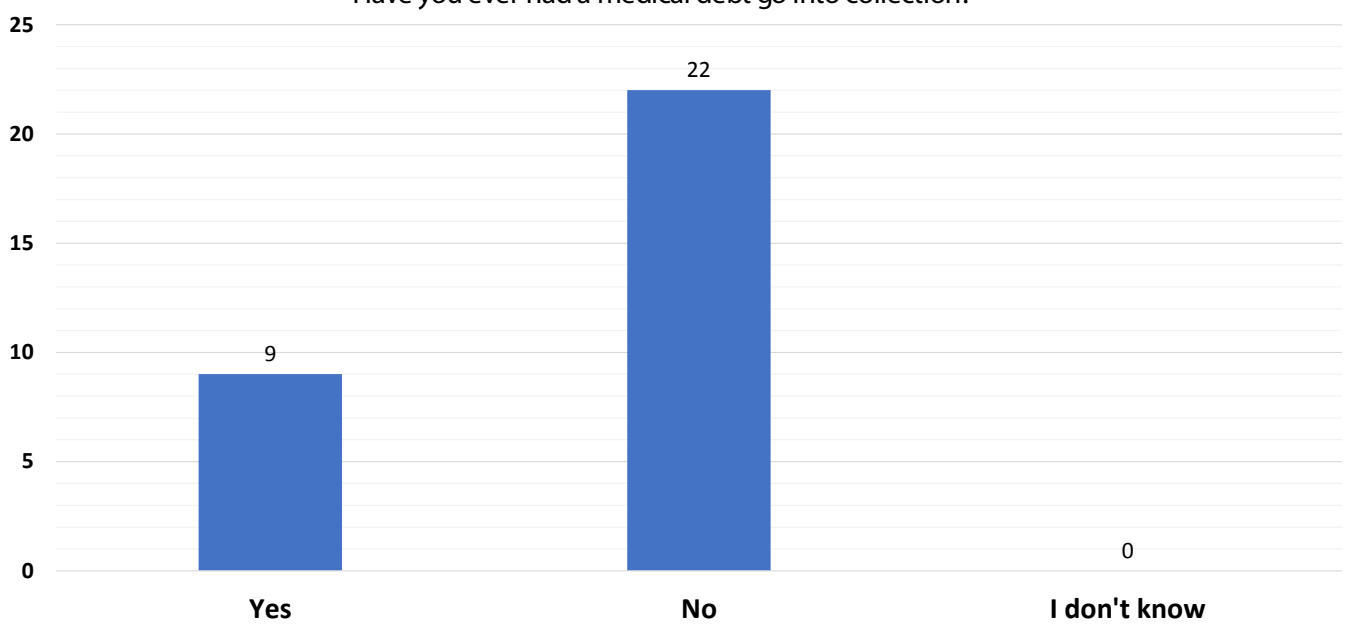

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1 For reports of surveys at previous Teaching Consumer Law Conferences, *see* Jeff Sovern, *The Content of Consumer Law Classes*, 12 J. Consumer & Commercial L. 48 (2008); Jeff Sovern, *The Content of Consumer Law Classes II*, 14 J. Consumer & Commercial L.16 (2010); Jeff Sovern, *The Content of Consumer Law Classes III*, 22 J. Consumer & Commercial L. 2 (2018) (hereinafter, Sovern, Content III).

2 A 2020-2022 survey found that 37% of the 199 law schools accredited by the American Bar Association did not offer a consumer law class and only about a quarter had a consumer law clinic. *See* Neil L. Sobol, *Consumer Law for Gen Z Law Students*, 66 Ariz. L. Rev. 93, 101 (2024). Some of those teaching such courses are adjunct professors who are probably less inclined to attend a conference on teaching consumer law.

3 See Figure Five.

4 See Figure Six.

5 *See, e.g*, John Ellis, *Higher Ed Has Become a Threat to America*, Wall. St. J. (Dec. 4, 2023) ("The radical left . . . most obviously through the one-party campuses [has] graduated an entire generation of young Americans indoctrinated with their ideas.").

6 See Figure Three.

7 *See* Sovern, Content III, *supra*, note 1, at 7.

8 See Figure Ten.

9 *See, e.g.,* the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*.

10 *See, e.g,* Omri Ben-Shahar & Carl E. Schneider, More Than You Wanted to Know: The Failure of Mandated Disclosure (2016); Dee Pridgen, Jeff Sovern, & Christopher L. Peterson, Consumer Law Cases and Materials 277-285 (5th ed. 2020).

11 *See* Figure 16. An example, though not mentioned in the survey, might be the method for determining the amount of the credit card balance on which the finance charge is calculated. The Truth in Lending Act, as implemented by the Consumer Financial Protection Bureau, requires credit card issuers to disclose the balance computation method in credit card solicitations, see 12 C.F.R. § 1026.60(b)(6), though the likelihood is that few consumers understand it.

12 *See* Figure 17.

13 *See* Figures 18 & 19.

14 *See supra* note 11 and accompanying text.

15 *See* Figures 20 & 21.

16 *See* Figure 11

17 *See* Martha Perez-Pedemonti, Regaining the Right to Reject: Forced Arbitration Clauses in Credit Card Contracts, Public Citizen 6 (May 15, 2023) ("Approximately 76% of [the largest] credit card [issuers'] terms of service agreements containing forced arbitration clauses include opt-out provisions . . . ."), https://www.citizen.org/article/regaining-the-right-to-reject-forced-arbitration-clauses-in-credit-card-contracts/.

18 *See* Mohamed v. Uber Technologies, Inc., 848 F.3d 1201, 1211 (9th Cir. 2018); Suarez v. Uber Technologies, Inc., 2016 WL 2348706 *4 (U.S. Fed. Dist. Ct. M.D. Fl. 2016).

19 *See* Figure 12.

20 *See* Richard T. LaPiere, *Attitudes vs. Actions*, 13 Soc. Forces 230, 233-34 (1934) (finding that 91.6% of 128 surveyed auto camps, tourist camps, restaurants, and hotels said they would not accept people of Chinese ethnicity as customers, but only one of 251 hotels, auto camps, tourist camps, and restaurants (which included the surveyed facilities) actually refused to accommodate a Chinese guest who visited the establishment); see generally Howard Schuman, *Attitudes vs. Actions Versus Attitudes vs. Attitudes*, 36 Pub. Op. Q. 347, 349-50 (1972) (noting inconsistencies between survey responses and real-life behavior).

21 *See* Fed. R. Civ. P. 23 (class actions may be brought in federal court only if "the class is so numerous that joinder of all members is impracticable").

22 See Figure 13.