

# A NEW CURRICULUM FOR BUSINESS LAW: THE 'BUSINESS-FACING' MODEL

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*JENNIFER IRELAND\**

## ABSTRACT

The School of Law at the University of Western Sydney ('UWS') recently completed a project to convert Introduction to Business Law ('IBL') into a blended learning unit. There were several stages in the project, culminating in development of a suite of online resources to support the blended delivery. The first stage of the project was a curriculum review, the outcome of which is the subject of this paper. The review provided an opportunity not just to prepare for future blended delivery, but also to redefine the overall direction of the unit's curriculum. The result was a move away from the traditional 'law-facing' curriculum to a new curriculum that is specially designed to be more engaging and relevant to business students: the 'business-facing' model. There is clear support in the literature, particularly in the United States and the United Kingdom, for the adoption of this type of approach to teaching business law but, to date, there have been very few reports of actual implementation of a 'business-facing' curriculum such as this one. This concept paper explores this theme in the literature, introduces the key features of the new IBL curriculum and explains the changes that have made it inherently 'business-facing' rather than 'law-facing'.

## I. INTRODUCTION

Introduction to Business Law ('IBL') is a compulsory subject for business students at the University of Western Sydney ('UWS'). Around 3000 students attempt the subject each year. Prior to 2011, IBL was a 'traditional' business law<sup>1</sup> offering, taught in a face-to-face lecture / tutorial mode. The overall pitch of the unit might fairly be described as 'law-facing', with an emphasis on primary legal authority, legal terminology and instruction in basic legal research. Overall student results as well as formal and informal student feedback, indicated that some aspects of the existing approach to IBL were not meeting the needs or expectations of our business students. A pattern of poor student attendance had developed, particularly at lectures, and below average results were linked with this pattern. In response to this situation, a decision was made in 2010 to convert IBL into a blended learning unit to allow students more flexibility in their attendance patterns. As an essential first step in the project<sup>2</sup> the curriculum was revised and rebuilt from the ground up.<sup>3</sup> It was clear from the outset of the project that the curriculum review was also an opportunity to move away from a traditional 'law-facing' focus and embrace

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\* Lecturer, School of Law, University of Western Sydney.

1 Although the term 'business law' is used throughout this paper, in line with the terminology commonly used in Australian courses, it is acknowledged that at least from the United States' perspective, the course described here probably has most in common with the content of a 'legal environment' course. See further notes 30, 31, below.

2 What became known as the 'IBL Online' project had two core aspects: first, a full revision and renewal of the curriculum and, second, development of a suite of on-line learning resources that use a combination of text, podcasts and videos to deliver the Unit's new content. These online resources provide students with greater flexibility by providing the option of accessing media-rich online content equivalent to the face-to-face lectures, although both forms of delivery are available, with many students now doing both. For a sample module see <<http://www.baileyandireland.com.au>>.

3 Allison Littlejohn and Chris Pegler, *Preparing for Blended e-Learning* (2007), 30; Jennifer Ireland, 'Blended Learning in Intellectual Property: The Best of Both Worlds' (2008) 18 *Legal Education Review* 139, 146.

a new ‘business-facing’ model for the unit. We needed to translate law into business — to bring the curriculum to life and tell the story from the business person’s perspective, not the lawyer’s. The business-facing model is designed to achieve this and, with it, to improve student engagement, motivation and results.

This concept paper examines the support in the literature on business law education for wider implementation of a ‘business-facing’<sup>4</sup> approach, and explains how the new IBL curriculum responds to that call. The business-facing curriculum was implemented in Autumn 2011<sup>5</sup> and, although evaluation of the new model’s effectiveness was still under way at the time of writing, early indications are very encouraging. There has been a significant reduction in the failure rates in all three sessions compared to previous offerings,<sup>6</sup> as well as positive student feedback in both formal and informal evaluations.

## II. A CRITIQUE OF THE TRADITIONAL ‘LAW-FACING’ BUSINESS LAW CURRICULUM

The literature reports a range of problems associated with business law courses taught according to the ‘traditional’ curriculum. Poor engagement and motivation,<sup>7</sup> frequently combined with feelings of apprehension about having to take business law units,<sup>8</sup> particularly at the start of the degree, are often reported by students in these courses:<sup>9</sup>

[s]tudents in the focus group discussions commonly described feeling daunted and apprehensive or even fearful of law as a subject, its perceived specialist nature and its technical jargon.

At least part of the reason for this situation is that the traditional business law curriculum does not make it clear to students how the law subject relates to the rest of their degree, or how important an understanding of law will be to them in their later business careers.<sup>10</sup> It must also be acknowledged that students often see the subject matter as boring, or too difficult, or both:

[S]tudents, like laymen in general, regard law as a dry subject composed of a huge body of rules, fine points, and technicalities.<sup>11</sup>

Traditional business law courses are almost invariably structured according to legal topics - that is, from the perspective of a lawyer and how she or he would approach the subject matter. There are several reasons for this. Set texts for business law courses usually reflect and reinforce

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4 The term ‘business-facing’ was adopted to differentiate this model from more traditional black-letter, or ‘law-facing’, approaches to the subject.

5 The e-learning aspects of the project were trialed at the end of Autumn 2011, implemented in stages during Spring 2011 and Summer 2012.

6 Offerings of IBL under the new business-facing curriculum saw the failure rate (excluding absent fails) drop from figures that were regularly in the high 20% range to 11% in Autumn 2011 and 18% in Spring 2011. The first fully integrated offering of the blended version in Autumn 2012 saw a further reduction to an 8% fail rate (excluding deferred results not available at the time of writing).

7 Lisa M Skwarok, ‘Business Law for Non-Lawyers: Setting the Stage for Teaching, Learning and Assessment at Hong Kong Polytechnic University’ (1995) *The Law Teacher* 189, 190 (‘an apparent lack of interest’ with students viewing business law as ‘peripheral’ and ‘largely irrelevant’).

8 Suzy Braye, Michael Preston-Shoot and Robert Johns, ‘Lost in translation? Teaching law to non-lawyers: Reviewing the evidence from social work’ (2006) 40(2) *The Law Teacher* 131, 136.

9 Ibid.

10 See, eg, Ross D Petty and Richard P Mandel, ‘Putting business into business law: The integration of law and business strategy’ (1992) 10 *Journal of Legal Studies Education* 205, 205 (‘business law faculty do not teach law in such a way that its importance is easily recognised by business students’).

11 Louis O Bergh, ‘The Teaching of Business Law’ (1953-4) 6 *Journal of Legal Education* 85, 85.

this perspective and in turn influence, or even dictate, a traditional style of delivery.<sup>12</sup> There is naturally also some reluctance among those teaching business law to ‘wean ourselves from traditional law school pedagogy’<sup>13</sup> in favour of ‘new ideas and directions’.<sup>14</sup> Additionally, the content is usually presented and assessed as an abbreviated version of the black letter content typically taught in undergraduate law degrees (the ‘LLB’), with business students required to learn legal terminology, names of cases and sections of Acts, and to do legal research and problem-solving as components of their assessments.

There is a strong line of criticism running through the literature of the law-facing approach. It is variously referred to as a ‘watered down law course borrowed from a law school’,<sup>15</sup> a ‘mini law school’<sup>16</sup> approach or ‘law school lite’,<sup>17</sup> just to sample a few of the less flattering descriptions. Perhaps the most telling description is of a ‘traditional, conservative, “rules and cases”, “black letter law” approach’ which should be rejected because ‘[m]anagement educators are not preparing lawyers for admission to practice, they are providing managers [with] information to assist in their decision-making. Managers simply do not need volumes of “lawyers’ law”.’<sup>18</sup> The view that there has been a tendency to give black letter law ‘undue emphasis’<sup>19</sup> is also commonly aired.

It is axiomatic that if students don’t find the content of a course engaging or relevant to their careers they won’t be motivated to study and will not do well.<sup>20</sup> One of the main reasons for a lack of engagement and motivation among students of business law is that they do not appreciate the relevance of the legal component of their course to their overall business studies or to their future careers. The literature, although somewhat sparse, does provide support for the claim that students see the business law course as less important, at least at the start of the course,<sup>21</sup> although some researchers have reported an improvement in perception of the importance of legal studies by the end of the course.<sup>22</sup>

The teacher of business law starts off with a handicap because his (sic) subject in itself does not have student appeal. There are many students of accounting, advertising, management, and

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- 12 Marc Lampe, ‘A New Paradigm for the Teaching of Business Law and Legal Environment Classes’ (2006) 23(1) *Journal of Legal Studies Education* 1-51, 3-4, 13; Ann Lawton, ‘Using a Management Driven Model to Teach Business Law’ (1997) 15 *Journal of Legal Studies Education* 211, 215; Elaine D Ingulli, ‘Transforming the Curriculum: What does the Pedagogy of Inclusion mean for Business Law’ (1991) 28 *American Business Law Journal* 605, 636.
- 13 S Scott Massin, ‘Corporate Perspectives on Business Law Curricula: An Empirical Study’ (1989) 8 *Journal of Legal Studies Education* 71, 91.
- 14 Lampe, above n 12, 9.
- 15 Paula Gerber, ‘How to Stop Engineers from becoming ‘Bush Lawyers’: The Art of teaching law to Engineering and Construction Students’ (2009) 1(4) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 179, 180.
- 16 James F Morgan, ‘Legal Studies in Business: Toward Realizing its Potential in the New Millennium’ (2003) 78(5) *Journal of Education for Business* 285, 288.
- 17 Lampe, above n 12, 3.
- 18 Greg Cartan and Tricia Vilkinas, ‘Legal Literacy for Managers: the Role of the Educator’ (1990) 24(3) *The Law Teacher* 246, 249.
- 19 David Reitzel, ‘Business Law and Legal Scholarship in the United States’ (1978) 12 *The Law Teacher* 212, 213. See also David J Doorey, ‘Harry and the Steelworker: Teaching Labour Law to Non-Lawyers’ (2008) 14 *Canadian Labour and Employment Law Journal* 107, 113.
- 20 David Kember, Amber Ho and Celina Hong, ‘The importance of establishing relevance in motivating student learning’ (2008) 9(3) *Active Learning in Higher Education* 249; Andrea Giampetro-Meyer, ‘What’s Your Cheese?’ (2012) 29(1) *Journal of Legal Studies Education* 145, 148. See also Marina Nehme, ‘E-Learning and Students’ Motivation’ (2010) 20 *Legal Education Review* 223.
- 21 Petty and Mandel, above n 10, 206; Skwarok, above n 7, 199. Cf Ann Ridley, ‘Legal skills for non-law students: Added value or irrelevant diversion?’ (1994) 28(3) *The Law Teacher* 281, 282-3.
- 22 Petty and Mandel, above n 10, 206; Ridley, above n 21, 282-3.

marketing who look on business law as off the main line. Their attitude is that they are not going to be lawyers and so why should they bother with the study of law.<sup>23</sup>

This situation is despite almost universal acknowledgement among academics and business alumni of the importance of the law subject within the business degree.<sup>24</sup> Observations that ‘almost every management decision has a legal dimension’,<sup>25</sup> that ‘legal questions arise in practically every business decision’<sup>26</sup> and that ‘[t]he commercial arena is underpinned, some would say totally dominated by, legal requirements’<sup>27</sup> fill the literature in this discipline.<sup>28</sup> It follows that students should ‘learn to inject legal thought into the business decision making process’<sup>29</sup> from the outset. However, although these points would almost go without saying for lawyers and teachers dealing regularly with business law, they seem far from obvious to the students. Making the ‘reason for the course’<sup>30</sup> and its importance to future business careers much clearer to students was therefore one of the key drivers for change to the IBL curriculum.<sup>31</sup> The specific features of the business-facing model, described further below, make it an ideal vehicle for more effective communication of this important message.

### III. ALTERNATIVE MODELS FOR BUSINESS LAW

There are a number of non-traditional models and approaches to teaching business law described in the literature. For example, there is a long-running debate in the United States, and to some extent also in the United Kingdom, over the differences and respective merits of ‘business law’,<sup>32</sup>

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23 Bergh, above n 11, 85.

24 Business alumni, who are of course often the employers, consider it to be highly important and, in fact, that there should even be more law taught in the business degree: John Tanner, Anne Keaty and Christopher Major, ‘A Survey of Business Alumni: Evidence of the Continuing Need for a Law Course in Business Curricula’ (2004) 21(2) *Journal of Legal Studies Education* 203, 205 (notably, 75% of those surveyed thought there should be more law in the business degree). As to academic support see, eg, Lampe, above n 12, 7 and notes 25 and 26, below, for selected references.

25 Cartan and Vilkinas, above n 18, 246.

26 Debra Dobray and David Steinman, ‘The Application of Case Method Teaching to Graduate Business Law Courses’ (1993) 11 *Journal of Legal Studies Education* 81, 86.

27 Cartan and Vilkinas, above n 18, 246.

28 See further O Lee Reed, Virginia G Maurer, Michael J O’Hara, J David Reitzel and Marcia J Staff, *The Status of Law in Academic Business Study: 1998 Report of the President’s Task Force, Academy of Legal Studies in Business*, available at <<http://cba.unomaha.edu/faculty/mohara/web/ALSBsta8.htm>> (law is an ‘inescapable and omnipresent’ reality in business); Morgan, above n 16, 285-6; Robert C Elliot, ‘The Teaching of Law to Non-Lawyers’ (1973) 7(2) *The Law Teacher* 81, 81 (‘the ever-increasing importance of law in nearly every aspect of our society’).

29 Dobray and Steinman, above n 26, 86.

30 Gerber, above n 15, 180, 181.

31 Elliot, above n 28, 81 (law described as an ‘essential management tool’); Larry A DiMatteo and T Leigh Anenson, ‘Teaching Law and Theory Through Context: Contract Clauses in Legal Studies Education’ (2007) 24(1) *Journal of Legal Studies Education* 19, 28-39; Doorey, above n 19.

32 In the United States, ‘business law’ is the term used to refer to the more traditional type of course that has quite a heavy focus on contracts and what is referred to as ‘private law’ aspects, being law that governs relations *between* businesses: see, eg, Carol J Miller and Susan A Crain, ‘Legal Environment v Business Law: A Distinction without a Difference?’ (2011) 28(2) *Journal of Legal Studies Education* 149, 156, 193.

as opposed to ‘environmental’,<sup>33</sup> syllabi for these courses, although the practical significance of this distinction appears to be waning nowadays.<sup>34</sup> This paper does not reiterate the background and historical development of the different models, as these have already been reported in detail elsewhere.<sup>35</sup> For present purposes, what can be said of those debates is that they are primarily about the syllabus or *content* of the course — what topics it should cover.

Several arrangements that depart from the traditional structure have also been described in the literature, including McGuire’s suggestion of structuring the course around the relationships a business may enter into (both internally and externally).<sup>36</sup> Similarly, Cartan and Vilkinas invite us to ‘consider the following everyday managerial activities: advertising, hiring staff, purchasing raw materials, selling goods, writing cheques, reprimanding employees, paying taxes, etc [and observe that the law] embraces all these operations.’<sup>37</sup> Other suggested models include developmental,<sup>38</sup> hybrid,<sup>39</sup> and a structure based around specific ‘forces’ that operate on the business manager, being ‘litigation, regulation, globalization, entrepreneurship, technology and compliance’.<sup>40</sup> It is submitted that these models focus primarily on the *structure* of the course — how the topics should be arranged.

The models, and categories, described above remain essentially ‘law-facing’ in their approach, even though they do present alternatives to the traditional curriculum. The curricular change reported in this paper engages with another, conceptually different, theme that also emerges from the literature, but which transcends debate over what *content* should be included in each type of course or how it should be *structured*. This is the call, perhaps most clearly articulated by Marc Lampe,<sup>41</sup> but shared by several others, for business law courses (however named and regardless of their actual content or structure), to move away from a ‘mini law school’<sup>42</sup> approach, towards an approach that explains the law from the business person’s perspective, not the lawyer’s.<sup>43</sup> The ‘business-facing’ concept was developed in response to that call. The move away from the ‘law-facing’ approach that it represents is essentially about the *perspective* from which such courses should be taught, not strictly about what content should be included in the syllabus or how the content should be arranged. As noted above, despite clear support for this ‘business-facing’ approach, there are as yet very few reports of actual implementation of such a model.

33 ‘Legal environment’ courses have a broader curriculum that includes more regulatory and ‘public law’ (legal aspects of the relationship between business and the public) content: Miller and Crain, above n 32, 181, 183, 185-6, 193, 200 (‘regulatory’ is described at 183 as including employment, antitrust, environment or securities regulations). Legal environment courses are also much more likely to include ethical and social responsibility (ibid 200), as well as historical, sociological, economic and political dimensions: Cartan and Vilkinas, above n 18, 248; Reitzel, above n 19, 213; Morgan, above n 16, 288.

34 Miller and Crain, above n 32; Reitzel, above n 19, 213-4.

35 For useful summaries of the background and history see Tanner, Keaty and Major, above n 24, 205-9; Morgan, above n 16, 287; Miller and Crain, above n 32, 154-6.

36 C R McGuire, ‘Logic and the law curriculum: A proposed conceptual framework for “the legal environment of business”’ (1986) 23(4) *American Business Law Journal* 479.

37 Cartan and Vilkinas, above n 18.

38 Morgan, above n 16; Reitzel, above n 19, 213 (acknowledging that law as a process ‘has a future as well as a past and a present’).

39 Cartan and Vilkinas, above n 18, 246.

40 George J Siedel, ‘Six Forces and the Legal Environment of Business: The Relative Value of Business Law among Business School Core Courses’ (2000) 37 *American Business Law Journal* 717.

41 Lampe, above n 12.

42 Morgan, above n 16, 288.

43 Cartan and Vilkinas, above n 18, 249.

#### IV. THE 'BUSINESS-FACING' MODEL

It has long been recognised, at least in the literature, that business law should not be taught in the same way as LLB subjects.<sup>44</sup> Business law is, after all, part of the business degree, not the law degree. We are not, or at least we *should* not be, 'training non-law students to "think like lawyers"'.<sup>45</sup> Consistent with this, it is appropriate to move away from teaching 'outlines of settled law'<sup>46</sup> or 'overviews of the law as taught in law schools'.<sup>47</sup> As Skwarok observes:

[T]he main objective of business legal education is to prepare students for the business world. Graduates should be able to operate a business within the parameters of the law, consider the legal implications and risks inherent in business decisions and identify legal issues at a preliminary stage. A person involved in business should not only be able to suggest possible solutions to disputes but also to distinguish circumstances in which it would be more appropriate to seek professional legal advice.<sup>48</sup>

The new 'business-facing' approach to IBL has an entirely different focus from the traditional 'law-school lite' approach. Much like the 'new paradigm' Lampe proposes,<sup>49</sup> it concentrates primarily on identification and prevention of legal risks and the formulation of business responses to those risks,<sup>50</sup> rather than on legal research or purely legal problem-solving. It also draws on the philosophy behind 'legal environment' courses and their goal of 'help[ing] businesspersons recognize legal issues, prevent and resolve legal disputes, and function within the parameters of government regulations'.<sup>51</sup> This approach allows for much greater attention to be given to the 'ways the law encourages commercial enterprise, how it limits such activities and how the legal and business systems adjust to each other'.<sup>52</sup>

The following sections examine the features of the new IBL curriculum that distinguish it from traditional models and explains why these features make it a 'business-facing' rather than a 'law-facing' model.

##### A. 'Business Life Cycle' Structure

The IBL re-structure started from the premise that it should avoid a presentation of the topics that would seem, from a business student's perspective, to consist of unrelated 'bits and pieces' of law. While a lawyer will understand the legal categories, to the business person (or student) the 'traditional legal subject labels'<sup>53</sup> can seem like 'a series of disjointed, seemingly independent, topics which are an abridged version of those from the law school'.<sup>54</sup> To illustrate, take the relationship between contracts, negligence and consumer protection: lawyers, at least those in commercial law, understand how they interact. However, business people can find it challenging to identify which area of the law applies, and they may well think that certain aspects overlap or worse, seem to contradict each other. Legal classification should be transparent within a business law course structure but it must also be coherent from a business perspective. For

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44 Skwarok, above n 7, 189.

45 Doorey, above n 19, 116.

46 Reitzel, above n 19, 212.

47 Cartan and Vilkinas, above n 18, 246.

48 Skwarok, above n 7, 190-1.

49 Lampe, above n 12.

50 Miller and Crain, above n 32, 151, 202. On the risk-management approach see Lampe, above n 12, 17-20.

51 Miller and Crain, above n 32, 150.

52 Cartan and Vilkinas, above n 18, 248 (footnote omitted).

53 Ibid 253.

54 Ibid 250.

business people ‘[p]revention is the quintessential rationale’<sup>55</sup> — their focus should be on the conduct they need to adopt or to avoid, not on identifying which part of the law is involved.

IBL is divided into ten modules, each consisting of 5-7 chapters or topics.<sup>56</sup> The modules are arranged from a business point of view, taking the ‘life-cycle’ of a typical business as the pattern. These modules tell the story of the business from start to finish. The rationale is to present the topics in an order that would be both approachable and meaningful to the business student or the business person, even if not necessarily so to the lawyer.<sup>57</sup> The business ‘life cycle’ structure of IBL is as follows:

- Australian legal system;<sup>58</sup>
- Starting a business;<sup>59</sup>
- Running a business: legal and compliance issues;<sup>60</sup>
- Negligence: liability for harm caused by or to the business;
- Contracts: purchase and sale of goods or services and business negotiations;
- Making valid sales within the *Australian Consumer Law*;<sup>61</sup>
- Responsibility for faulty or dangerous consumer products or services;
- Prohibited business conduct, including corporate crimes and breaches of directors duties;
- Dealing with competitors within the law;
- Ending the business, whether in favourable (selling) or unfavourable (bankruptcy and winding up) circumstances.

The reader will have noticed there is still a sense of the traditional legal topics at the ‘module’ level of this structure. There is further scope to break further away from the ‘arrangement by legal topic’ approach to a more strictly business focus. In this respect, the transformation is arguably not yet complete. For example rather than dealing with all aspects of consumer sales methods together, the coverage of pyramid schemes could be moved to the earlier topic on business structures. Although to a lawyer, this is a consumer law issue and the lawyer would classify it as a prohibited sales method, the business person needs to give it much earlier consideration. The legal classification is less important to the business person than knowing not to adopt a pyramid scheme when first starting up a business. Further, more detailed re-arrangement of the subject matter at the ‘topic’ level, or below, is planned for the future. For the present, the business life-cycle structure allows students to see straight away where the legal aspects fit into the business context, or the stage of the business’s ‘life cycle’, which also helps them see the relevance of the content.

55 Robert J Morris, ‘Improving curriculum theory and design for teaching law to non-lawyers in built environment education’ (2007) 25(3/4) *Structural Survey* 279, 284.

56 A full outline of the unit structure and a sample module are available at <<http://www.baileyandireland.com.au>>.

57 For a course for engineering students structured to follow the steps of a typical tendering process see Gerber, above n 15, 181.

58 The first module, ‘Australian Legal System’, provides a foundation for the unit by introducing students to key common law legal concepts such as precedent, as well as explaining the court structure and how cases are conducted, how legislation is made and (potentially) challenged, the different arms of government, and alternative methods of dispute resolution. Importantly, this module also contains a new section entitled ‘You and your lawyer’ that explains the nature of legal work as well as providing tips on locating, hiring and managing lawyers.

59 The module covers business structures, including web-based businesses and franchises, business premises, registrations and licences, business names and a selection of intellectual property issues.

60 The module covers taxation, insurance, the employment relationship, workplace health and safety and discrimination.

61 The module draws together misleading or deceptive conduct, misrepresentations, and sales that may be invalid under the new regulations on standard form contracts or due to use of prohibited sales methods,

### B. *Business Responses to Legal Issues*

There is an important difference between business law and subjects taught in the LLB that might almost be seen as chronological. It would generally be accepted that LLB subjects tend to focus on what to do *after* a problem has already arisen, and on how to resolve it in terms of the existing, often appellate, law. On the other hand, business law subjects should focus on how to *avoid* legal problems occurring in the first place, to identify problems when they do occur, and on knowing when to seek help from a legal practitioner.<sup>62</sup> The emphasis in business law courses should be on prevention, not cure.<sup>63</sup> The new IBL curriculum implements this approach in two ways: first, by emphasizing the *identification* of actual or potential legal issues, rather than their resolution, and second, by focusing on how to *avoid* legal problems, or how to stop those that do occur from getting worse. Removal of the legal research and legal problem solving requirements from the course allowed it to focus on business responses, rather than legal solutions, to common legal issues that arise in business. Students also develop a sense of when to call in a lawyer rather than trying to be one's own lawyer. These changes are explored further in the following sections.

#### 1. *Business Students Should Not Be Required To Do Legal Research*

[N]on-law students should not be expected to be able to research law or write legal papers.<sup>64</sup>

Similarly, 'the day to day atmosphere in which business people operate [does] not depend on their being able to distinguish between *ratio decidendi* and *obiter dicta* in a case' and that it would therefore not be reasonable to expect business students to 'comprehend the vagaries of legal reasoning'.<sup>65</sup>

These are only a couple of many such statements to be found in the literature. Many will find them controversial — others may find them refreshing. Either way, it is acknowledged that they represent a significant departure from the traditional approach to teaching business law. Removing the requirement for students to learn legal research methods and do legal problem-solving, was probably the central change to the IBL curriculum. Importantly, the legal research component has been moved to later compulsory accounting units, as these students are the only ones in the business law cohort who are required to do direct legal research as part of their degree.<sup>66</sup> The focus in IBL is now on what the business can do *within* the law. Students are required to formulate business responses based on the legal principles we have already provided to them, not to go out and research the law for themselves. Students are still required to demonstrate an accurate understanding of the law we have given them, but they do that primarily by explaining what businesses should and should not do within the law. They are not required to provide us with the legal argumentation and the analysis and citation of primary authorities, that would be expected from a law student.<sup>67</sup>

Inclusion of the legal research component is often justified for business students, even though it is unlikely to be something they will do as part of their future careers,<sup>68</sup> on the basis that it

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62 Lampe, above n 12, 12.

63 Ibid, 5; Morris, above n 55, 284.

64 Gerber, above n 15, 180.

65 Skwarok, above n 7, 191.

66 Lampe, above n 12, 2 ('Accounting students ... should not dictate class coverage for the introductory law course'). See also Ridley, above n 21.

67 Students who want to go further and provide some 'LLB-style' analysis in addition to the business perspective are certainly not discouraged from doing so and will earn higher marks if they do this accurately, but students are no longer required to demonstrate an ability to do legal research, legal problem-solving or provide primary citations in order to pass the unit.

68 Lampe, above n 12, 2.

develops critical thinking skills.<sup>69</sup> Our argument by way of response is that business leaders need critical *business* thinking skills, not critical *legal* problem-solving skills.<sup>70</sup> Legal research and problem-solving are more appropriately covered in later year business law subjects or even at postgraduate level, than in a general first year course. Critical thinking skills can still be gained while keeping the focus on *business responses* to legal problems, rather than having students work out legal solutions or do legal problem-solving per se.

## 2 *Knowing When to Seek Legal Advice as Opposed To Trying to be One's Own Lawyer*

[M]ost of all they need to know enough to know when to seek professional legal help. The analogy is often made to that of a patient and doctor: the patient needs to know enough about health and medicine to practice preventive medicine, to know when to take an aspirin, and when to visit the doctor - all because it is cheaper and easier to stay well.<sup>71</sup>

There is a further dimension to the point made earlier about business people needing to be able to identify legal problems. Some care should be taken that students do not complete their business law course thinking that they can now do their own legal work, whether for convenience or cost-saving or for some other reason. Teachers of business students need to emphasise that only lawyers have the specialised training to do legal research and problem-solving and to maintain currency in their field. They are paid for this expertise and, very importantly, they carry professional indemnity insurance in the event of a problem with their work. We need to ensure that business students are made aware of the risk of trying to be their own, uninsured, 'bush lawyer'.<sup>72</sup> The following observations, made over 40 years ago, remain true:

The little law that he (sic) has been taught will be forgotten [or will change anyway], he will almost always consult with his lawyers on any important matter involving legal aspects; and of course there are law books which state the rules of law. Secondly, the adage that "a little knowledge is worse than none" certainly applies to the "layman-lawyer" operating in the business community.<sup>73</sup>

It follows that not only is legal research and problem-solving not necessary to a business person's education about the law, there might even be a risk of engendering overconfidence in students by including it in the business law curriculum. In IBL, a brief description of legal research and problem-solving is included at the start of the unit for the purpose of conveying the complexity of the lawyer's work, the need to maintain currency,<sup>74</sup> and the specialised nature of the skills required as well as something of a 'don't try this at home' message. The focus of this discussion, for the business students, is therefore kept on how to deal with lawyers and how to

69 Debra D Burke, Ronald A Johnson and Deborah J Kemp, 'The Twenty-First Century and Legal Studies in Business: Preparing Students to Perform in a Globally Competitive Environment' (2010) 27(1) *Journal of Legal Studies Education* 1, 7.

70 John Collins, 'Learning to make Business Decisions in the Shadow of the Law' (1999) 17 *Journal of Legal Studies Education* 117, 118; Lampe, above n 12, 5, 41.

71 Morris, above n 55, 284.

72 Gerber, above n 15, at 179-180 ('learning just a small amount about a given topic can lead people to think they have more expertise than they really do. When it comes to legal problems, this can potentially result in engineers, architects, and contractors making a problem worse because they fail to promptly seek legal advice, erroneously believing that they have sufficient legal knowledge, from their construction law studies, to handle the problem themselves. Furthermore, construction students may not keep up with changes in the law after they graduate, and thus may seek to resolve legal problems by applying outdated legal knowledge'). Compare Lampe, above n 12, 34-35 (on 'self-help law').

73 A St J Hannigan and A B Afterman, 'The Teaching of Business Law Subjects in Non-Law Faculties' (1971) 5(3) *The Law Teacher* 166, 167.

74 Lampe, above n 12, 11; Ingulli, above n 12, 625-6.

manage the relationship with a lawyer,<sup>75</sup> just as one would manage any other valuable business relationship or resource:

Business school law classes should help students become knowledgeable and critical *consumers* of legal services.<sup>76</sup>

### *C. A 'Business Advice' Approach*

One of the most important shifts that needed to be made in the move to a business-facing curriculum occurred at a more 'micro' level, in the style of presentation of the content, both in face-to-face teaching and in the online resources. What we labelled a 'business advice' approach is key to the new IBL curriculum. Essentially it means explaining the content in a similar manner to a practitioner advising a client, rather than presenting the issues as one would when teaching LLB students, or talking to another lawyer. This makes sense from a business perspective — after all a legal practitioner wouldn't go through all the primary authorities when advising a client. What the business person really needs to know is what to do and what not to do in order to comply with the law. He or she doesn't need to know the fine details of what the law is, or how to locate it — only 'how to identify when there is a legal dimension to an issue and, if there is, how to deal with that legal aspect.'<sup>77</sup> The distinction can be likened to that between a mechanic (the lawyer) who understands how all the parts of a car work together as well as how to repair a problem, and the car's owner (the business person) who just wants the car to work.<sup>78</sup> For example, it doesn't really matter to the business person that sections 36 and 101 of the *Copyright Act 1968* (Cth) are the main statutory prohibitions on copyright infringement. What the business person needs to know is broadly what types of material copyright protects and not to copy those materials without a licence or consent. The actual Acts and section numbers are the lawyers' tools. What business people are concerned with is installing checks and balances into their business practices such that they, or their staff, do not fall foul of the law.

In line with this reasoning, the use of legal terminology is limited in the IBL curriculum to key terms that lawyers might use and which business people would benefit from understanding. Plain English terminology is otherwise used wherever possible and explanations of legal terms are also provided where these are used. The names of the modules and topics themselves also reflect this approach with labels that are relevant to business rather than law, being used where possible.<sup>79</sup> Approaching the content in this way allows the course to operate almost as an extended opportunity for students to have a lawyer (the teacher) take them through basic legal issues they should be aware of in business, explain those issues in lay terms and address their questions. Teachers in the unit are therefore encouraged to deal with their classes almost as an advising session with a client. It can be a good opportunity for students to gather key legal advice directly from a real lawyer as well.

The business advice approach is also central to the approach to case studies developed for IBL, as explained further below.

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<sup>75</sup> Rene Sacasas and Anita Cava, 'A Legal Studies Major: The Miami Model' (1991) 9 *Journal of Legal Studies Education* 339, 340; Lampe, above n 12, 20-23.

<sup>76</sup> Lampe, above n 12, 21 (emphasis added).

<sup>77</sup> Gerber, above n 15, 181.

<sup>78</sup> For a similar analogy, explored in more detail, see Doorey, above n 19.

<sup>79</sup> To illustrate, the consumer law modules are divided into two modules that reflect business, rather than legal classifications. The first module 'Making Sales', covers legal aspects impacting on the sales process such as misleading or deceptive conduct, false or misleading representations, unfair or otherwise invalid contracts or terms and a selection of prohibited sales methods (such as bait advertising). The second module, 'Products and Services', deals with faulty or dangerous goods or services and includes: the consumer guarantees, consumer rights (or business obligations) in relation to refunds and replacements, product safety standards, bans and recalls and liability for goods with safety defects.

### D. *Business Law Case Studies*

A businessman's law course should not be simply a superficial law course. If it is infinitely smaller than the law-school curriculum in some respects, it should be larger in other respects. We must get at the law in the cases, and dig deeper for the business experience embodied in them.<sup>80</sup>

The above observation was made in 1920. Picking up on Isaacs' call to 'dig deeper' into the cases for the 'business experience' they contain, the new IBL curriculum and the online resources that support it take quite a different approach to the treatment of cases than is usual in business law courses or texts. First, significantly fewer cases are included<sup>81</sup> but each is dealt with in much more depth and with much greater attention to what they mean for businesses than is usual in business law courses. Consistent with the 'business advice' approach described above, the case treatments focus on how businesses can adapt their practices to avoid similar problems. As far back as 1973 there was a call for more 'background information' to be provided on selected cases than was, and still is, usually given in texts aimed at law students. This would allow an 'in-depth examination of the wider background of leading cases'<sup>82</sup> in order for business students to be able to see the 'business' parts of the situation, not just the legal principles. There is an important difference between the LLB approach to cases and the case method used in business. Put simply, when studying cases, the 'take-away' for law students is the *ratio* of the case — the principles and legal reasoning to be applied to later similar situations. LLB teaching methods and texts naturally reinforce this. By comparison, the 'take-away' for business students or business people, looking at a legal case should be an understanding of the conduct that led to the matter ending up in court, and how conducting business differently might have avoided the situation. The tendency in traditional business law curricula and in most textbooks to provide very short summaries of the principles arising from a large number of cases is understandable if the aim is to provide an abbreviated version of law topics, but it also means that '[w]e miss the element of impact: what was the result to the business or the individual involved'.<sup>83</sup>

Instead of reducing cases to very short summaries, and adding more and more of them, the new IBL curriculum has gone the other way, adopting a treatment of cases that shares some aspects of the storytelling approach gathering favour in some areas of LLB teaching,<sup>84</sup> but which draws primarily on the case study method used in other business courses. In business, cases involving real situations, as opposed to fictional scenarios, sometimes called 'armchair cases', are generally preferred and the consensus is that 'ideal' cases for business study should also be reasonably complex and have a 'decision focus'.<sup>85</sup> Real legal cases exhibit these qualities and are therefore naturally well suited for presentation in this style.

The online resources for IBL, and the lecture coverage, now contain approximately 40 carefully selected and quite detailed case studies. There are approximately 4 case studies per module, presented in a hybrid 'business law case study' style which combines real legal cases

80 Nathan Isaacs, 'Teaching of Law in Collegiate Schools of Business' (1920) 28(2) *Journal of Political Economy* 113, 126 (quoted in William Zelermyer, 'The Future of Business Law in Higher Education' (1972) 9(3) *American Business Law Journal* 179, 190).

81 Doorey, above n 19, 119 ('we should avoid assigning to non-law students the heavy load of case-law typically assigned to LLB students'). Compare Lampe, above n 12, 37.

82 Elliot, above n 28, 83.

83 Linda A Reid and Curt M Weber, 'Using Technology-Enabled Active Learning Tools to Introduce Business Ethics Topics in Business Law Courses: A Few Practical Examples' (2008) 25(2) *Journal of Legal Studies Education* 283, 292.

84 See, eg, Donna M Steslow and Carolyn Gardner, 'More than One Way to Tell a Story: Integrating Storytelling into Your Law Course' (2011) 28(2) *Journal of Legal Studies Education* 249; Michael Blissenden, 'Using Storytelling as a teaching model in a law school: The experience in an Australian context' (2007) 41(3) *The Law Teacher* 260.

85 Craig C Lundberg, Peter Rainsford, Jeff P Shay and Cheri A Young, 'Case Writing Reconsidered' (2001) 25 *Journal of Management Education* 450, 452-3.

with the business case study method.<sup>86</sup> In this style, much more detail is given to both the facts and the results as well as to the ‘aftermath’ of the case, than would be given in an LLB presentation of the same case. This style is much more immediately relevant<sup>87</sup> and familiar to business students, and has the added advantage of maintaining consistency with an approach used elsewhere in the business degree. It is also intended to promote deeper learning of fewer but more targeted case studies, rather than a superficial understanding of a larger number of briefly summarised examples.

Each case was carefully selected for factual and legal relevance, as well as for its potential to engage students by reason of its story, currency, real-world relevance, or preferably all three.<sup>88</sup> Particular effort was made to select cases involving conduct that might otherwise seem like a good idea from a purely business perspective — such as a way of increasing sales, moving into a new market or competing better within an existing one, or that might look like a short cut or a cost saving — but where the conduct could actually have serious legal implications for the unwary business person. This is not to suggest that all aspects of the law’s impact on business are negative.<sup>89</sup> Cases have also been selected to demonstrate the potential benefits an awareness of certain legal rights, or of the timely<sup>90</sup> involvement of lawyers in negotiating transactions, can afford to business.

The centrepiece of the ‘business law case study’ approach is a special section that appears at the end of each case selected for IBL. This ‘business advice’ section explains what businesses should and should not do as a result of the case, much as a legal practitioner might do with a client. The business advice section is intended to ‘translate’ the case outcome into statements of appropriate business conduct or responses to real world situations that a business student can take into his or her future career. For example, the *Duff Beer* case<sup>91</sup> was chosen to illustrate the pitfalls in character merchandising and the importance of ensuring all promotional uses of famous names, images or other likenesses are licensed. Making a real life version of a fictional product from *The Simpsons* television show sounds on its face like a great business idea, unless you consider the producers’ rights. Although the brewers in this case attempted to make their product different enough from the one in the show to avoid liability, they failed. Rather than having a successful product, they ended up in court and significant sums already spent on advertising and producing the actual product were also lost as a result. The business advice arising from this case is that negotiating a licence would have been a far better approach, rather than trying to save the licence fee but at the same time escape liability by attempting to differentiate their product from the fictional product sufficiently to avoid misleading consumers.

Ultimately, what IBL aims to teach students through these case studies, and particularly through the Business Advice section, is that ‘all legal problems have not only a ‘legal’ but a ‘business’ solution and that issues of business relations, business reputation and other costs of disputes should be considered.’<sup>92</sup>

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86 Stephanie R Sipe, ‘Maximizing Student Learning Through Enron: The Ultimate B-Law Case Study’ (2007) 24(2) *Journal of Legal Studies Education* 325, 327 (‘a business law course that uses a case study approach, supplemented with various multimedia presentations, is likely to create a positive and successful learning experience for its participants’).

87 Dobray and Steinman, above n 26, 89.

88 Bergh, above n 11, 85.

89 Petty and Mandel, above n 10.

90 Gerber, above n 15, 180.

91 *Twentieth Century Fox Film Corp v South Australian Brewing Co Ltd* (1996) 66 FCR 451; (1996) 34 IPR 225.

92 Skwarok, above n 5, 193.

## V. CONCLUSION

[B]usiness students need not and perhaps *should not* be taught law in the same manner as LLB students. The teaching of law to business students involves facing challenges and meeting needs which are unique to this field of study.<sup>93</sup>

In closing, it should be acknowledged that it *is* a challenge to law teachers to teach their own discipline from the perspective of another. The changes advocated in this paper, particularly adopting the stance of a legal practitioner advising a client (the ‘business advice’ approach), is challenging to many, perhaps even most, academic lawyers.<sup>94</sup> These changes also require us to accept that less black letter law in a business course does not automatically mean the course is too easy. What it can and should mean is that the course has simply been made more relevant to the discipline for which it has been designed. IBL is not a course for students studying to be lawyers. Removing aspects such as legal research and legal problem-solving, only takes out parts that are irrelevant to business students’ future careers. What students of business law need instead is legal *awareness*: not ‘law school lite’. The significant improvements in results from the first semesters under the new IBL curriculum suggest it is now providing students with that awareness in a format that is more approachable and relevant to students’ future careers than traditional law-facing courses.

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93 Ibid 189.

94 Lampe, above n 12, 3-4, 9, 37, 41-42.

