Learning from the Past: Should Business Principles be a Required Course in Law School?
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Thesis: Similar to the teaching of legal ethics prior to the Watergate scandal, law schools have been teaching business principles to law students on a voluntary basis. The corporate scandals and financial crisis of the 21st century, along with an increasingly complex financial system and regulatory environment, have elevated the importance of business literacy among lawyers. Given the lack of business knowledge among many law students, the time may be ripe for the American Bar Association (ABA) to consider mandating the teaching of business principles to all students in law schools, just as the ABA mandated the teaching of legal ethics in response to the Watergate scandal over four decades ago. Without an understanding of basic business principles, lawyers may not fully appreciate a company’s business transactions, identify risks, ask sufficient questions, or suggest alternative approaches. In these situations, lawyers may not adequately represent their clients; at worst, they could inadvertently facilitate fraud and corporate wrongdoing.

Lessons of Watergate: During the Watergate scandal in the early 1970’s, more than 20 of the most powerful lawyers in the United States were involved in the break-in and/or cover-up, including President Richard M. Nixon and White House Counsel John Dean. As Dean said in his 1973 testimony to Congress, “How in God’s name could so many lawyers get involved in something like this?” Prior to Watergate, the teaching of ethics in law schools was scant and sporadic. As Dean, who attended Georgetown University Law Center, has stated, “In 1972, legal ethics boiled down to ‘don’t lie, don’t cheat, don’t steal and don’t advertise.’ When I took the elective course in ethics at law school, it was one-quarter of a credit. Legal ethics and professionalism played almost no role in any lawyer’s mind, including mine. Watergate changed that – for me and every other lawyer.”

Since Watergate, the ABA adopted the Model Rules of Professional Responsibility and mandated the teaching of legal ethics in law schools. In addition, most states now require the Multistate Professional Responsibility Exam for admission to the bar and courses in ethics and/or professionalism as part of continuing legal education requirements. Rules of ethics and professionalism have assumed a predominant role in legal education and in the practice of law and may have helped to prevent further incidents of the magnitude of Watergate.

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1 “Business principles” as used in this paper refers to the fundamentals of accounting, financial statement analysis, and corporate finance. An introductory course on business principles would provide background for other upper level business law courses.
2 http://www.abajournal.com/magazine/article/the_lawyers_of_watergate_how_a_3rd-rate_burglary_provoked_new_standards/
3 Id.
21st Century Scandals and Crisis: Fast forward to the 21st century. The first sixteen years of this century have been defined by egregious corporate scandals, including Enron, WorldCom, Adelphia, Tyco, Madoff, and more. These scandals precipitated the collapse of businesses, caused significant damage to stockholders and others, and resulted in the imprisonment of corporate executives. In addition, the world has endured the most devastating financial crisis since the Great Depression, provoked at least in part by irresponsible mortgage lending, risky securitized products such as collateralized debt obligations, unwarranted credit ratings, and ineffective regulators. In addition to other massive disruptions to the US and world economy, many banks failed, businesses declared bankruptcy, millions of Americans lost their jobs, homes, and wealth, and banks and investment banks have paid billions of dollars in fines.

Presence of Lawyers: Lawyers were actively involved in all of these recent corporate scandals and the financial crisis of 2008; their roles included advising clients and boards, preparing documents and regulatory filings, opining on transactions, and providing regulatory oversight. While some lawyers may have committed outright fraud or other wrongdoing, the paucity of major enforcement actions against lawyers suggests that illegal or unethical conduct by lawyers may not have been as pervasive as it was in the Watergate scandal.

The question then arises: how could the corporate scandals and financial crisis reach such magnitude despite the presence of so many lawyers? While many responses may surface – including overzealousness, duty of loyalty, financial dependence, deference to clients, the “silo effect,” lack of access to the C-suite, or turning a blind eye – one plausible response may be that lawyers lacked sufficient business acumen to represent their clients or regulate companies adequately.

While exceptionally bright, law students often do not have a business background, either academically or professionally. Many quip that they went to law school because “they don’t do numbers.” They have a mistaken impression that business principles require complicated math, when in fact a basic knowledge of arithmetic will usually suffice. Students deceive themselves by thinking that they can just focus on the law and avoid understanding business issues; most areas of law require at least some business knowledge. In addition, lawyers manage law firms as well as their personal finances.

Ethical rules of confidentiality have limited insights into the role of lawyers in the recent corporate scandals and financial crisis. Consequently, we cannot be certain if lawyers’ failure to understand business principles impeded their ability to represent their clients. However, we do know that the Court Appointed Examiner for Enron found that the Enron attorneys “saw their role in very narrow terms, as an implementer, not a counselor....these lawyers seemed to focus only on how to address a narrow question or simply to implement a decision (or document a
transaction)."\(^4\) We also know that even investment bankers and others in the financial services industry did not fully understand the intricacies of the complicated financial instruments that contributed to the financial crisis.\(^5\) Lawyers without business knowledge may have lacked the confidence or ability to recognize red flags that would have triggered additional inquiry.

In many cases, lawyer regulators failed to provide appropriate financial oversight, which could have prevented or at least lessened the drastic effects of the corporate scandals and financial crisis. The Madoff scandal is a good example. For several years, financial analyst Harry Markopolos tried to alert the SEC; in 2005, he prepared a memo with detailed data showing the fraud perpetrated by Madoff. However, the resulting SEC investigation found no evidence of fraud just a year before Madoff’s Ponzi scheme collapsed. After conducting a thorough analysis of Markopolos’s memo, Professor Robert Rhee of the University of Maryland Francis King Carey School of Law concluded that “the SEC and its lawyers were presented the proverbial ‘videotape’ of the crime, and yet they were unable to comprehend what had occurred because they lacked the skills, knowledge, and education.”\(^6\) Even the SEC made a similar admission in its own internal investigation.\(^7\) Without basic business knowledge, how can we expect SEC lawyer regulators to do their job?

**Complexity of Financial Markets:** As Professor Rhee has mused, “We no longer live in the simple days of stocks and bonds.”\(^8\) Investors and companies now engage in a myriad of investment vehicles: hedge funds, private equity, venture capital, derivatives, and more. As a result, the finance industry has experienced significant growth. In addition, financial technology has become more sophisticated, and the lines between Wall Street and Main Street have blurred. An understanding of business principles is therefore essential for all lawyers who deal with business clients.

**Intense Regulatory Environment:** As a result of recent corporate scandals and economic volatility, businesses and the financial services industry face increasing law and regulations, such as the Sarbanes-Oxley Act of 2002, Dodd-Frank Wall Street Reform and Consumer Protection Act, and Affordable Care Act. These laws, along with other regulatory measures, call for a lawyer’s understanding of business principles in order to provide effective representation of their clients.

**Widespread Applicability to Lawyers:** The need to understand business principles is not just limited to lawyers who represent business clients or regulate businesses. Other lawyers who benefit from knowledge of business principles include criminal defense lawyers and prosecutors who handle white collar matters or other

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\(^7\) *Id.* at 364.

\(^8\) Rhee, *supra*, at 377-378.
business-related crimes, family lawyers and estate lawyers who deal with clients’ financial matters, and public interest lawyers who help clients with business-related matters. In fact, most lawyers need to be business literate to do their jobs capably. As Dean Maureen O’Rourke of Boston University School of Law has noted, “It is crucial that we train our students to be effective lawyers, and today’s lawyers need to be business-savvy, whether they’re working at a law firm or with a public interest employer.”

Demand by Law Firms: Law firms are eager for law schools to provide training to future lawyers in business principles. In a 2014 Harvard Law School survey of 124 practicing attorneys at 11 major law firms, attorneys placed “accounting/financial statement analysis” and “corporate finance” at the top of the list of most important knowledge bases/skills for associates. Dean Nicholas Allard of Brooklyn Law School, has stated, “Law firms were telling us that associates had no business literacy. The need for business literacy has existed for a long time and graduates had to learn the business basics on the wing, but the legal recession has forced law schools to address flaws like this that had been papered over, or not addressed, in flush times.” Moreover, training in business principles improves a law student’s marketability and versatility. Given the current challenging job market, students cannot enter the market with only one focus; they need to be prepared to handle a variety of matters, and business principles can be applied to most areas of law.

Response by Law Schools: Many law schools are responding to the need for more training in business principles. Dean O’Rourke has noted, “We’re listening to our alumni and to the employers recruiting at our law school. We know that we must offer business fundamentals training if we want our students to be effective lawyers – whatever their intended practice areas.” In addition, Professor Lynn Stout at Cornell Law School has commented, “Today, most law students must possess a basic understanding of business before entering the legal profession.” Going one step further, Dean Jeremy Paul of Northeastern University School of Law believes that law schools have the responsibility to produce JDs who can think like MBAs.

Law schools offer a variety of delivery methods for courses on business principles, including stand-alone semester-long courses, business boot camps and workshops, collaboration with business schools, and online training modules.

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12 See supra note 9.
13 See supra note 11.
Boston University School of Law has recently taken the most aggressive step by becoming the first law school to require business fundamentals for all students.18

Some law schools face logistical issues in offering a course on business principles, such as limited faculty resources, scheduling concerns, or budget restraints. To address these issues, an on-line training module may provide the most economical, efficient, and flexible approach.

**Next Steps:** Law schools tend to resist the idea of adding required courses. However, a number of factors provide a compelling argument for law schools to provide training to all law students in business principles. This paper has discussed several factors, including lawyers’ involvement in recent corporate scandals and the financial crisis, the lack of business literacy among many law students, the increasing complexity of financial markets and regulations, the integration of business principles in most areas of law, and the market demand for lawyers with business training.

Teaching future lawyers about business principles would help them understand business transactions, recognize risks, ask the right questions, and brainstorm solutions or alternative approaches. They would be able to speak the client’s language and have more credibility with their clients. Lawyers who serve as regulators would have the knowledge to understand a regulated company’s business transactions and identify potential issues. Importantly, lawyers could be more proactive in avoiding problems of the past.

If we recognize and accept the need for and value of teaching business principles, several questions arise:

- Should the ABA consider mandating that law schools offer courses on business principles?
- As an alternative, should the ABA recommend that law schools offer courses on business principles?
- Instead of ABA involvement, should law schools make this decision on their own, allowing competitive market pressures to prevail?
- If a course on business principles is offered, should the course be mandatory for all students? Should it allow an opt-out by students with business knowledge? Should it be graded or pass/fail? Should it be for credit or no credit?

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18 http://www.bu.edu/law/courses/lawjd605/.