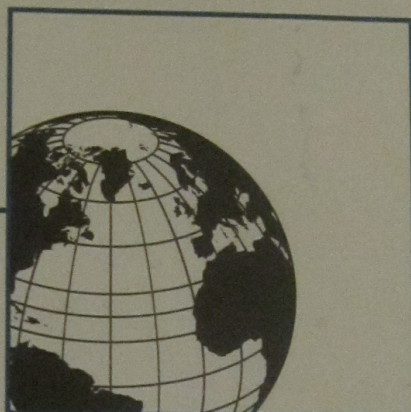


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Lawyers for
Transnational
Challenges**

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TRANSNATIONAL CURRICULUM FOR TOMORROW'S LAWYERS
CURRICULAR APPROACHES: BUSINESS LAW

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Introduction

The phenomenon of **globalization** has affected almost every side of people's lives; hence it has also inked their legal relationships. Decades of incremental changes with the increased **mobility** of persons and the bridging facet of **information technology (IT) developments** had significant cumulative effects; hence, borders are being crossed and parties to the transactions come from several jurisdictions. All this becomes source of **transnational challenges** for parties to the transaction, for their public authorities and finally for legal experts, such as lawyers and members of judicial staff.

Currently this development is at its high peak in the field of business and thus **business law**. Under the label of interconnected and interdependent *new economy* and in the era of information technology developments, cross-border commercial transactions and international financial contracts are progenerated and fulfilled in overwhelming volume and at enormous space. Moreover, all this happens in a **complex international legal environment**, sometimes filled with inconsistent legal rules and hardly predictable public authority interpretative actions.

If bundled, these factors point to increasing challenges towards representatives of legal profession, especially lawyers. So the question is raised logically: What is the **image or vision of the lawyer of tomorrow** in such a business and legal environment? In this respect, the following three capabilities are to be highlighted.

First, tomorrow's lawyers are able to **internationally "dig" the law applicable** to the transaction and find the main guidelines of the foreign or international court decisions including arbitration court guidelines. Tomorrow's lawyers foresee the future **trends in international regulation**.

Second, tomorrow's lawyers follow the **interdisciplinary approach**, thus their legal knowledge is extended by both economic and IT perspective. An economic vein implies understanding of **risk mitigation techniques** such as insurance, secured finance transactions and negotiable instruments. The rocketing share of electronic channels explains the importance of **IT trends** and of identifying **potential risks or opportunities** related as early as possible.

Third, tomorrow's lawyers address complex or unprecedented situations and persons with the help of basic insight in the **cultures and customs of the main regions** around the world and know at least slightly the sources of the **regional political and religious tensions**.

To put it brief, tomorrow's lawyers like today's lawyers are equipped with all the knowledge and skills needed to act in the best interest of their clients as well as the overall society. Under challenges of the *new economic* era and as a result of its international nature, however, the requirements toward legal profession moved on, which requires that universities show a certain degree of flexibility and thus an inclination to update their core business law syllabus.

Today's lawyers in the field of business law and their syllabuses

The business law syllabus of today's lawyers shows a gap between the international perspective involvement at undergraduate and at postgraduate level.

Today's lawyers with law degree are generally capable to grasp **legal principles**, main **legal concepts and basic sources** of their **domestic legal system**. In the field of business law syllabuses deal mostly with the process of **formation of contract** and the **question of torts**. In most of the universities international perspective is completely ignored at undergraduate level.

In international comparison the American, the European and the Asiatic undergraduate curriculum approaches show the following differences. In addition to formation of the contract, with the graduation **American** students are already through the idea of torts and solved a nice pile of simulated cases. This is also true in case of their **European** counterparts with the difference that here statutory regulation *per definitionem* overrides the principle of precedents. In addition, almost all European universities were 'forced' by the internal market concept to incorporate the European Union (EU) aspect of business law into their syllabuses. As far as the **Asiatic** region including Australia is concerned, besides the main principles and basic elements universities have covered some areas of international business law trends embraced by fora such as the World Trade Organization (WTO) or the Organization for Economic Cooperation and Development (OECD).

In contrast, at **postgraduate level** legal curricula unbelievably resemble each other as they all include not only the **international and comparative legal perspective** but also try to catch up with the **most straightforward legal issues and trends**. This phenomenon is presumably based on the quite common challenges posed by the labor market globally. Meanwhile in the era of mass education knowledge and skills transferred under law degree have been restricted to the very necessary and basic level, at postgraduate level diversity of subjects and approaches has revealed an upswing trend. The underlying idea for such an allocation of legal material was the requirement of efficiency which supported to hamper teaching undergraduate students to greatly complex and specific skills and knowledge in the frame of core law degree. Such firm ruling out of the "too much too early" Prussic attitude,

however, also bordered the possible extension of the undergraduate education to constantly follow necessary up-date of the material with international basics.

Based on the aforementioned, although postgraduates studies in business law reveal promising facts in the area of international knowledge, undergraduate curricula are now show their age. At first sight, all the aforementioned regional solutions are **unique and applicable** in their own original surrounding. US has far the closest economy worldwide, thus a need for international perspective at undergraduate level is tiny. EU Member States are forced to study the basic principles of the EU law as a consequence of the European Union developments and its impact on the formation of their domestic law. In the Asiatic region the main driver of the economies are joint ventures and the high economic anticipation after China's acceptance to WTO. No matter how appropriate these solutions may seem for a slight percentage of lawyers not directly affected by the international nature of legal issues or remedies, the **majority "votes" for changes in the law curricula**. The era of **globalization** raises the specter that to inject legal education with international perspective is inevitable. The name itself is 'university' which may imply not only the 'interdisciplinary' but also the 'universal' nature of the institution. **Tomorrow's universities** have the responsibility to equip their students with the necessary skills and knowledge through the most pioneering material content, in the most advanced organizatory structure and possibly with well-ahead real-time access to information sources. A prudent connotation and upgrading of the three 'regional' approaches will present the **best practice** of preparing today's lawyers for challenges of tomorrow thus fulfilling the vision of the tomorrow's lawyer. When stepping aside from general customs to this direction and making their students more competitive in both national and international arena, universities as a result will **increase the value of their degrees**. With such a move ahead also **today's universities** will become **tomorrow's universities**.

Tomorrow's lawyers in the field of business law and their syllabuses

Tomorrow's undergraduate legal education has to mirror the vision of the tomorrow's lawyers. To help to determine the ways and levels of changes to be made in undergraduate business law curriculum the following skills and knowledge stand out.

First, under the auspices of **global nature of legal matters**, after graduation tomorrow's business lawyer have to be able to **"dig" the law applicable** to the transaction, find the main guidelines of foreign or international court decisions such as "arbitration guidelines" and be aware of main **international regulatory trends affecting national legislation, such as WTO, OECD or the Bank for International Settlements (BIS)**.

Second, under the auspices of **interdisciplinary nature** tomorrow's business lawyers have to know well the main economic and IT principles of business. **Risk mitigation techniques** adhering to contracting imply the knowledge of legal tools, such as **insurance, secured financial transactions and negotiable instruments**. Developments such as e-

contracting underscore the importance of **excellent skills in the area of IT** as well as the constant follow of **state-of-the-art IT developments** for tomorrow's lawyers.

Third, under the auspices of **universality and strong ethics of legal profession**, tomorrow's lawyers are skilled to deal with global relationships, know the sources and the status of current regional political and religious tensions.

As far as the *first* and most important *requirement* is concerned, to implement the skill of **efficient international case and statutory exploration** at undergraduate level students have to be provided with the basic idea of different types of law systems, thus achieving implantation of the **comparative perspective**. Based on the latest comparative legal research achievements students could be introduced to **historical formation** of the main legal panels, i.e. civil law and common law around the world coupled with **chronological insight** in some fundamental concepts, such as agency or unjustifiable enrichment. This syllabus is properly fitted into the law curricula if preceded by the introduction to business law and basics of the domestic business law. In Hungary at ELTE University for instance, the course of "Comparative Business Law" is one of the elective undergraduate business law courses with historical insight in the topic. More global perspective is met in the frame of mandatory 'Roman Law' studies and in the frame of first semester of the PhD program.

In addition to efficient 'law finding' tomorrow's lawyers have to keep up with trends in **international law development**. In case of sheer contractual problems the focus of tensions, thus the guidelines of their solutions are already highlighted in the frame of United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) with their **uniform law** concept and by the European Union (EU) with its **law harmonization** process. Under the auspices of UNCITRAL and UNIDROIT international contracting as well as electronic contracting are facing approximation of the concepts of different types of jurisdiction under the name of **simplification** and **sophistication**. Although the idea of these movements is to seek the globally common items of the legal systems, they mainly follow the non-conformist idea of common law legal thinking. It is necessary that the yet infrequently followed practice of including these developments in the law curricula had gained grounds in form of extending **comparative legal studies** from the abovementioned historical to **today's perspective**. In Hungary, for instance, the international law unification issues are quite thoroughly dealt under the course of „Private International Law”. Numerous universities support undergraduates' interest in the field by promoting their active participation at **moot court competitions**.

As for **EU law**, it is generally an inherent course topic in all EU Member States and is becoming widespread in countries that have in mind accession in the near future. The successful accession candidate Hungary (ELTE University) has incorporated the course 'Commercial Law of European Communities' in law curriculum already in the early 90s'. Since the EU integration seems to gradually embrace the whole region and as by now it has

at around half decade history it seems to be reasonable that some basic principles of the EU law formation trend are accepted to course syllabuses also by universities outside the EU. In universities across the United States this change can be bridged by the idea that especially in the field of finance the main solutions have their source in the US wherefrom they are channeled to the EU legislation via United Kingdom based investments banks.

Besides nude international legal issues, sophistication of clients and their transactions reveal with increasing tense the *second requirement* towards tomorrow's lawyers, which is the ability of **interdisciplinary perspective**, with special regard to economics and information technology. There is more to business transaction than their mere legal aspect, since company and individual decisions have also their payment, accounting, industrial and taxation consequences. As for **economic perspective** business transactions are triggered by economical decisions which then imply risks. Thus, it is a significant need that tomorrow's lawyers are aware of the **risks** arising from the contracts and the main ways of how counterparties may reduce these risks. There is the risk, for instance, that a party fails to meet its obligation because of its or its debtor's bankruptcy or as a consequence of *force major*. The main tools to mitigate these risks include for instance **insurance, secured finance transactions** as well as **negotiable instruments**. At ELTE University these questions are dealt in frame of elective courses, such as 'Securities Law' or 'Stocks'. What regards current international developments here, trends indicated by fora such as the **BIS**, the **International Securities and Derivatives Association (ISDA)**, the **International Organization of Securities Commission (IOSCO)** and the **International Association of Insurance Supervisors (IAIS)** have to be grasped by the law degree candidates. If providing acquaintance with the fundamentals in these topics under the topic of 'Business Law' universities will prepare fruitful soil also for postgraduate studies.

In the field of business law also the **subject of technology, technological skills** and especially **technological developments** have to be accepted as a way to make legal relationships more global thus more challenging to today's lawyers. To help their clients and to be up-to-date invaluable legal experts and lawyers have to be aware of these phenomena, including the idea of wireless tools or the difference between open and closed communication networks (Internet and Intranet). In some cases contracts are made via electronic means, which involves the topic of e-contracting. In some cases contracts are fulfilled or disputed via electronic means, which raises the issues of e-finance or e-litigation. No matter whether obligations and rights in a legal relationship are set-off properly or legal remedies have to be faced such knowledge of technological developments is of high importance for tomorrow's lawyers. The basic insight could be supported by the undergraduate business law curriculum under the topic more general 'Business Law' and in addition supported by elective courses.

In current juncture of political dynamism and complexity of mankind's personality present the source for the *third requirement* towards tomorrow's lawyers. To deal with global relationships, to address **difficult political situations and complex clients** tomorrow's lawyers have to have firm knowledge on current political issues, know their roots and be able

to make funded predictions. Although the likely vision of a separate course e.g. 'International Politics' is already fulfilled by most of the universities, interconnections with business law have to be highlighted and underscored by the syllabus of business law.

Conclusions

With the evolvement of **mass education** the range of subjects taught by universities has increased, in contrast the material embraced by core curriculum has decreased. This phenomenon plainly mirrors the approach of **efficient education** which rules out the „too much too early” hypothesis. In contrast, even mass education is influenced by the **labor market's forces**. As a consequence, with the market going global, also legal education is forced to face changes. The conclusion can be drawn that the need for changes was **successfully fulfilled at postgraduate level** by different types of taught and doctorate programs.

In contrast, at **undergraduate level** changes to business law curriculum are still to be faced. The direction of these changes can be summed up in the vision of the **tomorrow's lawyer**. According to the vision tomorrow's lawyer in addition to the basic understanding of own domestic legal system and business terminology recent graduates are already equipped with the basic knowledge of other main types of law systems around the world, follow the main principles of economics and trends in IT developments and have the overview of global political and religious developments. To make the vision reality universities need to extend their undergraduate business law syllabus possibly according to the following checklist.

First, after introduction to business law an international outlook is required that draws picture on **historical formation of main legal families**. This lecture could be added with the current trends under **UNCITRAL, UNIDROIT and EU**, with special regard to **electronic contracting**. Succeeding postgraduate studies could than bank on the thorough knowledge of these fundamentals and provide deeper insight.

Second, in the frame of introduction to business law the **economic perspective** could be mentioned align with the concept of **risk awareness**. If syllabus deals with special types of contracts this could be extended to risk mitigation techniques, such as **insurance, negotiable secured finance transactions and negotiable instruments**. The basics of future trends mentioning **BIS, IOSCO, ISDA and IAIS** could be embraced. As for IT knowledge the acquaintance could be passed related to the topic of **e-contracting**.

Third, questions of **political and religious global issues** and trends could be included in the material of business law course through underscoring their relevance from the perspective of business law.