

Educating the Transnational Lawyer

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Comparisons: US/UK/Ireland

- Legal education in the United States is based on a consumer model with compulsory subjects in the first year followed by two years of study of mostly, if not entirely, optional subjects.
- Compulsory subjects are entirely drawn from domestic law.
- Even in the elective offerings, domestic law tends to predominate.
- It is possible to graduate from most U.S. law schools with no exposure to international law.
- The task of curricular design is thus largely passed on to students with law schools contenting themselves with providing greater choice in offerings.
- Bar exams do not test international law.

Comparisons: US/UK/Ireland

- UK and Ireland: mostly domestic law, but some EU law courses
- Limitations imposed by UG curriculum
- Universities regarded as teaching *academic law* whereas Bar trains in practice
- Behind curve in benefiting from advances in higher education
- Duality between apprenticeship-based model of training and universities

The Changing Legal Landscape

- Multiple sources of legal rules, increasingly supranational
- Contacts with multiple jurisdictions – contracts, insolvency, corporate ...
- Transnational litigation
- Judicial borrowing in domestic litigation – norms transplanted *ad hoc*
- Transnational practice – lawyers as norms entrepreneurs

Problems

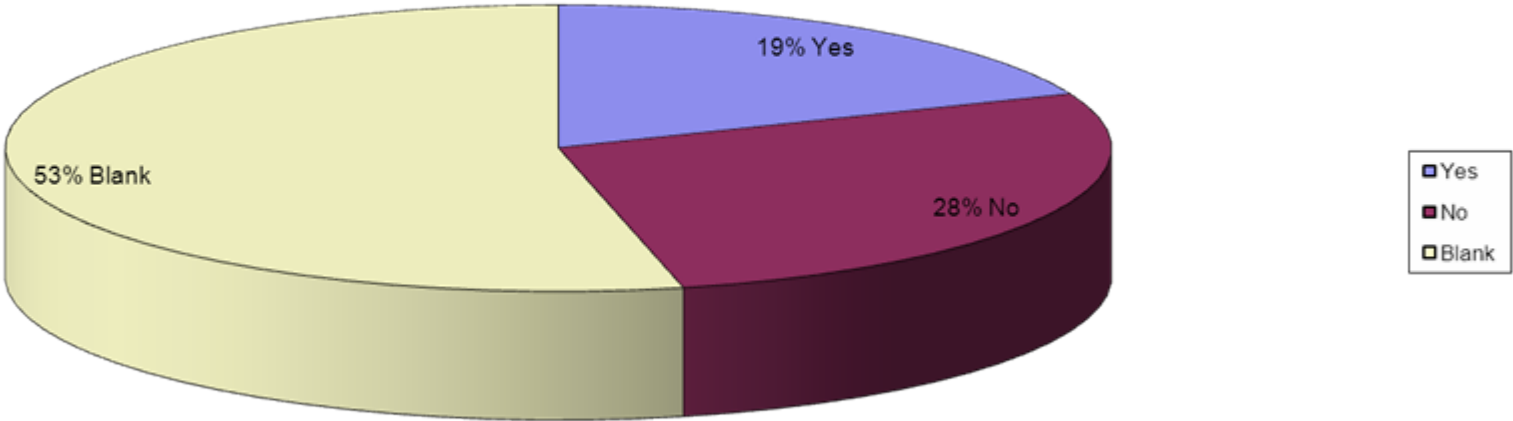
- Is a domestic law centred curriculum adequate?
- How to prepare for transnational elements?
- Malpractice if lawyers are unaware of applicable international legal instruments.
- E.g. UN Convention on Contracts for the International Sale of Goods: law in the US, but many lawyers ignorant about applicability
- A study of the Florida Bar found: “... the CISG was not being taught in most law school Contracts or Sales classes, was mostly unfamiliar to the practicing bar, and was considered with suspicion, if not dislike, by some judges of first instance courts.”

Problems

- Legal risk might result by lawyers being ignorant
- Parties lose out on legal rights by exclusion
- BP Oil International, Ltd., and BP Exploration & Oil, Inc., v. Empresa Estatal Petroleos De Ecuador (Petroecuador), et al., 332 F.3d 333 (2003): “A signatory’s assent to the CISG necessarily incorporates the treaty as part of that nation’s domestic law. Where parties seek to apply a signatory’s domestic law in lieu of the CISG, they must affirmatively opt-out of the CISG.”

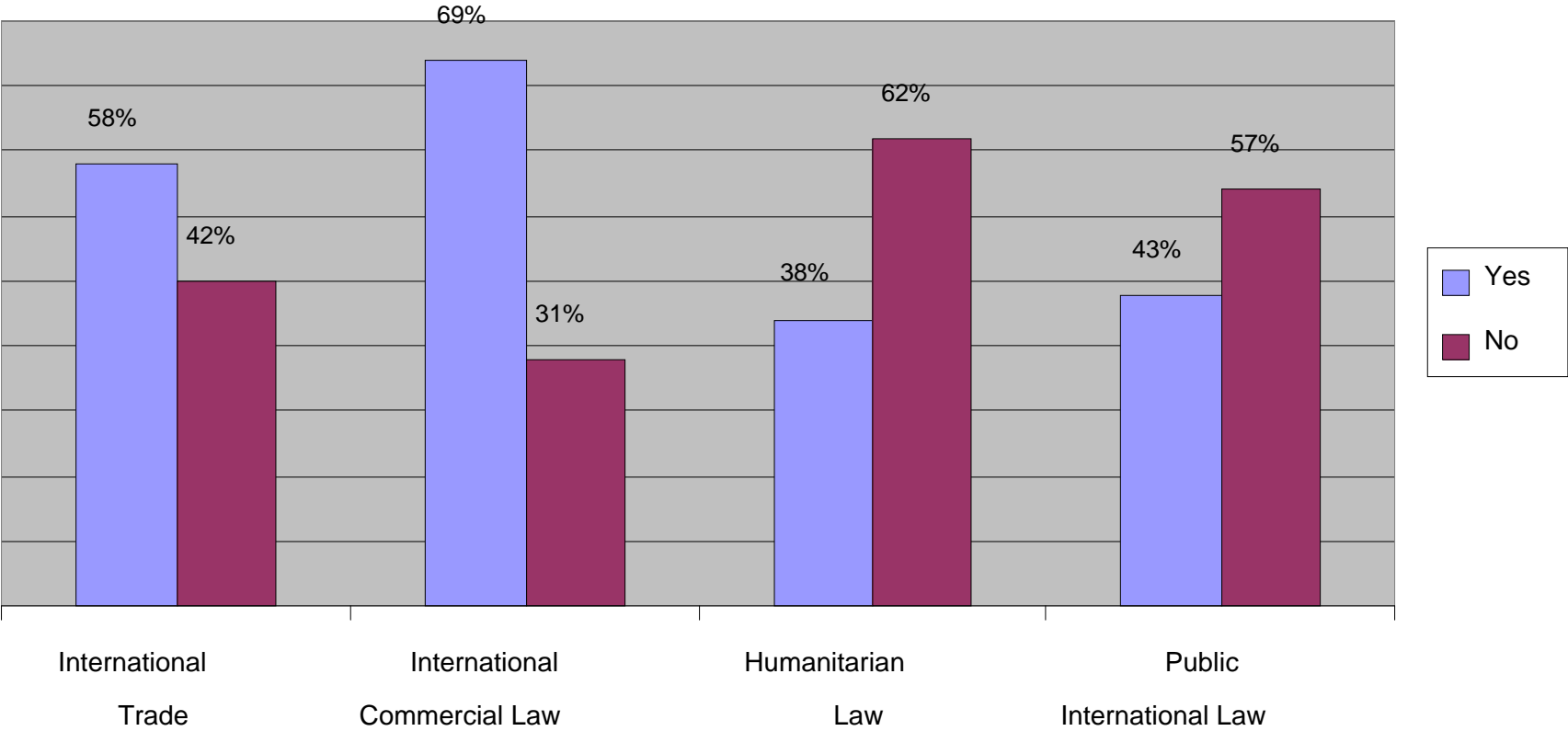
Survey of Phoenix Bar: Some Results

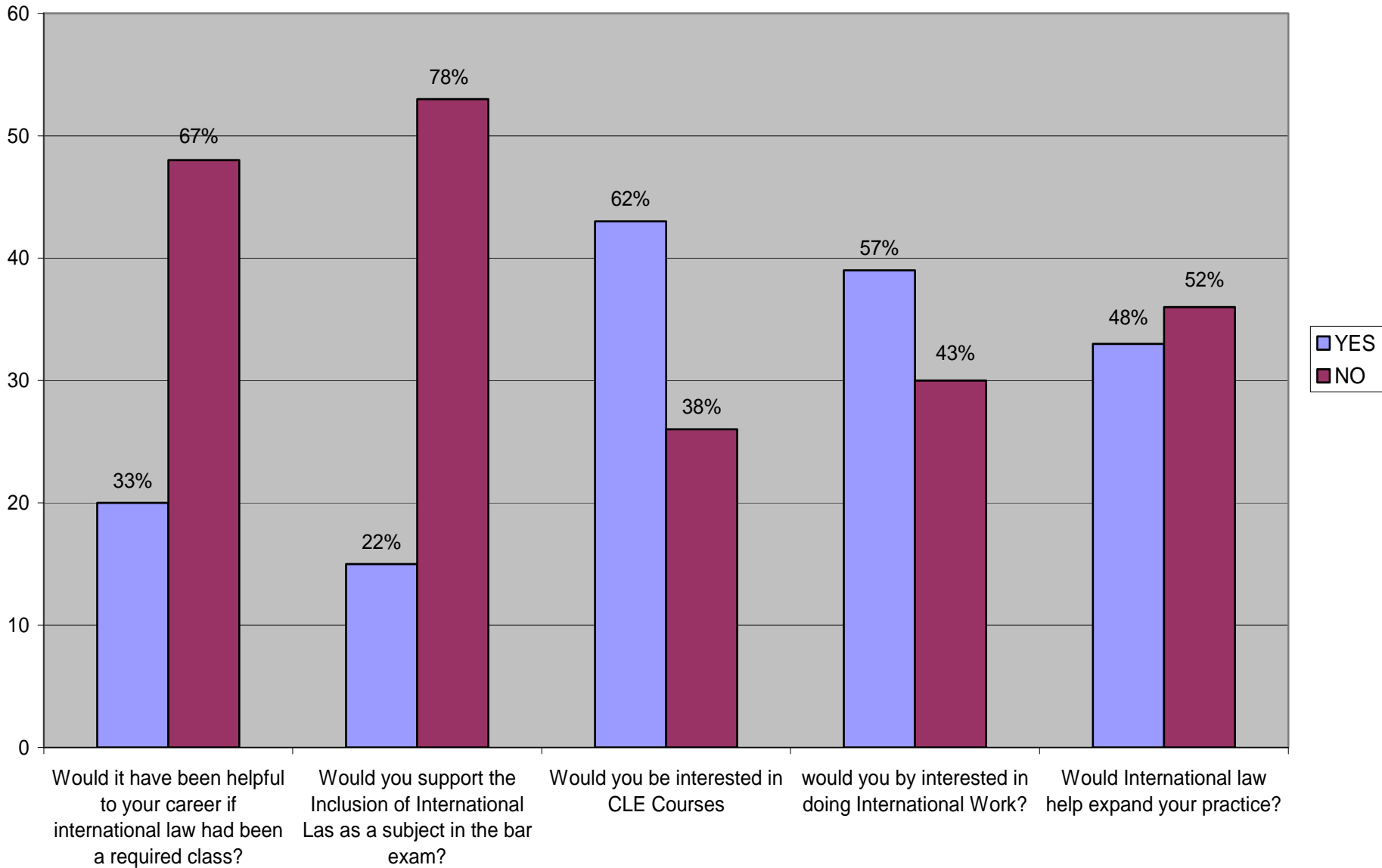
Have you Drafted a Contract Referencing Foreign Law?



Survey of Phoenix Bar: Some Results

What aspects of international law should a lawyer be familiar with?





Approaches

- Integrated approach: permeate domestic law courses with transnational legal materials
- Wider reach, exposes more lawyers to transnational law
- De-compartmentalizes law, shows that transnational law operates as a system with its own rules
- Challenges: time, teaching materials

Approaches (cont'd)

- Mandatory approach: transnational law courses required for graduation
- Which courses?
- Public international law tends to dominate in the academy but practitioners benefit more from private law courses?
- Paternalistic
- Bar exam?

Designing a curriculum: NUI Maynooth experience

- Curriculum designed based on US law school model rather than UK-Irish model
- Emphasis on incorporating transnational legal materials into domestic law
- Proved to be difficult in practice
- Compulsory modules on international law, two modules on EU law
- Study abroad – 1 year in foreign university
- Work placements in large law firms

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