

Enhancing Corporate Accountability through Contextual Ethical Exercises

Adrian Evans and John Howe⁺*

The collapse of Enron in the United States and of HIH Insurance in Australia, along with the findings of the Jackson Inquiry into the James Hardie Industries medical compensation fund, highlight a perceived decline in corporate ethical accountability. Each of these events featured lawyers behaving unethically or otherwise inadequately in a broad social context. Realistic ethics education of law students, many of whom will become future corporate officers and directors, offers harm minimisation in response to rising standards of corporate accountability. Ethical simulations of this nature are a part of the wider arsenal of strategies to limit the potential for future corporate collapse and dishonour.

This paper explains how it is possible to successfully expose law students to the reality of ethical conflict within corporate environments. On-line simulation of corporate ethical dilemmas allows students and trainee officers to anticipate what they will encounter in the corporate workforce and prepare them to apply alternative ethical models in deciding how to respond to those dilemmas.

Monash University Law School and the Melbourne Law School are collaborating in producing two online exercises to introduce students to ethical pitfalls in directors' duties and corporate tax evasion. The simulations are analysed in the context of initial student evaluations and the paper concludes with a brief exploration of the potential for future ethical education initiatives.

Introduction

Currently, Australian law students tend to learn about legal ethics, if they learn about it at all, as a distinct set of *rules*, rather than as a *method* of resolving moral conflict. Further, because these rules – literally, the rules of conduct - have been collected and published in the form of delegated legislation,¹ they tend to exert a primeval and exclusive pull over the budding lawyer. Rather than consider a positive set of principles or methods, in the context of the situations in which real problems actually arise, the current dominant approach to teaching legal ethics inevitably seduces lawyers into a statutory interpretation cul-de-sac. This historically superficial treatment reflects the recent relative disdain for ethics in the wider legal population. Having regard to the impact of high-profile corporate collapses such as *Enron* in the United States and *HIH Insurance* in Australia, evidence of strategic document destruction in the Australian case of *McCabe v British American Tobacco*, and the outcry over the restructuring of the *James Hardie* group and its

* Faculty of Law, Monash University.

⁺ Faculty of Law, University of Melbourne

An earlier version of this paper was presented at the Corporate Law Teachers Association Annual Conference, 5-7 February 2006, Brisbane.

¹ Consider, for example, Law Council of Australia, *Model Rules of Professional Conduct and Practice*, March 2002.

holding company's failure to adequately fund a scheme to compensate asbestos disease sufferers, has sounded a wake-up call. Today, it is more often understood that the genius (no longer the nemesis) of all ethical thought is its resistance to codification. Corporate ethical complexity is now recognised and in particular, it is accepted that, while we need to know the disciplinary rules, only through contextual discussion is it possible to approach ethics with integrity, let alone satisfaction.

In the cases above, lawyers were much criticised for their failure to act having regard to the public interest and not just to their clients' interests. Part of their limited cultural horizons may have arisen from the way in which units such as corporate law (in almost all law schools) were and often still are, usually taught: in a 'law as fact' context, that is, in accordance with the doubtful proposition that laws exist in concrete form, that they can be 'discovered'² in a more or less straightforward manner by students simply reading the federal statute/case reports and that their application to particular facts is a value-free process requiring very limited context or critical evaluation. Attention has also been drawn to the increasing role of lawyers as agents of corporate policy rather than as independent providers of legal advice.³

This paper describes an online, multimedia teaching and learning exercise, *Learning Legal Ethics in Context – Corporations Law (LLEC – Corporations Law)*. The exercise (and others still to come) represents an attempt to break down the artificial separation between the simplistic thrust of corporate law and the demanding context in which most of the 'factual' rules will have to be applied. *LLEC – Corporations Law* has been developed and taught at both Monash and Melbourne law schools and has received positive evaluations from students. The key factor in this reception is the innovative approach to student engagement. Law students (perhaps all students?), are now worldly and often disengaged from their studies, perceiving the tertiary experience as something to be endured before they are permitted to earn a significant income. This exercise breaks that cycle by progressively engaging a student's sense of conscience. That process is cumulative and subtle, conducted at a pace that progressively draws corporations law students into identification with the characters, with the drama and with the dilemmas of contemporary and corporate ethical challenges.

A transforming effect of the project described in this paper⁴ has been to make the corporate law context an integral part of the learning process. Not only has it been possible to approach ethical complexity in this context, but the actual construct of the discipline is more firmly embedded in

² We do not examine for reasons of space the great and ongoing debate between the positivist position on law (simplistically, that it just exists, *per se*) and that of the normative jurists, who look to concrete realities of operation for reference points (as to this debate, see for example, Jonathan B Wright, 'Efficiency Unprofitable Without Ethics', *The Australian* (Sydney), 24 September 2003, 32-33, who cites William Letwin in 'The Origins of Scientific Economics' (1963): 'Every economic act, being the action of a human being, is necessarily also an ethical act.', but this article proceeds from our mutual conviction that the normative approach is the more fruitful.

³ See, for example, R Painter, 'The Moral Interdependence of Corporate Lawyers and Their Clients' (1994) 67 *Southern California Law Review* 507; *McCabe v British American Tobacco Australia Services Ltd* [2002] VSC 73.

⁴ This online teaching example was developed within a Melbourne & Monash Collaborative Grant - 'Learning Legal Ethics in Context' - awarded to A/Prof. Evans of Monash Law and A/Prof. Camille Cameron of Melbourne Law, in 2002. Grant team members included Dr John Howe and Mr Peter Jones (Melbourne Law), Ms Claire Brooks (Melbourne Multimedia), Mr Jon Faulkner (Melbourne Research Assistant and Ms Kate Seear (Monash RA). The objective of the overall project is to transform two important legal sub-disciplines (Civil Procedure and Corporations Law) by integrating key concepts in legal ethics into the theory and practice of these subject areas.

students' minds and the understanding of one becomes enmeshed with the other. The integrated or 'pervasive'⁵ approach produces lawyers who are better able to identify and respond appropriately to ethical issues and dilemmas that occur in the corporate world. To the devious CEO, this process is perhaps subversive 'indoctrination', but to shareholders it may provide some encouragement that both in-house and external lawyers of the future will understand and question unethical behaviour before it is reflected in a plummeting balance sheet.

This paper describes the concept, approach and realisation of one exercise in the corporate law environment and sets out why we believe it will enhance corporate accountability. The paper is structured as follows: first, the alternative methods of understanding ethical choice are explained, because that explanation is also critical to student's analytical framework in working through the exercise. Secondly, we consider why contextual ethical exercises offer a valid approach to the significant Australian examples of corporate lawyers' failings. Thirdly, we describe the exercise, give an example of its progression, discuss its limitations and quote some of the student feedback. Finally, we offer a view that contextual ethical exercises in the area of corporations law are a part of the preventative approach central to future corporate efficiency and fair dealing.

Grounding best practice in learning and teaching corporate ethics

Best practice in online teaching requires a combination of techniques to capture student imagination, increase the depth of their knowledge, monitor their experience and assess their learning in a manner that strikes a balance between their other commitments and the time they spend in the online activity. Time requirements for students and teachers are, in our opinion, crucial. Our example – *LLEC – Corporations Law* is an optional assessable component of the subject *Corporations Law* as it is taught in the Monash and Melbourne Law Schools. We have made it optional because a new online exercise must not become so time consuming, relative to its perceived benefits, that the student grapevine becomes wary. Since most students (including law students) are working to support themselves and face increasing debts, they see use of their time as a crucial factor.

This example captures student imagination at multiple levels: we provide a hypothetical scenario known to be contentious; students play the role of an outside lawyer retained by a mining company to protect its interests; we provide photographs and research documents that are facsimiles of 'coffee stained' or otherwise 'used' originals, for example, of an environmentally incriminating report by the mining company's chief geologist; we include tense and combative exchanges in email form between company insiders, one of whom threatens to become a whistleblower; we create urgency and a sense of personal conflict by requiring memoranda of advice from students; we include a fully-produced video of a Directors' meeting in which all the tensions of the mining operation are subtly evident. In a real sense, students become 'flies on a wall', watching the developing complications but nevertheless required to provide advice which is just strictly 'legal' or something more, that is, ethical.

In challenging students to go beyond the 'law as fact' context, it was necessary to provide resources which would assist them in meeting this challenge. Before we explain the exercise

⁵ Deborah Rhode, 'Ethics By the Pervasive Method' (1992) 42(1) *Journal of Legal Education* 31.

itself in more detail (and its connection to corporate accountability), it will be helpful to set out the theoretical perspectives on ethical decision-making provided to students as part of the exercise.

Bases of Ethical Decision-Making

Depth of student knowledge concerning the ethics-based approaches to legal practice is addressed first by providing a commonplace moral philosophical categorisation of ethical decision-making, followed by a theory of ethical approaches to legal practice. Both are necessary, we suggest, because many law students are impoverished in ethical terms and have had few experiences and even fewer systematic thoughts in challenging ethical environments. Were we to simply ignore the need to provide a theoretical background, some students' reactions to the exercise would flounder.

First, we use the moral philosophical baseline sometimes described as the *Three Methods of Ethics*,⁶ as expressed in the following table:⁷

Conceptions of Ethical Methods or Approaches	Basic Description of Approach	Differentiators from Other Approaches
Kantian or 'Deontological'	'Right' actions or policies are those that primarily enhance and respect individual autonomy by treating persons as 'ends' rather than 'means'. The deontological approach emphasises the rightness of actions rather than their consequences.	Kantian methods are concerned to refute the notion that 'the end justifies the means' - arguing that the means, since they often involve what happens to individuals, are at least as important as outcomes - and are therefore usually wary of utilitarian approaches.
Utilitarian or 'Teleological'	'Right' actions or policies are those that bring about better <i>consequences</i> than any of the realistic alternatives	Otherwise known as 'maximising the public good', utilitarian methods suggest that the 'utility' of an action or policy, even if it might subordinate individual autonomy, is justified because it produces the 'greatest good for the greatest number'.

⁶ Slote, Barron and Petit, *Three Methods of Ethics*, Blackwells, Oxford, 2000.

⁷ Acknowledgement of the authorship of this table is made to Adrian Evans, Camille Cameron and Christine Parker, © 2003 Monash University and the University of Melbourne.

These three approaches to ethical decision making are enough for some law students to ground their decision-making within the exercise, despite the obvious intersections between them. These students, few as they are, appreciate from the beginning that there is no single ethical model that is adequate for all purposes.

Most students, however, responding to the emphasis of much of their teaching, are already subject to the precision-bias associated with legal definition and seem to respond more confidently to the following ethical categories,⁸ which contain more readily recognisable signposts to everyday experiences of lawyers:

Approaches or Methods of Ethical Lawyering	Social Role of Lawyers and Relationship to General Ethics	Relationship to Client and Law
<i>Adversarial Advocate</i> (Traditional Conception)	Lawyers' ethics governed by role as advocate in adversarial legal process/complex legal system – partisanship; loyalty; non-accountability.	This is an essentially utilitarian approach since adversarial ethics are justified by their consequences (in supporting the adversarial system). A lawyers' duty is to advocate a client's interests as zealously as possible within the bounds of the law (barest obligation to legality) – let the chips fall where they may. Extends beyond adversary role to ensuring client autonomy in a complex legal system as required by the rule of law.
<i>Responsible Lawyer</i> (Officer of the Court)	Lawyers' ethics are governed by the role of facilitating justice according to law – to make sure matters are decided on the substantive merits in compliance with the spirit of the law.	More deontological in that lawyers are required to follow and preserve the integrity of legal rules for their own sake. All duties of advocacy are tempered by a duty to ensure integrity of and compliance with the spirit of the law; to ensure that issues are not decided on purely procedural or formal grounds but substantive merits. A lawyer is responsible to make law work as fairly and justly as possible and may need to act as gatekeeper of the law and an advocate of the legal system against a client.

⁸ This precise categorisation was developed by Dr Christine Parker. See C Parker 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30 *Monash Law Review* 49.

<p><i>Moral Activist</i> (Client Counselling/ Public Interest Lawyering)</p>	<p>General Ethics/Substantive Justice/Public Interest defines what lawyer's role should be, ie, to advance justice (NOT lawyer's role/adversary justice system/ legal justice defining lawyers' ethics).</p>	<p>Although not an exact fit to any of the mainstream ethical methods, this approach requires the lawyer to apply whichever method they find most convincing to their practice as a lawyer – deontological (the 'golden rule'), teleological (social justice) or virtuous (nurturing of relationships). Lawyers should take advantage of their position to improve justice in two ways: (1) Public interest lawyering and law reform activities to improve access to justice and change the law and legal institutions to make the law more substantively just (ie, in the public interest). (2) Client counselling to seek to persuade clients of the moral thing to do or withdraw if the client wants something else.</p>
<p><i>Ethics of Care</i> (Moral Dialogue)</p>	<p>The social role of lawyers is irrelevant. Relational and virtue ethics (Ethics of Care) should guide lawyers (and clients) as everybody else.</p>	<p>'Relationship' and covenant are more important than impersonal justice. The value of law and other roles is derivative from relationships. Law is a power/institution; people and relationships are more important than law. The goal of the lawyer-client relationship (like all relationships) should be the moral worth and goodness of both lawyer and client, or at least the nurturing of relationships and community.</p>

Of course, these approaches may also overlap in particular circumstances, and most lawyers operate according to a variety of approaches throughout their career and in different circumstances.

Central Ethical Challenges for Corporations Law' Students

These different approaches to legal ethics give different answers to the following questions which in our view are central to legal practice in a corporate context. All of these questions are ones which students of the exercise need to come to grips with, and demonstrate in their responses that they understand that there are and will be, choices available to them in a real-client setting:

* To what extent should corporate lawyers' ethics be determined by a special and particular social role that lawyers should play (for example, the zealous advocate of an adversarial system)? Or, to what extent should lawyers be held to the same general ethics as anyone else (for example, sometimes, duties to justice or the public interest shall override duties to clients)?

* How should the lawyer and their corporate client relate to one another in relation to ethical issues? Are ethics irrelevant? Are they a topic for dialogue? Or should one party's view of morality (either the lawyer's or the corporation's), prevail over the other?

* What is the lawyer's obligation towards law and justice? To obey the letter of the law but test its limits in the interests of the corporation's right to autonomy? To preserve the spirit and integrity of the law *against* client interests? To work to reform the law and legal institutions to improve their substantive social justice? To pursue the moral goodness and/or best interests of the client in the context of his/her relationships despite legal institutions or broader dictates of social justice?

Ethics and Corporate Accountability

The choice of *Corporations Law* as the context in which students are asked to explore these ethical dilemmas was deliberate and carefully considered. There has been a longstanding debate in this field about the desirability of corporations and their managers being responsible or accountable not only to their shareholders, but to the interests of the wider society in which they operate. This is often discussed as the issue of ‘corporate accountability’ or ‘corporate social responsibility’.⁹

As we indicated in the introduction to this article, some recent corporate stories have reinvigorated this debate, and among other things, highlighted a shortfall between corporate practice and ethical standards of behaviour. As suggested earlier in this paper, a consistent theme in the various examples of corporate malfeasance we have identified has been the role that lawyers have played in relation to corporate misconduct. As the former chairman of the Australian Competition and Consumer Commission, Professor Allan Fels, has noted, ‘[w]hen corporations break the law, it is often the lawyers who devise and advise on the schemes’.¹⁰ Of these stories, the decision of Justice Eames of the Supreme Court of Victoria in *McCabe v British American Tobacco Australia Services Ltd*¹¹ is the one where the role of lawyers and their ethics was most directly implicated. In 2002, Rolah McCabe successfully sued a cigarette manufacturer, *British American Tobacco (BAT)* for compensation for smoking-related illness. A jury awarding McCabe the sum of \$700,000 after Justice Eames of the Supreme Court of Victoria struck out *BAT*’s defence on the grounds that it had destroyed documents in anticipation of litigation and misled the court about what happened to these documents. Eames J expressly criticized the law firm which had advised *BAT* in relation to the destruction of documents (carried out under what was called a ‘document retention policy’). Eames J concluded that the firm had assisted *BAT* to subvert the process of discovery ‘with the deliberate intention of denying a fair trial to the plaintiff’.¹² Although Eames J’s decision and his conclusion concerning the role of *BAT*’s lawyers was overturned on appeal,¹³ the decision prompted a strong public debate over the ethical responsibilities of lawyers advising corporations.¹⁴

Other examples where the behaviour of corporations has had a significant negative impact on sections of Australian society led to a number of formal inquiries which have sought to address the issue of corporate accountability more generally, including the role of legal advisors in relation to corporate misconduct. The fallout over the *BAT* case was followed in 2003 by handing down of the final report of the Owen Royal Commission into the collapse of *HIH Insurance*.¹⁵

⁹ A useful overview of the concept of corporate social responsibility can be found in D Vogel, *The Market For Virtue: The Potential and Limits of Corporate Social Responsibility* (Brookings Institution, 2005); Corporations and Markets Advisory Committee, *Corporate Social Responsibility: Discussion Paper* (November 2005).

¹⁰ Allan Fels, quoted in Margaret Simons, ‘Justice Inc’, *The Sunday Age* (Melbourne), 4 August 2002, Agenda 1.

¹¹ [2002] VSC 73

¹² *Ibid*, para 384, and see generally C Cameron and J Liberman, “Destruction of Documents Before Proceedings Commence: What is a Court to Do?” (2003) 27 *MULR* 273.

¹³ *British American Tobacco Australia Services Ltd v Cowell (as representing the Estate of Rolah Anne McCabe, deceased)* [2002] VSCA 197.

¹⁴ See, for example, Margaret Simons, ‘Justice Inc’, *The Sunday Age* (Melbourne), 4 August 2002, Agenda 1; F Shiel ‘Push for ethics advisers at law firms’, *The Age*, 6 September 2002.

¹⁵ Justice Neville Owen, *The Failure of HIH Insurance* (April 2003).

Justice Owen found that the collapse of *HIH* had caused significant damage to individuals and the community in general, and was largely caused by ‘problematic aspects of [*HIH*’s] corporate culture’ and the failure of regulators or *HIH*’s professional advisers to correct this culture.¹⁶ In 2004, the revelation that the *James Hardie* corporation had relocated its operations to the Netherlands, leaving behind in Australia insufficient funds to meet anticipated claims for compensation by people suffering asbestos-related diseases caused by *James Hardie* products and activities, led to the NSW Government calling a formal inquiry into these events (the Jackson Inquiry).¹⁷

Apparently in response to claims by *James Hardie*’s CEO that directors’ duties actually restricted the capacity of the company’s directors to make adequate funding arrangements,¹⁸ in March 2005, the Parliamentary Secretary to the Treasurer asked the Corporations and Markets Advisory Committee (CAMAC)¹⁹ to give consideration to the extent to which the *Corporations Act 2001* (Cth) should include explicit obligations to take into account the interests of certain classes of shareholders other than shareholders.²⁰ Also in early 2005, the Parliamentary Joint Committee on Corporations and Financial Services announced an Inquiry into Corporate Social Responsibility, with a report due in June 2006.²¹

It is unlikely that either of these inquiries will lead to significant changes in corporate law in the short term. Moreover, there is a substantial literature which has questioned whether legal systems alone are an effective mechanism for securing greater corporate accountability to the interests of the wider community.²² It is therefore important to consider alternative approaches to achieving higher levels of corporate accountability. Ethics-based approaches are one such alternative. An ethics-based approach to corporate social responsibility has recently been defined by CAMAC as:

‘directors taking various ethical values or standards (going beyond the spirit, as well as the letter, of the law) into account in their corporate decision-making, even if this may not enhance corporate profit or shareholder gain. An example might be an in-principle decision of directors that the company will not engage in certain commercial activities,

¹⁶ Ibid, p xiii (our emphasis).

¹⁷ David Jackson QC, *Report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation* (September 2004)(the Jackson Report).

¹⁸ ‘Hardie calls for Corporate Law Extension’, *The Australian Financial Review*, 17 March 2005, p 3.

¹⁹ CAMAC was established by statute in 1989 and is responsible for providing advice to the Australian Commonwealth Government on issues that arise from time to time in corporations and financial markets law and practice.

²⁰ Corporations and Markets Advisory Committee, *Corporate Social Responsibility: Discussion Paper* (November 2005), p vi.

²¹ The website for this inquiry is:

http://www.aph.gov.au/senate/committee/corporations_ctte/corporate_responsibility/info.htm (last visited on 28 April 2006).

²² See, for example, I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, Clarendon Press, Oxford, 1992; F Haines, *Corporate Regulation: Beyond Punish or Persuade*, OUP, Oxford, 1997; C Parker *The Open Corporation: Effective Self-Regulation and Democracy*, Cambridge University Press, Cambridge, 2002, pp 8-12.

regardless of the opportunities or potential profits, or will not deal with any organization that fails to meet certain environmental or social standards'.²³

The *LLEC – Corporations Law* exercise extends ethics-based approaches to corporate accountability to encompass the role of lawyers advising corporate clients. In doing so, the exercise takes up a challenge suggested by Justice Owen in his summing up of the HIH Royal Commission:²⁴

'Right and wrong are moral concepts, and morality does not exist in a vacuum. I think all those who participate in the direction and management of public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values. They must then apply those tenets in the decision-making process. The education system—particularly at tertiary level—should take seriously the responsibility it has to inculcate in students a sense of ethical method.

In an ideal world the protagonists would begin the process by asking: is this right? That would be the first question, rather than: how far can the prescriptive dictates be stretched? The end of the process must, of course, be in accord with the prescriptive dictates, but it will have been informed by a consideration of whether it is morally right. In corporate decision making, as elsewhere, we should at least aim for an ideal world.'

Encouraging law students to confront and think about the ethics of their role as lawyers in the context of providing advice to corporations will not be a panacea for the problem of corporate misbehaviour. However, it would seem that ignorance of ethics among corporate lawyers certainly plays a role in corporate misconduct. Given that corporate law reform alone is unlikely to achieve significant change in corporate culture, raising student awareness and understanding of the ethical challenges that they will confront in the practice of corporate law is something that corporate law teachers can do to promote corporate accountability into the future.

The Exercise

The objective of the overall project of which *LLEC – Corporations Law* forms a part is to transform two important legal sub-disciplines (Civil Procedure and Corporations Law) by integrating key concepts in legal ethics into the theory and practice of these subject areas. By establishing legal ethics as a vital part of the context of major areas of legal knowledge, the project seeks to address a chronic and major problem with the teaching and learning of legal ethics, legal practice and community understanding of the legal professional – the perception that ethics is extraneous to and separable from success in legal practice.²⁵

This objective was to be supported by the use of technology that would facilitate delivery of problem-driven content in a cost effective way that was conducive to 'deep learning' rather than

²³ Corporations and Markets Advisory Committee, *Corporate Social Responsibility: Discussion Paper* (November 2005), p 25.

²⁴ Justice Neville Owen, *The Failure of HIH Insurance* (April 2003) [from 'The Failure of HIH: A Critical Assessment'].

²⁵ M Castles, 'Challenges to the Academy: Reflections on the Teaching of Legal Ethics in Australia' (2001) *Legal Education Review*, 12, 81-104.

just superficial familiarity. Implicit in what we were doing was to identify the best ways to engage and challenge the students' interest in the exercise and its objectives through both the subject matter and the manner of its presentation. In this regard, we proceeded on the understanding that best practice in online teaching requires a combination of techniques to *capture* student imagination, increase the *depth* of their knowledge, *monitor* their experience and *assess* their learning in a manner that strikes a balance between their other commitments and the time they spend in the online activity.²⁶

The *LLEC – Corporations Law* exercise described here was the first of four to be completed under this program.²⁷ This first *LLEC – Corporations Law* exercise, which has now been offered at both Monash and Melbourne Law Schools, consists of a simulated case study of a corporate venture – a mining company close to insolvency that is polluting the environment and harming its workers' health. Students play the role of junior lawyers at a large law firm who are members of a new 'Ethical Standards Committee' established by the firm.²⁸ Students are asked to respond to and resolve various ethical, procedural and substantive issues arising from advice sought by directors of the fictional corporation relating to directors duties and the general application of corporations law arising in the course of the simulation. The exercise asks students to consider how they might act when asked to advise the company board regarding proposed behaviour – do they confine their advice to the strict letter of the law, or should they too give consideration to ethical values and standards which go beyond the law in its concrete form? The students must confront the larger question of whether as lawyers they are morally responsible for their corporate clients' actions.²⁹

Example from the Exercise

To illustrate, at one stage in the exercise, participating students are informed that a journalist has invited directors of their client company to comment on evidence that environmental harm has resulted from the company's activities, as well as unexplained illness experienced by employees of the company. Students are asked to advise the board of the company concerning a press release which the board wishes to use in order to minimise bad publicity arising from the journalist's story. Students are asked about the ethics of 'spin doctoring', and challenged to consider under what circumstances their responsibilities to a corporate client should be subordinated to public interests such as the protection of public health.

These questions are not posed in isolation. Various textual materials are provided through the online interface. Depth of student knowledge is addressed by provision of online research resources that describe the theory of ethical approaches to legal practice as outlined earlier in this paper, along with academic consideration of relevant issues in journals and texts, relevant

²⁶ DM Laurillard, *Rethinking University Teaching: A framework for effective use of educational technology*, Routledge, London, 1993.

²⁷ A second *LLEC – Corporations Law* exercise is in development. In the second exercise, students work as in-house counsel for a fictional company which has recently taken over another firm with significant tax liabilities. In this exercise, students must confront the both ethical and substantive questions raised as a result of the company's management considering the possibility of corporate restructure to reduce or avoid its tax liability.

²⁸ See F Shiel, 'Push for ethics advisers at law firms', *The Age*, 6 September 2002.

²⁹ R Painter, 'The Moral Interdependence of Corporate Lawyers and Their Clients' (1994) 67 *Southern California Law Review* 507.

provisions from the *Corporations Act 2001* (Cth) and copies of newspaper articles about similar cases. In addition to text-based scenario content, the exercise also provides further information (and interest) through various media, including video (eg, simulated board meeting) and sound (eg, voice message left for student ‘legal advisor’ by director ‘client’). Extensive use is made of simulated documentation related to the exercise scenario, such as copies of board minutes and email communications to members of the ESC sent by more senior lawyers at the students’ law firm. In relation to the example given above, students are presented with a mock newspaper article written by the journalist in question.

Thus, although students are not required to conduct research beyond what is provided by the exercises, students have to think about a number of challenging issues in a scenario which closely simulates practice in this area of the law.

Progression of the Exercise

The exercise lasts six weeks in real time, from becoming active to the submission of the last piece of assessment, and is designed to run between weeks 4 and 9 of the university semester. Another technique used to enhance the ‘realism’ of the project was the staged release of information. We wanted to make sure that the ‘story’ unfolded in a logical and internally consistent manner. This is a key advantage of the online format. The technology ensures that each week students are automatically given access to each stage of the exercise (five in all), without being able to ‘read ahead’, so to speak. A chronology of events is incorporated into the exercise, and an updated version of this document is made available at each stage of the exercise. The following table illustrates the dynamic progression of the exercise:

LLEC – Corporations Law: Table of Exercise Stages

Stage 1 (Week 1 of Exercise)	Exercise published online – initial scenario information and material is made available, along with introductory resources
Stage 2 (Week 2)	Further development of scenario with supporting material and additional resources First Interim Assessment Task set
Stage 3 (Week 3)	Further development of scenario, again with supporting material and additional resources Second Interim Assessment Task set
Stage 4 (Week 4)	Final developments in scenario are presented with supporting material Final Assessment Task set
Stage 5 (Week 6)	Submission of Final Assessment and Student Evaluation

Each student is presented with the same information, although there is some variation in the assessment tasks presented to them. Assessment tasks are set online as part of the development of the exercise scenario.

Monitoring of performance is assisted by a chat forum for students and the teacher and progressive assessment is achieved by a requirement to submit online, two short interim pieces of

work before a final and larger 'advice'. Marking of assessment is conducted online and involves marking and grading of student responses to the assessment tasks set. All exercise activities are, naturally, undertaken out of hours, but the time expenditure is proportionate to the 30% assessment of the exercise component within the whole of the unit.

We have also avoided undue additional time commitment by teachers by allowing students to substitute this exercise for an existing assessment requirement (completion of a conventional written assignment).

Students learn and teach each other through the chat facility and, via the examples before them of similar stories from the media, they do so against the backdrop of what they know to be the difficult reality ahead of them. The unit as a whole becomes more holistic and students' knowledge more integrated.

Students are asked to evaluate the exercise by completing a questionnaire prior to submission of the final assessment. The pedagogical effectiveness of the system is evaluated with a particular emphasis upon analysing the integration and synergy between the legal content and the ethics scenarios. However, questions also address the technological aspects of the exercise.

Student Evaluation

Overall, our experience in administering the exercise has been a positive one. Many students have indicated that the exercise was one of the more enjoyable aspects of studying Corporations Law. The following comment by a student who completed the exercise is illustrative of the benefits of the exercise:

'What I liked most about learning Legal Ethics in Context is the interactional approach to learning i.e. the boardroom video. (It is a shame you could not obtain copyright for the viewing of some films - it certainly would have made the exercise even more interesting. That is it would have balanced out the lengthy reading tasks) I also enjoyed the way the scenario slowly unfolded and indeed I was actually a little sad to see it come to a close....Moreover, the exercise also helped me to appreciate the very serious ethical issues that lawyers are faced with. It was a most rewarding exercise. Thank You. I am only sorry that more students are not given the opportunity to learn 'the law' via this interactive method. N.B...The exercise also allowed me to discover resources I would never have thought to look into before. For example I would never have thought to look at the Royal Commissioner's report on the collapse of HIH, etc. So that while the exercise did not require [*outside*] research on my part, it still managed (albeit indirectly) to improve my research skills. (As you can see there were too many things I liked about the exercise to limit my answer to just one aspect).'

Another student confirms that they appreciated the opportunity to experience the ethical complexity of practicing corporate law: 'I enjoyed the practical application and discussion of issues. It was enjoyable preparing assessment that was not just application of legal principles and [instead] dealing with issues that are not as clear cut'.

Exercise Limitations

Not all feedback has been positive. Some students found it difficult to know what was expected of them in responding to the assessment questions posed. At least one student evaluation response suggested that this was because there was too much material to process given the word limits imposed and so on. It is also likely, however, that some students found it difficult to apply the ethical approaches suggested given the divergence of these approaches from the way that law is normally taught. If this is true, then it reinforces the importance of the exercise in exposing students to the challenging context in which they will apply their legal training if they enter the field of corporate law. Such difficulties can also be addressed in the future by preparing some more detailed assessment criteria for students completing the exercise.

While students have identified minor technical difficulties as a distraction for them in undertaking the exercise, overall the feedback from students concerning the online presentation of the exercise has been positive. Students have identified the use of multimedia, for example video and audio files, as one of the strengths of the exercise. This is important because these techniques are intended to enhance the realism of the exercise to capture student imagination and facilitate deep learning. Unfortunately, the costs associated with producing multimedia effects are high. For this reason, it will not be possible to use such techniques in the second *LLEC-Corporations Law* exercise which is currently in development. Realism will be maintained through document simulation and photographs rather than more dynamic multimedia. This is a limitation of the exercise which must be born in mind by anyone planning similar initiatives.

Conclusion

The ethics of corporate lawyers are moving to the forefront of critical public and scholarly debate, just as their client corporations' overall ethical responsibilities are attracting increasing scrutiny.³⁰ It is suggested that corporations' law teachers may benefit their students' future utility to their employers and to the public interest, if they explore methods of exciting student interest in the integration of ethical decision-making within future employment environments. Student feedback suggests that learning is enhanced when such integration is attempted and, although we cannot yet demonstrate an empirical connection, it seems plausible to us that students who are thus enriched are perhaps more likely to ask harder questions of their future corporate clients or employers, adding considerable value to their role, in the manner of the best corporate counsel.

Corporations law is arguably at the forefront of all legal practice, not just in terms of gross revenue per lawyer, but also in terms of its' critical impact on the sharing of social wealth, a factor which in turn affects the social stability on which secure returns to capital are ultimately dependent. Where corporate law curricula can demonstrate effective means of exposing law students to some of the social obligations of their future employment, those courses are likely to play a role that will assist in the limitation of future corporate failure and directors' disgrace.

³⁰ See for example, Therese Wilson, 'The Pursuit of Profit at All Costs: Corporate Law as a Barrier to Corporate Social Responsibility' (2005) 30(6) *Alt LJ* 278-282; Susan P Koniak, 'Corporate Fraud: See, Lawyers' (2003) 26 *Harvard Journal of Law and Public Policy* 195.