

‘Education is what survives when what has been learned has been forgotten’¹
Abe Herzberg² and Phillip Lipton³

Abstract

This paper⁴ discusses how a corporate law textbook and corporate law website can be integrated as a multi-media learning resource. The package of book and website facilitate a constructivist approach to student learning that encourages students to take the driver’s seat and become active participants in the learning process. The inclusion of the website in the integrated package signals that the subject is not restricted merely to the contents of a textbook and permits students to focus on complex corporate law concepts and critical thinking in areas they self-select.

Introduction

We are co-authors of a widely prescribed Australian company law textbook³ and the Understanding Company Law website.⁴ While the book and website are parts of an integrated multi-media package they are also ‘stand alone’ products that reflect our constructivist approach to teaching and learning. We have designed the package in a way that deepens the learning experience and encourages students to take the driver’s seat and become active participants in learning. The inclusion of the website ensures that students are able to keep pace with the rapid, far reaching Australian corporate law reforms that have taken place since the 1990s. We have organised the website to enable students to delve more deeply into a topic than would be possible in a textbook as well as to tap into the large volume and variety of corporate law related Internet material. The contents of the integrated multi-media package signals that the discipline is not restricted merely to the contents of a textbook and permits students to focus on complex corporate law concepts and critical thinking in areas they self-select.

The rationale for our approach can be expressed in the quotation of B F Skinner. “Education is what survives when what has been learned has been forgotten.” The accumulation of knowledge in the form of legal rules is rarely remembered after the exams. However the process of learning how to learn stays with the student through their professional lives.

This approach stems from a belief that student learning is best achieved when the student determines what they wish to learn. The integration of text and website enables the adoption of a constructivist approach to student learning which enables the individual student to become an active participant in the learning process and derive meaning through specific self-directed learning rather than a directed approach. The website is a one stop shop containing a comprehensive collection of linked internet resources pertaining to corporate law which is cross referenced to the textbook. This package clearly signals that the discipline content is not restricted to the contents of the text and enables students to focus on complex legal concepts and critical thinking in areas of their own choosing rather than the traditional teacher-centered focus on the accumulation of knowledge of legal rules contained in a text.

The Broad Aims of Teaching Corporate Law

As with other subjects within the law degree, Corporate Law as taught in Law Schools has usually emphasised the continuing development of skills in legal methodology. This has generally been achieved by emphasis on the long-established teaching resources of a

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⁴ This paper is an updated version of Herzberg, Lipton & Jones, “Pathways to a Constructivist Approach to Teaching and Learning Corporate Law”, chapter in Gayle Morris & Gloria Latham (eds), *E learning in the University: Some Constructivist Perspectives*; Melbourne: RMIT University Press, 2005

³ Lipton & Herzberg, *Understanding Company Law*, 14th ed, Lawbook Co 2008

⁴ <http://www.lipton-herzberg.com.au>

textbook, legislation and sometimes a casebook to convey the main principles of substantive law. The major assessment is an examination which is usually comprised largely of problem-type questions. To successfully answer these questions, the student is expected to develop the intellectual skills necessary to analyse a legal problem, ascertain the relevant legal issues, apply the relevant law and consider the applicable legal arguments.

This approach and these skills certainly lie at the heart of legal education and justifiably will continue to form the core of the learning experience and intellectual development of law students. The main thrust of this paper is to suggest that this approach could be augmented with the development of other skills and capabilities by the integration into the curriculum of a wider range of resources accessible on the Internet.

Corporate law is also taught within business degrees (particularly those degrees involving accounting majors) where it is the second most studied law subject. The subject is also one of the prerequisites for professional accounting accreditation. Graduates of business degrees do not enter the legal profession nor practice law. Legal studies in this context have the broad aim of raising the awareness of students about the legal environment of business. While there is some benefit in business students being introduced to aspects of legal methodology, the main emphasis is on enabling the student to better understand the legal environment so as to be aware of legal issues in their professional lives and be able to better relate to lawyers in relation to these issues. Further, there are a number of pedagogic opportunities presented by teaching law subjects such as corporate law. These subjects are often the most language-dense subjects studied by business students. In terms of graduate attributes, they allow for development of language, communication and research skills while enhancing the capacity to think in conceptual and abstract terms. This paper strongly suggests that business students undertaking the study of corporate law would benefit greatly in developing these attributes by engaging with Internet resources as an integral part of the curriculum.

The reliance upon textbook and legislation as the dominant resources in teaching and learning corporate law invariably leads to a strong emphasis on teacher-centred learning. The lecturer sets out the parameters of the course with the implicit message that everything in the course materials is important and everything not in the course materials is unimportant. This is reinforced by the fact that excluded matters will not be included in the examination or other assessment. The role of the student is to accept these parameters by engaging in the curriculum within its four walls as directed.

In seeking an alternative teaching strategy, we have tried to introduce elements of a student-centred approach to teaching and learning corporate law. This approach invites students to choose the topic areas or issues about which they want to learn. While the teacher has a central role in prescribing the curriculum, we believe that students should determine some of the learning.. This approach is facilitated by use of Internet resources for the reasons stated below.

Using Internet Resources in the Learning Environment

Internet resources are valuable in support of teaching corporate law. Teaching students how to access these resources promotes the development of an active and self-directed learning approach towards information literacy skills in finding and using legal resources online, critically analysing the law and applying the law in the context of realistic business problems and developing an ability for managing legal issues in the corporate environment. As Kunkel (2000) states, now this information is readily accessible online, business law teachers are able to shift their focus from simple knowledge of legal rules to critical thinking and more sophisticated analysis and application of legal rules in a business context. In this sense, use of the Internet allows promotion of “deeper” research and learning.

The incorporation of Internet resources into the curriculum provides several advantages from a teaching and learning point of view:

- Readily available learning content such as legal data bases, professional and regulatory organisation websites, academic journals and bulletins, legislation and

corporate websites is substantially increased beyond that available in the form of prescribed and recommended references;

- Internet content may often be more dynamic and current than is possible with static hard copy texts or CDROM;
- Students are able to engage in a wider range of learning activities outside the classroom or off-campus and can utilise resources in their own time and at their own pace
- Internet research skills and information literacy skills are developed;
- Learning activities are more stimulating and require techniques which are closer to the leisure activities of many students;
- The Internet can provide an equitable platform for learners;
- Deeper learning experiences and transformation of information into knowledge through investigation, research, reflection, analysis and application;
- An effective collection of resources with guided navigation can make Internet searching quicker and more effective than researching hardcopy resources in a library.

A “Constructivist” Approach

The paper by Wilson and Lowry (2000) “Constructivist Learning on the Web”⁵ explores how adult learners may make use of the vast resources available on the Web and thereby construct meaning through its use. The paper also describes key features of the web as a learning resource, going on to explain that a well organised collection of links is valuable as a highly interactive multimedia site. Significant education benefits arise where commercial usage is combined with academia and users have control over the learning experience. The reader becomes an active participant and determiner of the learning process. This process provides an alternative experience to traditional forms of teaching and learning. Students are encouraged to attempt to make sense of their learning environments and of the information presented to them by constructing frameworks of knowledge and learning as opposed to highly technical multimedia filled interactive learning packages. This in itself is a powerful element in the learning process.

We envisage that the Internet can be used to incorporate instructional design elements that focus on the use of online learning materials and resources which adopt educational technology combined with a constructive learning approach. Theoretically, the essence of constructivism lies in its emphasis on learning as a process of personal understanding and meaning making which is active and interpretive. In this domain, learning is viewed as the construction of meaning rather than as the memorisation of facts (Oliver 2000). The key to successful teaching and learning in law is the provision of support and strategies in critical thinking and analysis applicable in the corporate world.

This incorporates a constructivist learning approach where students are encouraged to construct meaningful knowledge from the information discovered by them. Constructivism focuses on the learner’s ability to build their own conceptualisations and solutions and to apply these in a contemporary professional context.

Understanding Company Law Website

In order to address the learning needs of students and other users, we have developed the Understanding Company website⁶ which aims to make a comprehensive collection of publicly available Internet resources that are relevant to corporate law more accessible by providing a structured and annotated map of these resources. The website is a publicly accessible free portal with links to thousands of corporate law related information on the internet and is up dated on a continuing basis.

⁵ This paper may be accessed at http://ceo.cudenver.edu/~brent_wilson/WebLearning.html

⁶ <http://www.lipton-herzberg.com.au>

The richness of Internet resources paradoxically results in difficulties for students. In a sense, the Internet is a dense jungle with few signposts and guides. Students may often be referred or find their way to a home page or other website content but lack focus in knowing what to look for or how to extract meaningful information and understanding from within a particular site. This dilemma squarely raises the central question in teaching and learning of how students and other learners can be assisted in ascending from information gathering to forming meaningful conceptual frameworks and understanding of particular issues.

This question, which we seek to address, arises from an embarrassment of riches in the subject. There are many websites with valuable information buried within them that is not readily apparent on first viewing or is difficult to find or utilise in a meaningful way.

The site is divided into 8 main parts and contains numerous resources which facilitate research-led teaching and learning. The following are the main sections of the website:

Law reform page (http://www.lipton-herzberg.com.au/law_reform.htm). There are hundreds of links to various government corporate law reform reports and discussion papers. We use them in setting assignment questions for students to research.

For example, in a mid-semester assignment question we asked students to provide their opinions on whether the law needed to be changed to make directors responsible to non-shareholder corporate stakeholders. The starting point for this research was 2 major government law reform reports on the topic both of which were linked to the Law Reform page on the website.

The corporate regulator, The Australian Securities and Investment Commission⁷ (ASIC) page has deep links to various parts of the Australian Securities & Investment Commission's site, including ASIC Annual Reports, Media & Information Releases, ASIC Forms and its National Names Index.

We use these resources to enhance students' learning experience. For example, students can select a proposed company name and look up the National Names Index to find out if it is already used & therefore unavailable for a new company. The Annual Reports & Media Releases enable students to discover current areas of interest for Australia's corporate regulator.

New Developments - This part of the website is itself broken down into 4 broad areas – links to newly released law reform reports and discussion papers; links to new legislative amendments (Bills and their explanatory papers); links to the full text of significant new court decisions; and links to case studies dealing major corporate scandals or collapses including AWB, James Hardie etc. These facilitate a constructivist approach that allows students to research areas of current concern that interest themselves.

Pathways⁸ - This part of the website is a navigational tool that organises available corporate law related Internet resources in a readily accessible way.⁹ It contains topic by topic deep links to legislation and cases, explanatory memoranda, articles, law reform reports, speeches, ASIC and Treasury websites and other resources. Pathways places these resources into the context of topics with cross references to our book and links to study questions designed to encourage self-directed learning and develop skills in using the Internet. Legal education needs to be 'inclusive' and wide ranging with broad scope and the curriculum should provide an opportunity for the learner to discover and investigate.

Schneider (1994) points out that the learning environment should be designed as a "powerful dedicated working environment. It must be rich and complex reflecting the essential properties of what has to be learned." He also considered that the environment must be

⁷ ASIC is the main Australian government corporate law regulator.

⁸ By commercial arrangement with our book publishers access to this area of the website is password protected (username = comein password spinner)

⁹ <http://www.lipton-herzberg.com.au/pathways.html>

structured to avoid unnecessary complexity as this will reduce learning. We have attempted to incorporate these guiding principles into the creation of a multi media package comprising hardcopy text and website.

Suggested Learning Experiences

It is apparent from the resources collected in Pathways that only some topic areas are represented. This clearly indicates that in terms of the total subject, the website and text are complementary. Some topics are best covered by reliance upon the text in the traditional way while others are best served by use of both the text and website. Bearing this in mind, we suggest five types of learning activities which largely involve the use of resources available on the Internet.

- Commercial practice questions
- Internet searching
- Reflective journal
- Law Reform Proposal Research
- Corporate law in the real world

Commercial practice questions

These activities involve the student engaging in a simulation of a process or activity which may arise in professional practice.

Topics such as the role and functions of ASIC, registration procedure and fundraising best lend themselves to a hands on approach by the student using the regulator's (ASIC & the ASX) and other corporate websites. As an example, the following questions contained in *Pathways/registration procedure pathway*¹⁰ require the student to engage in a useful learning experience that simulates professional practice:

1. *Abe and Phillip would like to form a company to be called Vandalay Industries Pty Ltd. Is the name available?*
2. *Assume you wish to form a company.*
 - a. *select an available name for your proposed company*
 - b. *fill in an application for registration*
 - c. *what is the fee for lodging an application for registration with ASIC?*
 - d. *What consents must be obtained before the application for registration is lodged with ASIC?*
 - e. *Do you need to prepare a constitution for your proposed company?*
 - f. *Outline the books, records and registers that your company must establish after it is formed.*
 - g. *Can your company's invoices set out its ABN instead of its ACN?*

These questions may be added to existing tutorial questions and be the subject of later discussion in class or assessment or students may answer the questions in their own time. The information which the student must access to answer these questions comes from using both the textbook and the relevant Pathways links.

Internet searching

The ability to effectively search and find useful commercial information on the Internet is a vital learning objective for students in all disciplines. Data gathering and synthesis improves research skills, methodology, evaluation and reporting and quantification. It also represents an opportunity for authentic enquiry, with the learner acting as if a practitioner, connecting theory to practice and taking responsibility for acquiring knowledge.

¹⁰ <http://www.lipton-herzberg.com.au/pathways-registration-procedure.html>

In the corporate law context, the ASIC website presents a vast array of resources but also presents the difficulties arising from navigating such a vast website. Pathways encourages the development of Internet research skills by posing specific queries and thereby enabling students to focus on particular matters while conducting their searches. It is suggested that navigating a large website while seeking answers is more effective than aimlessly wandering the website especially as encouragement is also given to digress and look at interesting resources which are stumbled upon.

For example in *Pathways/legislative framework pathway*¹¹ we pose the following questions regarding ASIC:

1. *Describe ASIC's role and functions.*
2. *Refer to the most recent ASIC Annual Report:*
 - (i) *List four organisations or professional groups regulated by ASIC. Briefly explain for each, how they are regulated.*
 - (ii) *In what ways has ASIC sought to meet the challenges posed in regulating E-Commerce? (See speeches on this topic by ASIC Commissioners and officers).*
 - (iii) *What are the Corporate Governance structure and practices of ASIC? In your answer consider matters such as how commissioners are appointed, how they carry out their responsibilities, how potential conflicts of interest are dealt with and how the commissioners are monitored.*
 - (iv) *What were the main issues raised by the inquiries into Burns Philp Ltd and Spedley Securities Ltd? What were the main lessons learned?*
 - (v) *What are the main activities of ASIC in relation to enforcement and regulation of small business?*
 - (vi) *List five examples of people successfully prosecuted by ASIC for criminal offences. Include the type of offence and sentence.*
 - (vii) *How many registered companies are there in Australia? (according to the latest Annual Report).*
 - (viii) *How many investigations were commenced by ASIC during the previous year?*
 - (ix) *Give three examples of interventions by ASIC where it believed the law had been breached in relation to the operation of securities and futures markets.*

The answers to these questions can be found by searching the ASIC website which is linked from Pathways.

The objectives met by these questions are to enable:

1. the student to gain experience in searching a complex, multi tiered website containing vast amounts of commercially useful information.
2. enrichment of the learning experience by means of internet surfing in ways which cannot be matched by hard copy resources alone.

Company Law Journal

A possible assessment task is the idea of using a reflective company law journal. The reflective journal requires students to select and discuss a range of current news items and legal issues. The main benefit of this assessment task is that the learning process becomes student-centred. The choice of topic and approach to exploring the topic is determined by each individual student. This approach signals that the parameters of the subject extend far

¹¹ <http://www.lipton-herzberg.com.au/pathways-legislative-framework.html>

beyond the topics which can be covered in the syllabus in the time available, usually one semester. The student is encouraged to find a topic of interest and learn how to learn about it. This is quite a different experience to the teacher-driven approach of setting out the topic areas, covering these in lectures and excluding everything else.

Pathways can enhance this learning experience by providing a wide range of links to journal articles, law reform proposals and discussion papers, the Corporate Law Electronic Bulletin issued by the Centre for Corporate Law and Securities Regulation and other links. The Lipton-Herzberg website also hyperlinks the National Library's collection of newspaper sites.¹²

Law Reform

An example of this approach can be seen in the following assignment task which enables students to choose their own area of interest to learn about from a large number of articles and law reform reports. They are able to choose their own method of investigation or research in terms of how far they depart from their original document by following a trail of related documents:

In this assignment you are required to choose a law reform report or journal article which considers an area of corporate law. Your assignment should answer the following or similar questions in relation to your chosen report or article. These or similar questions should be used as headings in your discussion so as to assist you in structuring your work: What area or areas of corporate law are being considered? Briefly outline the relevant law. What problems associated with this law are identified? What recommendations or suggestions are put forward to change the law? Why are these issues of importance? Do you agree with the recommendations put forward or are there possible problems which could arise from the implementation of these recommendations?

It is recommended that you first go the Lipton-Herzberg website www.lipton-herzberg.com.au or "Law Reform Proposals" on the MUSO site.

There are a large number of Law Reform reports issued by the Corporations and Markets Advisory Committee and other law reform committees. A large number of journal articles can also be accessed through Pathways. Browse these linked documents to find ones of interest that you may wish to investigate further and then choose one for your assignment.

Corporate law in the 'real world'

A proper understanding of corporate law requires more than an understanding of legal principles derived from legislation and cases. It also requires an appreciation of how business practice applies these principles in a 'real world' context.

The 'Top ASX Listed Companies' page on the Lipton-Herzberg website is intended to clothe corporate law principles with a 'real world' context.¹³ This page, which is still under development, provides links to the websites of Australia's largest businesses. While such a collection of sites is available on a number of other websites, we intend to couple the links with student focused activities that aim to highlight how the top ASX companies respond to legislative and other corporate requirements. For example, we intend to pose questions such as the following:

- *One of the recommendations in the ASIC guidance paper, 'Better Disclosure for Investors' was that companies should post price sensitive information on their websites to give investors better access to information. . Visit the*

¹² <http://www.lipton-herzberg.com.au/corp-law-websites-main.html#Newspapers>

¹³ http://www.lipton-herzberg.com.au/top_100_ASX_listed_companies.html

websites of 3 companies which have posted such information and compare how they deal with continuous disclosure issues.

- *ASX Listing Rule 4.10.3 requires the Annual Report of a listed company to set out a statement of its main corporate governance practices. Choose 3 listed company Annual Reports and compare and contrast their corporate governance practices.*
- *Choose a company and go to information regarding its last annual general meeting.*
 - (a) *What information is contained in the notice of meeting?*
 - (b) *What resolutions are proposed?*
 - (c) *When does the proxy form have to be lodged?*

Conclusion

The combination of Pathways and traditional teaching content and activities creates a simple but effective learning framework which incorporates a strategy towards meaningful constructive learning which places the learner at the centre of the process. The website does not seek to replace the traditional text, learning activities and role of the teacher. Rather, it seeks to take advantage of several important advantages which the Internet has over traditional, hardcopy media. It makes a range of resources available to the learner to be used when and where convenient. It allows users to access commercial websites and documents so as to facilitate a practical, commercial perspective of the subject. Beyond the subject itself, such an approach develops electronic research and literacy skills, enabling law subjects to play an important role in fostering the necessary graduate attributes essential for professional development in the 21st century.

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