

care and duty of loyalty, as standard form contract provisions that attempt to deal with the vexing problem of specifying in advance the extent of the agent's duties. Given the obvious difficulties associated with specifically stipulating management's duties, shareholders may seek to employ an incentive-based contract that shifts some of the risk of loss to the agent. However, incentive-based contracts are not problem-free.

Finally, students are introduced to the idea that the parties in a firm may wish to rely on reputational considerations as a means of regulating agent behavior. In the public corporation setting, this is equivalent to the proposition that market forces and, in particular, the markets for corporate control and managerial labour may operate as effective constraints on management misbehavior. One of the central debates in corporate law is the extent to which market forces effectively constrain management misbehavior and the extent to which the law must intervene, and this point in the hypothetical exercise represents a good opportunity to introduce students to this debate.

Business organisations control an immense amount of wealth and power. Understanding how the participants in those organisations interact with each other and with the rest of society enables students to function as more able lawyers, voters and community members long after their knowledge of such minutiae as the Delaware code's approach to written shareholder consents has faded.

Designing learning strategies for competition law — finding a place for context and problem based learning

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Competition Law, the role of which has been rapidly expanding over the past decade, has become a popular subject in most law schools' curricula.

However, unlike Consumer Protection Law or Criminal Law, students come to this subject with little notion of what it entails. Nevertheless, like those other subjects, Competition Law has been the site of significant theoretical and empirical analysis. This paper examines the manner in which two teaching strategies, namely teaching in context and problem based learning, can be used together in teaching Competition Law.

Competition Law is not an easy subject to teach. There are two main barriers that must be addressed in teaching this, and probably a number of other commercially oriented subjects, such as Corporations Law or Taxation Law. The most significant complaint from students, which is expressed in the teaching evaluations, points to the extent to which they are required to know economics and the manner in which such theoretical knowledge can be translated to a real life event. The second main problem encountered, particularly in the early weeks of the semester, is that students find it difficult to engage with the subject matter because it is not relevant to their lives.

In considering the design of any subject attention must firstly be directed to the composition of the student body. Whereas there is a greater degree of uniformity among the postgraduate student population undertaking the Competition Law subjects, this is not so at the undergraduate levels. First there are the business oriented students, who include mature-age students, part-time students and students who have completed their first degrees. Often these students have some knowledge of business and current affairs, having undertaken a number of business subjects in their business degrees.

The second student category is the non-business student, as well as the straight law students. They generally have little or no knowledge of business and are not well versed with the

guiding economic rationale of the current regulatory framework or the terminology of Competition Law, which is presumed by the standard texts and the statute. They usually require greater guidance with these matters. However, they are also much more critical of the economic rationale and are open to a wider range of alternative theories in assessing competition law principles and practice. Engaging the students with this subject matter and allowing their concerns to be voiced within an informed theoretical framework is the challenge posed by these students.

Context has been used in numerous ways and has influenced legal education for well over two decades. The use of context contributes to the development of analytical skills in a student and goes toward achieving the second objective discussed earlier, namely that law teaching should encourage a critical questioning of the values inherent in laws. It allows students to consider how lawyers think. Being able to do so can allow the learner to appreciate the voices or values that are not considered in Competition Law.

There is no doubt that students in this subject need a good grounding in neo-classical economic analysis. However, how much economics is enough to understand the legislation and the case law is a difficult question to answer. Part of the reason why neo-classical economics has had a significant influence is that it appears to be scientific and promises to be value-free. But it is not value free and it does not offer solutions to all problems. It is in getting this message across and assisting students to develop a critical understanding of law and economics that context can be of assistance.

Teaching law using problem based learning can consist of case studies and individually directed learning as distinct from other modes of training, such as small group exercises. It can include giving students a fact situation

(a close approximation to a real life situation), which raises a number of legal issues, and asking the students to advise on these issues.

However, problem based learning is something more than simply asking students to transfer the information from a lecture to a given fact situation. It involves a good deal of attention in designing problems which will allow the student to embark on a process of independent study whereby the student recognises the issues involved, undertakes the necessary research and analysis and applies the law. This will also allow students to assess their own level of learning.

Problem based learning, which is now an integral part of education in many disciplines, has two main benefits. First, it can develop basic knowledge and skills to equip students for legal practice. Second, it enables students to take responsibility for learning and allows them to evaluate their own levels of learning. However, it also has numerous shortcomings. It places emphasis on what is needed, on the ability to gain propositional knowledge as required, and to put it to the most valuable use in a given situation. Problem based learning approaches ideally should not focus on one particular area of law, as this is not realistic. Legal problems in the real world do not always come under subject headings as they do within a law school. This is a problem that goes to the heart of the way we teach law. Perhaps the best way to address it is to make students aware of these limitations in the way we teach.

The most significant shortcoming of relying solely on problem based learning in the teaching of any subject is that it may ignore the contextual nature of law, whereby the issues of history, culture, social organisation, politics and economics and law reform are insufficiently considered. Asking the right question will be important if the learning is going to explore some

of the multi-dimensional issues with a critical perspective.

It is clear that neither problem based learning nor teaching in context alone can accommodate the objectives of legal education. Whereas problem based learning may encourage independent thinking and prepare students for legal practice, it will not allow them to appreciate the values that are built into Competition Law. The introduction of context can allow students to assess critically the values inherent in our legal systems and identify some alternative and creative ways of examining laws. Using these different learning strategies can facilitate a deep approach to learning by linking a complex chain of events to theoretical knowledge.

Teaching evidence, proof and facts: providing a background in factual analysis and case evaluation

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This article describes a model for a class in factual analysis and case evaluation. It is a class about facts, and about evidence; but, insofar as it is a class about evidence, it does not follow the contemporary law school model. This is a class about evidence itself, its science and philosophy, as opposed to the law and rules of evidence. It deals with the questions of what exactly we mean by evidence, proof, probability and other terms of art that we tend to bandy about in an evidence class with little, if any, consideration of their real significance.

What, then, is the study of evidence and proof, and why should it be of concern to law teachers? Ultimately it is simply the study of the treatment of facts, a subject that involves a wonderfully rich mixture of disciplines, is of vital importance to practitioners and judges and yet has often been marginalised or even ignored in our law schools. There are compelling reasons why the law school syllabus

needs a class such as the authors' course, Evidence, Proof and Facts (EPF). Most young lawyers spend a lot more time worrying about the facts of their cases than they do worrying about the law.

The lack of training available to lawyers in the rigorous analysis of masses of interrelated facts is a major weakness of our system of legal education and a major weakness of our profession. A student can go through three years of intense legal education without ever stopping to ponder the meaning of such terms as evidence, proof, probability and causation, and without once having the opportunity to construct an inference network.

The authors' EPF students are required to investigate the philosophical and scientific basis for our use of evidence in judicial trials, as reflected in jurisprudence, logic, rhetoric, psychology, mathematical and non-mathematical approaches to probability theory, and even a hint of metaphysics. Consequently the class demands considerable intellectual rigour and also offers some important practical work. It places evidence and other litigation-related subjects in an appropriate theoretical context.

The class starts out by examining a number of important foundational issues. The first is the question of what evidence is, and what separates the use of evidence by lawyers in a judicial trial from its use by those in other fields, for example scientists, historians and journalists. At this stage the class talks in a very general way about the process of judicial reasoning, the difference between logic and rhetoric, the use of evidence in support or contradiction of factual hypotheses, and the role of generalisations. The second major issue is the distinction between evidence and the law of evidence. This involves consideration of how the law of evidence evolved. The next stage is to develop the process of judicial reasoning in far greater detail.