

## **Enabling law students to understand business concepts: Reflections on developing a business case study for Corporate Law**

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**Abstract:** For many law students the study of Corporate Law presents several challenges. In addition to the mastering the complexities of corporate legislation and case law, Corporate Law subjects provide many students with their first detailed introduction to business terminology and processes. For many students without previous backgrounds or studies in business, understanding such concepts can prove challenging. This article discusses the development of a business case study that was incorporated into the teaching of Corporate Law at the University of Technology Sydney from 2016. Drawing upon the extensive literature on strategies for teaching law to business students, the article explains how the business case study was pitched to progressively develop students' understanding of business concepts covered in Corporate Law. A series of voluntary online surveys were used to evaluate students' perceptions of the usefulness of the business case study in developing their understanding of business terminology and processes, with the overall feedback being highly positive. In light of the findings from this evaluation project, the article concludes by suggesting some strategies for corporate law teachers to consider to help students develop their understanding of business concepts.

### **Introduction**

Corporate Law (also termed Company Law) is one of the compulsory subjects that all Australian law students must successfully complete in order to be eligible for admission to legal practice. To effectively advise clients about the law as it applies to companies, law graduates need to master not only the rules of Corporate Law, but to also have an understanding of business processes and terminology. Examples of business concepts covered in Corporate Law subjects include the roles of key persons within companies, the rationale for selecting particular company types and corporate structures, the financing of companies and the rationale for major corporate transactions. For many law students without previous business experience or education, understanding such concepts can prove challenging.

Whilst numerous studies have reflected upon strategies to address the challenges of teaching law to business students,<sup>2</sup> little (if any) research has been published on measures that may assist law students to develop

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<sup>1</sup> The author thanks Professor Jason Harris, Associate Professor Tracey Booth and the two anonymous referees for their feedback on earlier drafts of this article

<sup>2</sup> Part [2.2] of this article examines the literature on strategies for effectively teaching law to business students

their understanding of business concepts covered in Corporate Law courses. This article discusses the findings from a learning and teaching evaluation project that was undertaken in the teaching of Corporate Law at the University of Technology Sydney (UTS) during 2016.<sup>3</sup> Part 1 discusses the importance of law graduates having a working knowledge of business terminology and processes, and considers the role played by Corporate Law subjects in developing this working knowledge. Part 2 then undertakes a comparison of the objectives of law and business degrees, and analyses the extensive literature on strategies for effectively teaching law to business students. It then explains how the pointers from this literature were drawn upon to develop a Master Case Study on a hypothetical business, which was then incorporated into the Corporate Law teaching programme. Part 3 discusses the findings from a series of voluntary anonymous online surveys to ascertain the challenges that students encountered in understanding business terminology and processes covered in Corporate Law, and their feedback on the usefulness of the case study in helping to develop their understanding of business concepts. Overall the feedback from students was highly positive, and Part 4 concludes by suggesting some strategies that corporate law teachers might consider to assist students in developing their understanding of business processes and terminology.

## **[1] Business concepts in Corporate Law**

### **[1.1] The need for law graduates to understand business concepts**

Completion of a law degree can enable graduates to pursue a wide range of careers, including but not limited to the practice of law. In addition to legal practice many law graduates pursue interesting careers within government, academia, the media, banking and finance and within large corporation – where their legal knowledge, research and problem solving skills are highly sought after.

For those who chose to practise law, an appreciation of the affairs of their clients and the legal risks they may face is essential. As clients commonly seek advice on the law as it applies to companies and businesses, lawyers need to have a sound understanding of business processes and terminology. For instance, when working on commercial transactions (such as the sale or purchase of businesses, takeovers and capital raisings) lawyers also frequently liaise with other professionals – including accountants, investment bankers, auditors and valuers. Litigation and other dispute resolution processes can also involve lawyers interacting with a wide range of business professionals. Furthermore, as lawyers attain senior roles within their firms, they will also be business decision-makers for their firms. Examples of such business decisions include deciding which practice areas to focus on, the costing of legal services, marketing and promotion

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<sup>3</sup> In accordance with the UTS Policy on Teaching and Learning Evaluations, ethics approval was obtained for this project UTS Human Research Ethics Committee Approval number ETH16-1049, 14 March 2016

of the firm, the setting and justification of legal fees, staffing and remuneration decisions, the engagement of service providers, and reviewing the profitability of the firm. In the highly competitive legal services market, a working knowledge of business concepts and financial literacy are important attributes for lawyers to possess.

The importance of lawyers understanding business concepts has been widely recognised by leaders of the legal profession. In 2008 global legal market analyst Jordan Furlong listed financial literacy as one of the six most important skills for lawyers to possess.<sup>4</sup> As Furlong put it: 'Too many lawyers with Arts degrees just shrug and say, 'I was never good with numbers' or 'They never taught me that in law school'. Not good enough: every client and every case involves money in some way, and every lawyer in private practice is running a business of one size or another. Financial literacy is essential'.<sup>5</sup> In 2012 the President of the Law Institute of Victoria noted the interpretation of financial information as being a significant aspect of practice in family, criminal and commercial law.<sup>6</sup> More recently the President of the Law Society of New South Wales commented that 'Prospective employers want their lawyers to have some business skills. They want graduates to be able to understand how their business runs, what are the drivers of that business, and they also want them to be able to understand the drivers of their clients' business or needs'.<sup>7</sup> Along similar lines the President of the Law Society of Western Australia recently urged law graduates to develop additional skills, particularly in finance and project management.<sup>8</sup>

In addition to private legal practice, the number of lawyers working in in-house legal roles has grown significantly in recent years. The growth of in-house legal practice has been driven by the need for companies and other organisations to have readily-available and cost-effective legal advice, provided by lawyers with a high degree of familiarity with their businesses.<sup>9</sup> In comparison to the specialised focus of

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<sup>4</sup> Jordan Furlong 'Core competence: 6 new skills now required of lawyers' Online blog, 4 July 2008 <https://www.law21.ca/2008/07/core-competence-6-new-skills-now-required-of-lawyers/> The other 'core skills' that Furlong noted were collaboration skills, emotional intelligence, project management, technological affinity and time management

<sup>5</sup> Jordan Furlong 'Core competence: 6 new skills now required of lawyers' Online blog, 4 July 2008 <https://www.law21.ca/2008/07/core-competence-6-new-skills-now-required-of-lawyers/>

<sup>6</sup> Michael Holcroft 'What are the benefits of being a financially savvy lawyer?' Law Institute of Victoria – 2012 Presidents Blog <https://www.liv.asn.au/LIVPresBlog2012/November-2012/What-are-the-benefits-of-being-a-financially-savvy>

<sup>7</sup> Melissa Coad 'Skills law students need to brace for the future' *Lawyers Weekly* 6 January 2017 <https://www.lawyersweekly.com.au/corporate-counsel/20312-skills-law-students-need-to-brace-for-the-future>

<sup>8</sup> Melissa Coad 'Future lawyers encouraged to build expertise outside of law' *Lawyers Weekly* 12 December 2017 <https://www.lawyersweekly.com.au/biglaw/22412-future-lawyers-encouraged-to-build-expertise-outside-of-law>

<sup>9</sup> See for example *Australia: State of the Legal Market 2017* (Melbourne Law School and Thomson Reuters, 2017) - <http://insight.thomsonreuters.com.au/resources/resource/state-of-the-australian-legal-market-2017>, 6; *The Future of Legal Services: January 2016* (Law Society of England and Wales, 2016), 26 <http://www.lawsociety.org.uk/support-services/research-trends/the-future-of-legal-services/>; See also Sophie Schroder 'The rise of in-house counsel: What

private practice lawyers, the advice of in-house lawyers may be sought on a wide range of legal issues impacting on the organisation. Many in-house lawyers also take on additional responsibilities including company secretarial roles. For these reasons a sound understanding of business terminology and processes is essential in such roles.

The question then arises as to how law graduates might develop financial literacy and business awareness in order to be effective in legal practice. Some commentators have argued that universities should introduce business skills education as part of law degrees.<sup>10</sup> Others have taken the view that business skills can also be developed at a later stage in Practical Legal Training (PLT) courses, through on the job experience in legal practice, and through Continuing Legal Education (CLE) programmes.<sup>11</sup> For example in 2015 one of Australia's leading PLT providers the College of Law developed a suite of 'Legal Business Skills' modules covering topics such as time and workload management, developing a commercial mindset and understanding financial information.<sup>12</sup>

In spite of these initiatives, it appears the development of business skills training for lawyers will remain a topic of interest in the near future. For example, the New South Wales Law Society's 2017 Future of Law and Innovation in the Profession Commission of Inquiry Report observed that the development of accounting, finance and business skills for lawyers continued to be regarded as outside the ambit of mainstream legal education in Australia. The report noted that 'at the university level this seems to follow from the ubiquity of business degrees being available as part of a double degree or prior to undertaking law, *if of interest to the student*'.<sup>13</sup> (emphasis added). Nevertheless, in noting business skills to be essential for all areas of legal practice, the report recommended the NSW Law Society should develop guidance for lawyers to operate as entrepreneurs and businesses.<sup>14</sup>

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does it mean for law firms?' *Australasian Lawyer*, 14 July 2014 <http://www.australasianlawyer.com.au/news/the-rise-of-inhouse-counsel-what-does-this-mean-for-law-firms-189682.aspx>

<sup>10</sup> Jordan Furlong 'Core competence: 6 new skills now required of lawyers' Online blog, 4 July 2008 <https://www.law21.ca/2008/07/core-competence-6-new-skills-now-required-of-lawyers/>

<sup>11</sup> Melissa Coade 'Skills law students need to brace for the future' *Lawyers Weekly* 6 January 2017 [https://www.lawyersweekly.com.au/corporate-counsel/20312-skills-law-students-need-to-brace-for-the-future -](https://www.lawyersweekly.com.au/corporate-counsel/20312-skills-law-students-need-to-brace-for-the-future-)

<sup>12</sup> Lara Bullock 'PLT to increase business skills focus' *Lawyers Weekly* (23 May 2016) <https://www.lawyersweekly.com.au/news/18610-plt-to-increase-business-skills-focus>

<sup>13</sup> Gary Ulman *Future of Law and Innovation in the Profession: Commission of Inquiry Report* (Law Society of New South Wales, 2017), 78 <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1272952.pdf>

<sup>14</sup> Gary Ulman *Future of Law and Innovation in the Profession: Commission of Inquiry Report* (Law Society of New South Wales, 2017) <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1272952.pdf>

Whilst law graduates will undertake further education and skills training throughout their careers, Corporate Law subjects play an important role in providing the foundational knowledge on how the law applies to companies. As discussed below, for many law students without previous business backgrounds Corporate Law modules may provide them with their first detailed interaction with the language of business.

## **[1.2] The context of Corporate Law teaching at UTS**

At UTS Corporate Law is ordinarily completed as one of the last compulsory subjects in undergraduate LLB courses before students proceed to complete elective subjects.<sup>15</sup> It is one of the “Priestley 11” compulsory subjects that law graduates must complete in order to be eligible for admission to legal practice in Australia.<sup>16</sup> The subject provides students with a comprehensive overview of Australian law as it applies to the formation, running and winding up of companies, and aims to develop an appreciation of the roles, rights and responsibilities of key internal and external stakeholders including members, creditors, directors, officers, managers and employees. The following topics are covered over a 12 week programme:

- Contextual, ethical and theoretical issues
- Partnerships and other business structures
- Corporate personality and veil piercing
- Corporate authority and criminal liability
- Directors and officers – definitions, appointment, removal and remuneration
- Members’ and Directors’ Meetings
- Corporate fundraising
- Directors duties 1 – Duty of care, skill and diligence, liability for insolvent trading
- Directors duties 2 – Good faith and proper purpose
- Conflicts of interest
- Shareholder remedies

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<sup>15</sup> UTS Subject description – 70417 Corporate Law - <http://www.handbook.uts.edu.au/courses/c10124.html>

<sup>16</sup> In 1993 the Council of Chief Justices and the Law Council of Australia endorsed the recommendations of the Law Admissions Consultative Committee chaired by Justice Lancelot John Priestley, which recommended that the academic and practical training of Australian legal practitioners should include compulsory study in 11 legal subjects: Law Council of Australia: Law Admissions Consultative Committee – Historical documents <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee/historical-documents>  
In addition to Company Law, these subjects are Criminal Law and Procedure, Torts, Contracts, Property, Equity, Administrative Law, Federal and State Constitutional Law, Civil Dispute Resolution, Evidence and Ethics and Professional Responsibility, and are set out in Schedule 1 of the *Legal Profession Uniform Admission Rules 2015* (NSW): [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol\\_reg/lpuar2015411/sch1.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_reg/lpuar2015411/sch1.html)

Whilst Corporate Law focuses on developing legal knowledge and problem solving skills, the subject also considers the ethical and commercial considerations in the conduct of companies' operations. This is shown in three of the six subject learning objectives (SLOs), which state that upon successful completion of Corporate Law, students should be able to (inter alia): 'clearly articulate and critically evaluate the ethical issues that may arise from a company's actions and their interaction with commercial issues, and identify solutions to manage these issues (SLO 3); 'assess their own understanding of the perspectives of relevant stakeholders that may be impacted by a company's decision-making' (SLO 4); and 'articulate the legal, commercial, political and economic factors that drive changes in Australian corporate law, and reflect upon how these factors may impact upon Australian corporate law in the future' (SLO 6).

As explained in further detail in [1.4] below, one of the primary student learning activities in Corporate Law is through weekly seminars, where students practise their legal problem solving skills after having reviewed the weekly readings and listened to weekly lectures. The subject incorporates four assessment tasks, which are discussed below in order of their due dates as semester progresses.

The first assessment task is an ethical reflection exercise worth 15 marks which is due at the end of the third week. Students are presented with a scenario in which a company secretary or general counsel of a major company faces an ethical dilemma. One example from a recent semester was the discovery by a company secretary that the company (an importer of coffee beans) had been secretly importing coffee beans at low costs from a dictatorship where forced labour was used. Students were required to put themselves in the position of the company secretary (who was preparing for the company's board to meet with a major institutional investor) and discuss how the competing ethical and commercial factors might be addressed in determining the appropriate course of action. The objectives of this exercise include developing students' appreciation of the roles of key personnel within companies and their external stakeholders, and the ethical and commercial considerations that may impact upon corporate decision-making processes. While this assessment task aims to assist students in becoming familiar with the roles of key actors in companies, and provide students with an opportunity to receive "low stakes" feedback relatively early in the semester, as noted below a number of students have reported challenges in understanding the corporate terminology, roles and processes.

Secondly, in the middle of the semester students are required to complete a legal advice assignment worth 25 marks over the course of around four days. Thirdly, students are graded out of 10 on their contribution to class discussions during the weekly seminars, which is finalised at the end of the 12 week seminar programme. The final assessment task is a three hour open-book exam worth 50 marks. The exam includes

one compulsory problem solving question and then a choice of either a second problem solving question or a doctrinal question involving corporate law theories.

After the successful completion of Corporate Law, there are a range of elective subjects available to students depending on their interests and degree combinations.<sup>17</sup> For those that intend to enter legal practice, a further requirement is the completion of an approved PLT programme.<sup>18</sup> The coursework subjects for these PLT programmes include topics on advising and acting for clients in the sale and purchase of properties and businesses, including the evaluation of relevant business structures, and relevant revenue implications.<sup>19</sup>

Since 2017 students completing the graduate entry Juris Doctor (JD) course have been required to undertake the subject 70107 Principles of Company Law instead of 70417 Corporate Law. The Principles of Company Law subject was developed in late 2016 as part of a re-accreditation of the JD programme. This re-accreditation process required a number of subjects in the JD programme to be differentiated in their level of assessment to reflect the postgraduate level of the JD degree – which equates to Level 9 (Masters Degree) of the Australian Qualifications Framework (AQF).<sup>20</sup> To this end, Principles of Company Law requires students to complete a 3,000 word research essay worth 35 per cent of the subject grade<sup>21</sup> in contrast to the assessment tasks in the Corporate Law subject (outlined above), which are assessed at Level 7 (Bachelor Degree) of the AQF.

Nevertheless, during 2016 (which was the main evaluation period examined in this article) Corporate Law was open to both undergraduate LLB students (who were in the process of undertaking a diverse range of degree combinations) and graduate-entry JD students (who had a diverse range of previous academic and

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<sup>17</sup> See for example C10124v8 Bachelor of Laws course description - <http://www.handbook.uts.edu.au/courses/c10124.html>

<sup>18</sup> See for example NSW Legal Profession Admission Board 'Accredited law courses and PLT providers' <http://www.lpab.justice.nsw.gov.au/Pages/admission-lawyer/accredited-law-courses-plt-providers.aspx>

<sup>19</sup> See for example College of Law 'Corporate and Commercial Practice' <https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/coursework/commercial-and-corporate-practice>; and UTS Graduate Certificate in Professional Legal Practice – 75422 Transactional Practice: <http://handbook.uts.edu.au/subjects/details/75422.html>

<sup>20</sup> Australian Qualifications Framework (Australian Government, 2<sup>nd</sup> Edition, 2013) – [www.aqf.edu.au](http://www.aqf.edu.au). Level 9 (Master's Degree) of the AQF equates to Level 7 of the United Kingdom Framework for Higher Education Qualifications (FHEQ) and Level 7 the European Qualifications Framework (EQF). See *Comparative Analysis of the Australian Qualifications Framework and the European Qualifications Framework for Lifelong Learning: Joint Technical Report* (Australian Government, 2016), accessible at: [https://internationaleducation.gov.au/News/Latest-News/Documents/ED16-0165%20-%20693040%20-%20Joint%20Technical%20Report\\_ACC.pdf](https://internationaleducation.gov.au/News/Latest-News/Documents/ED16-0165%20-%20693040%20-%20Joint%20Technical%20Report_ACC.pdf)

<sup>21</sup> UTS: Subject description: 70107 Principles of Company Law <http://handbook.uts.edu.au/subjects/details/70107.html>

professional backgrounds). The next section discusses a common perception among students that those without previous academic or professional backgrounds in business may be at a disadvantage in studying Corporate Law. It then analyses the overall subject results across four semesters to investigate whether perception had a valid basis.

### **[1.3] Does a business background provide an advantage in studying Corporate Law?**

As noted in [1.1], a working knowledge of business concepts has been recognised as an important attribute in contemporary legal practice. Whilst there a range of ways in which this working knowledge might be developed, leading Australian corporate law academic Professor Michael Adams has suggested that a business degree is essential for graduates aspiring to practice in the field of corporate law.<sup>22</sup> But does a business background necessarily provide an advantage in studying Corporate Law? Previous student feedback reveals a perception amongst students that those from business backgrounds have an advantage in Corporate Law in comparison to their peers from non-business backgrounds.

For example, in a Student Feedback Survey from the Spring semester of 2014, one student commented that ‘Some concepts have been difficult eg. large corporate structures and this is done very fast in the tutorial. Is ok for business students but for people like myself who have never done any business subjects - find it a bit more difficult and needs more explaining. Otherwise, very good and it is obvious the lecturers and tutorial leaders enjoy what they teach’.<sup>23</sup> Similar comments were made by another student in the following Autumn semester of 2015, who remarked that: ‘I find that there is a heavy focus in this subject on 'general knowledge' of business and economics, particularly with the ethics reflection exercise. The concepts in this topic are highly specific and unless you come from a business background I fail to see how this sort of information is 'general knowledge'. On this note, I find it highly unfair that some students who do come from a business background have an advantage as for them these concepts are general knowledge’.<sup>24</sup>

Additionally, over several years of teaching Corporate Law, a number of other students have casually remarked over the years that students with business backgrounds have appeared more confident in contributing to class discussions during tutorials than their peers from non-business backgrounds.

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<sup>22</sup> Stefanie Garber ‘Business degree ‘essential’ for corporate lawyers’ Lawyers Weekly (6 July 2015) <http://www.lawyersweekly.com.au/careers/16774-business-degree-essential-for-corporate-lawyers>

<sup>23</sup> Student Feedback Survey response, 70147 Corporate Law, Spring semester 2014

<sup>24</sup> Student Feedback Survey response, 70147 Corporate Law, Autumn semester 2015



To investigate the whether a business background provides an advantage in studying Corporate Law, the overall results for the subject across the four semesters of 2014 and 2015 were analysed. Table 1 shows the breakdown of grades for each semester, and Table 2 shows the breakdown of grades within the five largest degree combinations of students enrolled in the subject each semester

**Table 1: Overall grade distribution for 70417 Corporate Law: 2014 and 2015**

	<b>Autumn 2014</b>	<b>Spring 2014</b>	<b>Autumn 2015</b>	<b>Spring 2015</b>
Total enrolments	184	150	144	98
High Distinction (> 85%)	0	4 (3%)	5 (3%)	3 (3%)
Distinction (75% - 84%)	23 (13%)	23 (15%)	14 (10%)	19 (19%)
Credit (65% - 74%)	93 (51%)	57 (38%)	51 (35%)	33 (34%)
Pass (50% - 64%)	57 (31%)	53 (35%)	63 (44%)	38 (39%)
Fail (< 50%)	11 (6%)	13 (9%)	11 (8%)	5 (5%)

**Table 2: Breakdown of 70417 Corporate Law grades by five largest course combinations: 2014 – 2015**

	<b>Autumn 2014</b>	<b>Spring 2014</b>	<b>Autumn 2015</b>	<b>Spring 2015</b>
<b>C04236 - JD - Enrolments</b>	<b>76 (41%)<sup>25</sup></b>	<b>55 (37%)</b>	<b>51 (35%)</b>	<b>32 (33%)</b>
High Distinction	0	1 (25%)	1 (20%)	0
Distinction	7 (30%) <sup>26</sup>	5 (22%)	4 (29%)	7 (37%)
Credit	34 (37%)	16 (28%)	21 (41%)	14 (42%)
Pass	29 (51%)	25 (47%)	19 (30%)	9 (24%)
Fail	6 (55%)	8 (62%)	6 (55%)	2 (40%)
<b>C10125 - BBus/LLB - Enrolments</b>	<b>28 (15%)</b>	<b>36 (24%)</b>	<b>27 (19%)</b>	<b>16 (16%)</b>
High Distinction	0	1 (25%)	2 (40%)	0
Distinction	5 (22%)	8 (35%)	2 (14%)	2 (11%)
Credit	14 (14%)	18 (32%)	10 (20%)	5 (15%)
Pass	7 (12%)	8 (15%)	13 (21%)	9 (24%)
Fail	2 (18%)	1 (8%)	0	0
<b>C10124 - LLB - Enrolments</b>	<b>20 (11%)</b>	<b>22 (15%)</b>	<b>14 (10%)</b>	<b>10 (10%)</b>
High Distinction	0	0	0	2 (67%)
Distinction	2 (9%)	4 (17%)	2 (14%)	1 (5%)
Credit	12 (13%)	8 (14%)	2 (4%)	3 (9%)

<sup>25</sup> The figure of 41 per cent is the percentage of JD students enrolled in the subject – ie (76/184) x 100

<sup>26</sup> The figure of 30 per cent is the percentage of JD students that achieved a Distinction in the semester – ie (7/23) x 100

	<b>Autumn 2014</b>	<b>Spring 2014</b>	<b>Autumn 2015</b>	<b>Spring 2015</b>
Pass	5 (9%)	10 (19%)	7 (11%)	3 (8%)
Fail	1 (9%)	0	3 (27%)	1 (20%)
<b>C10260 - BA Communication (Social Inquiry)/LLB - Enrolments</b>	<b>14 (8%)</b>	<b>7 (5%)</b>	<b>10 (7%)</b>	<b>8 (8%)</b>
High Distinction	0	1 (25%)	0	0
Distinction	3 (13%)	0	2 (14%)	3 (16%)
Credit	8 (9%)	5 (9%)	3 (6%)	3 (9%)
Pass	3 (5%)	0	5 (8%)	2 (5%)
Fail	0	1 (8%)	0	0
<b>C10258 - BA Communications (Journalism)/LLB - Enrolments</b>	<b>12 (7%)</b>	<b>6 (4%)</b>	<b>8 (6%)</b>	<b>5 (5%)</b>
High Distinction	0	0	0	0
Distinction	2 (9%)	1 (4%)	2 (14%)	0
Credit	7 (8%)	1 (2%)	3 (6%)	2 (6%)
Pass	3 (5%)	4 (8%)	4 (6%)	3 (8%)
Fail	0	0	0	0

The grade statistics in Table 2 show considerable variation amongst and between the degree cohorts over the four semesters. Overall the statistics did not indicate that students undertaking combined business and law degrees performed better than those enrolled in other courses. Several factors may account for the variation in the results. These include the possibility that students from Arts backgrounds may have well-developed written communication skills (which could help them to perform well in written assessment tasks). Another possibility is that the previous studies and/or life experiences of students (particularly of the JD students) might also assist them in achieving good results in Corporate Law.

Nevertheless, the feedback from students prompted me to reflect on resources and teaching strategies to improve students' confidence with, and understanding of, the business processes and terminology that they encounter in studying Corporate Law.

#### **[1.4] 2016 changes to the delivery of Corporate Law**

The need for additional learning resources and activities to assist students in developing their understanding of the business concepts in Corporate Law was given additional impetus as the 2016 academic year approached. As part of the UTS-wide Learning.Futures initiative introduced in 2015, there has been a

university-wide change shift from lectures as the primary mode of information delivery (in many cases followed by activities such as tutorials) towards online learning through media such as podcasts followed by active and collaborative learning experiences.<sup>27</sup>

In line with the UTS Learning.Futures strategy, in late 2015 the Corporate Law teaching team reviewed the delivery of the subject in preparation for the 2016 academic year. For many years Corporate Law had been delivered via two hour lectures followed by two hour tutorials. However as the lectures were mostly recorded and then made available to students via the UTS Online Blackboard online learning management system,<sup>28</sup> student attendances at lectures had steadily declined. Many students who did not attend lectures due to work and other commitments had instead listened to the recordings of the lectures.

From 2016 Corporate Law has been delivered by a series of two to three pre-recorded podcasts per week, followed by three hour seminars each week. The three hour seminars involve similar learning activities to those in the previous two hour tutorials, with the addition of extra interactive activities. These included role-plays (where different students adopted the characters of hypothetical persons in legal problem solving exercises) and small group activities (for example, completing the documentation to set up a hypothetical company).

The combination of the extra hour of class time in the weekly seminars and the increased focus on maximising class time through active (rather than passive) learning provided an opportunity to develop an additional resource to assist students in developing their understanding of the business processes and terminology covered in the weekly seminars. In developing this teaching resource to enable Corporate Law students to become more familiar with business concepts, the extensive literature on teaching law to business students provided several valuable pointers, which are discussed in the following section.

## **[2] Developing a resource to assist Corporate Law students to develop their understanding of business concepts**

This section analyses the literature on strategies for effectively teaching law to business students. After comparing the objectives of law and business courses, it examines some of the innovative approaches that

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<sup>27</sup> UTS 'Learning.Futures – New approaches' <https://www.uts.edu.au/research-and-teaching/learning-and-teaching/learningfutures/new-approaches> ; See also UTS 'Learning.Futures – What is it exactly' [https://www.uts.edu.au/sites/default/files/article/downloads/What-is-learning-futures\\_0.pdf](https://www.uts.edu.au/sites/default/files/article/downloads/What-is-learning-futures_0.pdf)

<sup>28</sup> UTS, UTS Online <https://online.uts.edu.au/>

have been implemented to ensure such courses equip business students with a working knowledge of the law which they will be able to utilise as future business professionals. I drew upon the key pointers from these studies in formulating resources to assist law students to develop their understanding of the business processes and terminology covered in Corporate Law.

## **[2.1] High-level comparison of Law and Business courses**

Law and Business are two different academic disciplines. An academic ‘discipline’ has been described as ‘an area of structural, socially patterned activity or practice, organised around a body of internal protocols and assumptions, characteristic behaviours and self-sustaining values’.<sup>29</sup> The differences in the foci of these two disciplines can be seen from a high-level comparison of the objectives of law and business degrees.

As an example, Table 3 below compares the of Course Intended Learning Outcomes of the stand-alone (ie non-combined) Bachelor of Business and Bachelor of Laws degrees at UTS. Whilst both degrees aim to develop similar graduate attributes such as critical analysis, communication and research skills, there are several key differences between the degrees, which are italicised in Table 3 below.

For example, the Bachelor of Business aims to develop graduates with the ability to ‘locate and critically evaluate relevant data and literature to address business problems’ (CILO 2.1), and to ‘apply technical and professional skills necessary to operate effectively in business and related professions’ (CILO 5.1). Depending on their choice of majors,<sup>30</sup> completion of this degree may enable graduates to pursue a range of professional practice opportunities. The Bachelor of Business course description on the UTS website notes possible career options for graduates as accountants, auditors, bankers, business advisers, business analysts, business consultants, economists, entrepreneurs, financial analysts, financial planners, human resource managers, project managers, marketing specialists, stockbrokers.<sup>31</sup> With the coverage of statistics and finance in this degree, the Bachelor of Business course description specifies mathematics and two units

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<sup>29</sup> Richard Terdiman ‘The Force of Law: Towards a Sociology of the Juridical Field by Pierre Bourdieu’ (1986 – 1987) 38 *Hastings Law Journal*, 805 – 806. Cited in Vida Allen ‘A Critical Reflection on the Methodology of Teaching Law to Non-law Students’ [2007] 4 *Web Journal of Current Legal Issues*: <http://www.bailii.org/uk/other/journals/WebJCLI/2007/issue4/allen4.html>

<sup>30</sup> At UTS there are eight different majors that may be completed in business degrees, including Accounting, Economics, Finance, Human Resource Management, International Business, Management, Marketing and Marketing Communications: UTS Handbook 2018 – Undergraduate course information: Business <http://www.handbook.uts.edu.au/bus/area/ug.html#majors>

<sup>31</sup> C10026v4 Bachelor of Business course description - <http://handbook.uts.edu.au/courses/c10026.html>

of English as assumed knowledge.<sup>32</sup>

By contrast the Bachelor of Laws degree aims to develop graduates with the ‘... ability to identify and articulate legal issues, apply reasoning and research, engage in critical analysis and make reasoned choices (CILO 3.0); and to ensure they have ‘Well-developed cognitive and practical skills necessary to identify, research, evaluate and synthesise relevant factual, legal and policy issues (CILO 4.0).

The course description on the UTS website notes possible professional practice opportunities for graduates of the Bachelor of Laws as including work as a ‘lawyer or legal policy adviser within a government or corporate department, private law firm or community law centre, or negotiating treaties or work in legislation drafting with the Attorney-General's Department’.<sup>33</sup> Given the primacy of written and oral communication skills in law, proficiency in English is stated as assumed knowledge in this degree.<sup>34</sup>

**Table 3: Comparison of UTS Business and Law Course Intended Learning Outcomes**

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<sup>32</sup> C10026v4 Bachelor of Business course description - <http://handbook.uts.edu.au/courses/c10026.html>

<sup>33</sup> C10124v8 Bachelor of Laws course description - <http://www.handbook.uts.edu.au/courses/c10124.html>

<sup>34</sup> C10124v8 Bachelor of Laws course description - <http://www.handbook.uts.edu.au/courses/c10124.html>

C10026v4 Bachelor of Business <sup>35</sup>	C10124v8 Bachelor of Laws <sup>36</sup>
<p>1.1: Critically analyse relevant concepts to understand practice in business and related professions in a global workplace</p> <p>1.2: Demonstrate inter-relationships between differing business and related disciplines</p> <p>2.1: <u>Locate and critically evaluate relevant data and literature to address business problems through a research approach</u></p> <p>2.2: Apply critical and creative thinking to address issues in business</p> <p>3.1: Convey information clearly and fluently in high quality written form appropriate for their audience</p> <p>3.2: Use oral communication appropriately to convey information clearly and fluently</p> <p>3.3: Demonstrate and critically reflect on how individuals work in teams in an inclusive manner</p> <p>4.1: Critically analyse business decisions in terms of ethical practice and social responsibility</p> <p>4.2: Critically analyse sustainability principles for various stakeholders in relation to business contexts</p> <p>5.1: <u>Apply technical and professional skills necessary to operate effectively in business and related professions</u></p>	<p>1.0: A coherent understanding of fundamental areas of legal knowledge including the Australian legal system, social justice, cultural and international contexts and the principles and values of ethical practice.</p> <p>2.0: A capacity to value and promote honesty, integrity, accountability, public service and ethical standards including an understanding of approaches to ethical decision making, the rules of professional responsibility and, an ability to reflect upon and respond to ethical challenges in practice.</p> <p>3.0: A capacity to think critically, strategically and creatively including an <u>ability to identify and articulate legal issues, apply reasoning and research, engage in critical analysis and make reasoned choices.</u></p> <p>4.0: Well-developed cognitive and practical skills necessary to <u>identify, research, evaluate and synthesise relevant factual, legal and policy issues.</u></p> <p>5.0: Effective and appropriate communication skills including highly effective use of the English language, an ability to inform, analyse, report and persuade using an appropriate medium and message and an ability to respond appropriately.</p> <p>6.0: The ability to implement appropriate self-management and lifelong learning strategies including initiating self-directed work and learning, judgment and responsibility, self assessment of skills, personal wellbeing and appropriate use of feedback and, a capacity to adapt to and embrace change.</p>

<sup>35</sup> C10026v4 Bachelor of Business course description - <http://handbook.uts.edu.au/courses/c10026.html>

<sup>36</sup> C10124v8 Bachelor of Laws course description - <http://www.handbook.uts.edu.au/courses/c10124.html>

In generalised summary (that is, disregarding the possibility of degree combinations – and further study or training that graduates might complete after their degrees), business graduates are being prepared for roles in business and/or in the business professions such as those noted above, and law graduates are being prepared for future roles in legal, policy and related roles. It is also worth noting that there have been several cases where lawyers have been held liable for exceeding the scope of their specialisation through providing financial advice outside the scope of their competence.<sup>37</sup> For this reason PLT courses emphasise to prospective lawyers the importance of carefully setting out (and not exceeding) the scope of their professional skills under their retainer or terms of engagement; and where necessary advising their clients to seek specialist advice from other professionals (such as tax accountants and financial advisers) where required.

However whilst their specialisation is in the provision of legal advice, as [1.1] of this article noted, lawyers still need to have a working knowledge of the practices of these other professions. The extensive literature on teaching law to business students provided several pointers on strategies for developing such a working knowledge of the practices of professionals in other disciplines.

## **[2.2] Key points from the literature on teaching law to business students**

Over the years several studies have reflected upon the appropriate ways to pitch law courses to business students in a manner that is engaging and meaningful to educate them about the legal issues they may encounter in their future roles in business.

### **Differences in the objectives of law and business degrees**

In the design of law for business courses, several teachers have noted the differences in the objectives of law and business degrees. For instance Cartan and Vilkinas pointed out that in comparison to law graduates, business graduates will not be the ones preparing legal advices; more realistically, they will be the ones seeking legal advice.<sup>38</sup> Batty developed upon Cartan and Vilkinas's observation, explaining that 'Business

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<sup>37</sup> For examples of some of these cases, see Gino Dal Pont *Lawyers Professional Responsibility* 6<sup>th</sup> Edition (Thomson Reuters, 2017), 169 – 175

<sup>38</sup> Greg Cartan and Tricia Vilkinas 'Legal literacy for managers: The role of the educator' (1990) 24(3) *The Law Teacher*, 245. Similar points about the different futures of business graduates in comparison to those law graduates have been emphasised in the literature – see for example John Collins 'Learning to make business decisions in the shadow of the law' (1999) 17(1-2) *Journal of Legal Studies Education*, 117; and Lisa Skwarok 'Business law for non-lawyers: setting the stage for teaching, learning and assessment at Hong Kong Polytechnic University,' (1995) 29(2) *Law Teacher*, 191

students are not aiming to be lawyers. They will not draft legal opinions or statements of claim. They do not intend to give legal advice to clients. Instead, business students will become managers, company executives, accountants, analysts, consultants or entrepreneurs. Accordingly, business students will need to learn about the law to assist them in their day-to-day decision-making in their future roles. They do not need, as Cartan and Vilkinas<sup>39</sup> put it, ‘volumes of lawyers law’.<sup>40</sup> Allison made similar points in a 1991 review of business law teaching programmes in the United States, reasoning that such courses ‘... are, and should be, quite different than courses taught in law schools. They are “business school courses about law”. Their goal is to give students a *working knowledge* (emphasis added) of the structure of both the law generally and the particular legal area under consideration. They should be taught from the perspective of planning, prevention and managerial participation in the resolution of legal problems’.<sup>41</sup>

### **Challenges experienced by business students in studying law courses**

Nevertheless, it has been noted that many business students encounter a number of challenges when studying in what is often their first encounter with the discipline of law. Examples of such challenges include the volume of reading (with many courses requiring business students to read lengthy cases), and the technical nuances of legal terminology. Several business law teachers have also noted a frequent problem of business law curricula being overloaded with substantive legal content.<sup>42</sup> This has also been noted as a problem in the United States – with many business law courses being overly legalistic and focused towards the covering the law of the state where the course was taught.<sup>43</sup>

Jones, Swan and Turner evaluated the responses of student responses to a survey upon the commencement of a Law for Business module at the University of Brighton. 231 responses were received from the enrolled cohort of 291 students (a 79.4 percent response rate). For 78 percent of students the Law for Business module was their first experience in studying law. 98 percent of respondents agreed that law was relevant to business, and 87 percent stating that they were interested in studying law and its applications to business. When asked about the challenges they anticipated in studying the law module in comparison to previous

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<sup>39</sup> Greg Cartan and Tricia Vilkinas ‘Legal literacy for managers: The role of the educator’ (1990) 24(3) *The Law Teacher* 246 – 257

<sup>40</sup> Rob Batty ‘Well there’s your problem – the case for using PBL to teaching law to business students’ (2013) 47(2) *The Law Teacher*, 245

<sup>41</sup> John Allison ‘The role of law in the business school curriculum’ (1991) 1 *Legal Studies Education* 239; cited in Marc Lampe ‘A new paradigm for the teaching of business law and legal environment classes’ (2006) 23(1) *Journal of Legal Studies Education* 1

<sup>42</sup> Rob Batty ‘Well there’s your problem – the case for using PBL to teaching law to business students’ (2013) 47(2) *The Law Teacher*, 244

<sup>43</sup> Marc Lampe ‘A new paradigm for the teaching of business law and legal environment classes’ (2006) 23(1) *Journal of Legal Studies Education*, 2



modules, 56 percent considered law would be more challenging; 39 percent considered it would be as challenging; and only five percent considered that it would be less challenging than their previous business modules.<sup>44</sup> A study by Allen reported on her findings from focus groups of accounting and finance students in relation to their experiences in studying a business law module at Kingston University. Whilst most students stated that they enjoyed the law module, Allen noted they also found several aspects of the module challenging – particularly the different academic conventions between the law and business disciplines; large volumes of reading; and the complexities of legal jargon.<sup>45</sup> Butler and Madhloom made similar observations from their experience in teaching company law modules to business students Manchester University. They noted the disciplinary differences between business courses (which generally accepted a more casual, report-style tone of writing) and law courses (which mostly required a more formal essay-style tone in written work) resulted in many students becoming ‘accustomed to “pigeon-holing” their law modules, rather than examining and embracing their inter-connectedness, and attempting the cross-application of skills’.<sup>46</sup>

### **Recommended strategies for effectively teaching law to business students**

To overcome these challenges, teachers of law courses in business degrees have emphasised the importance of keeping such courses focused towards developing the working knowledge of the law that business graduates require through practical activities, rather than seeking to replicate the comprehensive level of detail that is found in law courses. Lampe argues that business law modules should aim to empower business graduates to become informed consumers of legal services, and to also educate future business leaders on strategies for lessening the scope for legal disputes to arise in their businesses. Using the example of the Business Law course at the University of San Diego, he advocates the inclusion of topics on practical legal issues that graduates are likely to encounter in business. These include how to hire and manage lawyers (including billing structures and options for making complaints against lawyers);<sup>47</sup> strategies for avoiding and resolving conflicts through negotiation, mediation and arbitration; risk management and insurance; basic legal research; the conduct of legal risk audits and the development of compliance programmes;

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<sup>44</sup> Lucy Jones, Zoe Swan and Juliet Turner ‘Reinvigorating Law for the Business Student: Perceptions and Reality’ (2010) 5 *Practice and Evidence of Scholarship of Teaching and Learning*, 54

<sup>45</sup> Vida Allen ‘A critical reflection on the methodology of teaching law to non-law students’ (2007) 4 *Web Journal of Current Legal Issues*  
<http://www.bailii.org/uk/other/journals/WebJCLI/2007/issue4/allen4.html>

<sup>46</sup> Nicolette Butler and Omar Madhloom ‘Teaching company law to business students: An effective framework’ (2015) 50(2) *The Law Teacher* 163 – 165

<sup>47</sup> For an interesting discussion of teaching strategies for educating business graduates on effectively working with the legal profession, see Murray Levin ‘The Attorney-Client Relationship as a Business Law-Legal Environment Topic’ (2004) 21(2) *Journal of Legal Studies Education*, 241

ethical decision-making in a business context; and the features of commonly-used business contracts.<sup>48</sup> Lampe summarised that 'this new paradigm [of business law teaching] replaces learning legal details and rules that change with skills such as negotiation, hiring and managing an attorney, and legal research'.<sup>49</sup>

Other academics have also emphasised the importance of actively engaging students in the learning process. In re-focusing the delivery of the Introduction to Business Law course at Griffith University, Corbin noted that Ramsden's reasoning that one of the most effective ways of developing students' understanding of a concept was to actively engage them in the process of actively seeking out information, and then interpreting the results.<sup>50</sup> She noted an academic at another university quoting a student remarking that 'If a lecturer tells me something, I'll forget it; if I look it up in a book, I'll forget it as well, but at least I'll know where to find it later'.<sup>51</sup> The teaching strategy of actively involving students in seeking out information was applied in the tutorial programme by requiring students to research appropriate business structures and contractual relationships for setting up a student bus service – initially through group work, and then through individual assignments. Corbin explained that: 'By using real-world problems that relate to the business world the students have an interest in the subject matter. They see the problems as being situations that they may one-day encounter. Interest in a course has been described as intrinsic motivation that in turn leads to a deep approach to learning'.<sup>52</sup>

At Hong Kong Polytechnic University, a manufacturing business simulation game (incorporating issues of contract law, product liability and corporate structures) was developed to be played by students undertaking Business Law. The lecturers found that along with guest presentations, case studies involving both business and legal issues, and interactive videos, these learning activities helped to increase student engagement and motivation. The lecturers of this module reported that during feedback sessions many students remarked that they found the law subject more interesting and relevant to their everyday experiences than they had expected.<sup>53</sup>

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<sup>48</sup> Marc Lampe 'A new paradigm for the teaching of business law and legal environment classes' (2006) 23(1) *Journal of Legal Studies Education*, 8 - 19

<sup>49</sup> Marc Lampe 'A new paradigm for the teaching of business law and legal environment classes' (2006) 23(1) *Journal of Legal Studies Education*, 4, 19

<sup>50</sup> Paul Ramsden *Learning to Teach in Higher Education* 2<sup>nd</sup> Edition (London: Routledge, 2003), 152

<sup>51</sup> Lillian Corbin 'Teaching Business Law to Non-Law Students' (2002) 9(1) *Murdoch University Law Review*, 4

<sup>52</sup> Lillian Corbin 'Teaching Business Law to Non-Law Students' (2002) 9(1) *Murdoch University Law Review*, 3

<sup>53</sup> Lisa Skwarok 'Business law for non-lawyers: setting the stage for teaching, learning and assessment at Hong Kong Polytechnic University' (1995) 29(2) *Law Teacher*, 195 - 199

A 20 per cent assessment task was incorporated into the Legal and Ethical Environment of Business (LEEB) course at Georgia State University (GSU) – requiring students to visit, observe and reflect upon the proceedings of a commercial court – the lecturers highly recommended this as an experiential learning activity and developed comprehensive resources<sup>54</sup> for this exercise to be replicated at other American universities.<sup>55</sup> In a later iteration of the LEEB course at GSU, a “Build a Business Project” was developed as an assessment task – this involved students working in groups to formulate a business idea and then to report upon the likely legal issues of relevance to the chosen business – including potential tort liability, contracts the business might enter into and appropriate business structures. This project received positive feedback from students as an interesting and engaging means of developing their appreciation of the application of the law in a business context.<sup>56</sup>

### **[2.3] Design of the Master Case Study for the Corporate Law seminar programme**

In developing a resource to assist students in developing their understanding of the business concepts in Corporate Law, and to appreciate the practical application of these concepts,<sup>57</sup> I “flipped” the key points from the business law teaching literature noted in [2.2] above. As discussed in the comparison of the objectives of law and business courses in [2.1] above, law graduates are not expected to have the technical skills expected from graduates of business degrees – for example they are not assessed on their ability to analyse financial statements, undertake calculations and financial modelling and to solve business problems. However as [1.1] noted, developing a working knowledge of business terminology and concepts can enable law graduates to more effectively interact with professionals from these other disciplines in their future roles, and to have a better appreciation of the business issues facing their future clients. To this end

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<sup>54</sup> These resources included the instructions and grading rubrics for the business court observation project, as well as a list of commercial courts in the United States

<sup>55</sup> Anne Tucker Nees, Susan Wiley and Nancy Mansfield ‘Enhancing the educational value of experiential learning: The business court project’ (2010) 27(2) *Journal of Legal Studies Education* 171

<sup>56</sup> Ryan Grelecki and Susan Wiley ‘Applying legal concepts to business in a legal and ethical environment of a business course: The build-a-business project’ (2017) 34(1) *Journal of Legal Studies Education* 89

<sup>57</sup> A small handful of studies have noted the benefits of case studies as a teaching strategy to enable corporate law students to appreciate the practical tasks that lawyers undertake in corporate litigation and transactions. See for example Bruce Dyer, Mary-Anne Hughson and Sam Ricketson ‘Teaching Note: Creating a Corporations Law Case Study’ (1997) 8 *Legal Education Review* 161 - which discussed the development of a case study based on the legal and practical steps involved in the shareholder oppression matter of *Dynasty Pty Ltd v Coombs* (1995) 12 ACLC 1,290 as an alternative assessment task to the final exam for LLB students of Corporations and Business Associations Law at Monash Law School. The case study involved students developing a commentary on the case and then answering inquiry-based questions based on copies of the actual documents that were obtained by the authors of this study for teaching purposes. See also Andrew Godwin ‘Teaching Corporations Law from a transactional perspective through the use of experiential techniques’ (2015) 25 *Legal Education Review* 221, which outlined the ways in which experiential learning techniques such as client interviewing, drafting and negotiation simulations might be incorporated into capstone law courses.

I was mindful of the need for students to develop a foundational understanding of business concepts that could be carried through to their future careers.

Leading educational psychologists have emphasised that effective learning occurs not through the acquisition of new information – but rather through the way in which learners structure and make sense of new information.<sup>58</sup> It has also been noted that people learn a greater proportion of what they talk over with others, in comparison to what they read and hear.<sup>59</sup> With these educational principles in mind, I was mindful of the importance of striking a balance between these learning and teaching resources being sufficiently informative (in order to provide an illustration of the practical application of the business concepts) and interactive (through providing opportunities for inquiry-based learning and class discussion). In developing these resources, I was cognisant of the need to pitch them as a familiarisation exercise that students could relate to.

Firstly, given the replacement of the previous format of face-to-face lectures with recorded podcasts, an introductory 20 minute “Companies in Context” podcast was recorded and posted for students to listen to before the first seminar. This podcast provided an overview of the different types of companies under the Corporations Act 2001 (Cth); the formation, operation and lifecycle of companies; the roles of key personnel within companies; and an overview of the concepts of debt and equity.

The second teaching and learning resource that was developed was a Master Case Study (MCS) on a hypothetical business, which was developed to provide an in-class “warm up” activity to the legal problem-solving exercises covered in each of the weekly seminars. The MCS was based on the start-up, growth and eventual collapse of a hypothetical business, Up The Hill Fitness, which was established by two university students named Jack and Jill. This business started off as a small scale venture where they conducted group fitness classes, and then as the business grew and recruited extra fitness trainers Jack and Jill incorporated a company, Up the Hill Fitness Pty Ltd. As the business grew the company started conducting group hill running exercises, which were reported in the media. Driven by this media interest customer demand increased and the company acquired properties to develop obstacle running courses. This growth attracted wealthy investors to the company and additional directors were appointed to its board. In order to fund a

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<sup>58</sup> John Biggs and Catherine Tang *Teaching for Quality Learning at University: What the Student Does* 4<sup>th</sup> Edition (McGraw Hill, 2011), 22 – 23; see also Roger Burridge ‘Learning law and legal expertise by experience’ in Roger Burridge, Karen Hinett, Abdul Paliwala and Tracey Varnava (eds) *Effective Learning and Teaching in Law* (London, Kogan Page, 2002), 25 - 52

<sup>59</sup> John Biggs and Catherine Tang *Teaching for Quality Learning at University: What the Student Does* 4<sup>th</sup> Edition (McGraw Hill, 2011), 63

diversification of the company's business into developing a revolutionary new "virtual reality" helmet for use in fitness centres (which could simulate running up a real hill or through a jungle), the company then listed on the Australian Securities Exchange (ASX) after completing an Initial Public Offering. However due to a number of overly ambitious business decisions and undisclosed conflicts of interest between the company's directors and certain counterparties, the company's financial situation deteriorated. Being unable to pay a large debt the company was placed into liquidation and its assets were sold off to private buyers.

The MCS mirrored the weekly progression of topics that were firstly explained in the lectures and which then formed the basis for legal problem solving in the seminars. Each week, after a short summary of the phase in the evolution of Up the Hill Fitness, the MCS included a number of short questions and targeted internet searches for students to discuss in class. Some examples of these questions included:

- What sort of skills and experience would be desirable for directors to bring to a company's board? Would this explain why Jack and Jill accepted the offer from Ricardo (who had previous experience in managing start-up companies) and Gonzalo (who had previously worked in the private equity field) but not from Michael (one of their wealthy friends who had invested in the company, but who lacked business experience)?
- In smaller proprietary companies<sup>60</sup> (see the scenario for Seminar 3), the directors are frequently involved in the day-to-day management of the companies – whereas in larger public companies the directors take more of a monitoring role in overseeing the management to the company (the duties of directors and officers are covered in Seminar 8). What do you think might happen if the board of a major public company started to get too directly involved in the day-to-day management of the company?

The MCS also referred students to relevant online resources, particularly the website of the Australian Securities and Investments Commission (ASIC), which is accessible at [www.asic.gov.au](http://www.asic.gov.au). As the regulator of Australian companies, financial markets and financial services, the ASIC website contains useful guidance for those wishing to register companies and operate companies. The ASIC online register enables investors, lenders and other stakeholders to search details about registered companies. ASIC also produces extensive regulatory guidance to set out its interpretation of the legislation it administers and to assist

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<sup>60</sup> In Australia, corporations incorporated under the *Corporations Act 2001* (Cth) are classified as either proprietary or public companies. Proprietary companies (which are analogous to 'private companies' under s 4 of the *Companies Act 2006* (UK) c 46) constitute the majority of registered Australian corporations. See for example Stephen Bottomley, Kath Hall, Peta Spender and Beth Nosworthy *Contemporary Australian Corporate Law* (Cambridge University Press, 2018), 97 - 100

regulated parties to comply with the law. For example, in the class on corporate insolvency students perused ASIC Regulatory Guide 217,<sup>61</sup> which was developed to provide guidance to company directors on recognising (and taking early action to prevent) the risk of insolvent trading.

Following these short class discussion questions based on the MCS for around 30 minutes, the seminars then proceeded to focus on the weekly legal problem solving exercises. Through providing a scenario that students could relate to, the intent of these short discussions and targeted searches was to help students develop their understanding of business terminology and processes by seeing how these concepts might apply in practice. It was also intended that this process of class discussions questions would help students to better appreciate the commercial and legal considerations arising at various stages of the corporate life cycle. Through including characters in the MCS with questionable motives for their actions (for example directors with undisclosed conflicts of interest in proposed transactions), the MCS included questions prompting students to reflect upon the rationale for the various disclosure requirements under the *Corporations Act 2001* (Cth). The MCS may be viewed at: <https://corporatelawcasestudy.wordpress.com/>

The feedback from the seminar tutors in both semesters during end of semester meetings was also positive, with the tutors remarking that the MCS promoted a good level of discussion during the weekly seminars. The tutors also reported that the MCS appeared to be useful in enabling students to develop their understanding of business terminology. The next part of this article discusses the results of an evaluation of the students' perceptions of the usefulness of the MCS in helping them to better understand the business terminology and processes covered in Corporate Law.

### **[3] Evaluation of the MCS**

During both the Autumn and Spring semesters of 2016, an evaluation of the usefulness of the MCS in helping students to develop their understanding of the business concepts in Corporate Law was undertaken. The evaluation was undertaken by inviting students to complete a voluntary anonymous online using the SurveyMonkey online survey system.<sup>62</sup>

The survey invited student feedback at two stages in each semester. During the first two weeks of each semester, Survey 1 asked students to rate their level of confidence in understanding business terminology

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<sup>61</sup> ASIC Regulatory Guide 217 'Duty to prevent insolvent trading: Guide for directors' (July 2010) <http://www.asic.gov.au/media/1241384/rg217-29july2010.pdf>

<sup>62</sup> SurveyMonkey is a free online opinion survey tool. See [www.surveymonkey.com](http://www.surveymonkey.com)

and invited feedback about any challenges they anticipated for the semester ahead. The findings from Survey 1 are outlined in [3.1] below. After the first two weeks of each semester, Survey 2 (which is discussed in [3.2] below) invited students to provide feedback on whether they were finding any of the business terminology discussed in the seminars challenging to understand. Survey 2 also sought feedback on the usefulness of the MCS in assisting students to understand business processes and terminology develop this, and how it might be improved.

### **[3.1] Analysis of responses to Survey 1 during the first two weeks of each semester**

During the first two weeks of each semester, Survey 1 invited students to respond to the following three questions:

- Question 1: ‘Which degree combination are you currently studying (e.g. JD, Business/Law, Communications/Law)?’;
- Question 2: ‘How would you rate your current understanding of business terminology and processes through your previous studies and/or business experience? (Students were asked to select between ‘Very familiar’; ‘Somewhat familiar’; and ‘Not at all familiar’; and were also invited to elaborate on their responses); and
- Question 3: ‘Do you expect to encounter any challenges in understanding the business terminology and processes in Corporate Law this semester? If so, please explain’.

The intention of these questions was firstly to ascertain the level of students’ understanding of business terminology at the start of each semester and for the teaching staff to focus on concepts that might need further explanation. A secondary purpose was to investigate whether there was any basis to the perceptions noted in [1.3] about business students having an advantage in Corporate Law. Students were informed about the survey both during the seminars and through postings on the UTS Online blackboard system.

Tables 4 and 5 below summarise the responses to Questions 1 and 2. Over the course of 2016 a total of 75 responses were received to the questions posed during the first two weeks. During the Autumn semester of 2016 a total of 147 students were enrolled in Corporate Law (with the 36 responses to the survey representing 24.5 percent of enrolled students), and in the Spring semester 122 students completed the subject (with the 39 survey responses representing 32 percent of enrolled students). The full tabulation of responses to the surveys may be viewed at: <https://corplawcasestudysurveyresponses.wordpress.com>

**Table 4: Degree combination and understanding of business concepts: Autumn 2016**

<b>Autumn 2016: Degree combinations</b>	<b>Responses</b>	<b>Very familiar</b>	<b>Somewhat familiar</b>	<b>Not at all familiar</b>
Juris Doctor	11	1	5	5
Business/Law	7	5	2	
Communications/Law	7		2	5
Law (no combination)	8		5	3
Science/Law	2			2
Civil Engineering /Law	1			1
Total responses and % of enrolled students	36 (24.5%)	6 (16.7%)	14 (38.9%)	16 (44.4%)

**Table 5: Degree combination and understanding of business concepts: Spring 2016**

<b>Spring 2016: Degree combinations</b>	<b>Responses</b>	<b>Very familiar</b>	<b>Somewhat familiar</b>	<b>Not at all familiar</b>
Juris Doctor	11	5	4	2
Business/Law	11	7	4	
Communications/Law	8		5	3
Law (no combination)	8	1	4	3
Science/Law	1			1
Civil Engineering /Law	0			
Total responses and % of enrolled students	39 (32%)	13 (33.3%)	17 (43.6%)	9 (23.1%)

Tables 4 and 5 show a higher proportion of students in combined Business/Law degrees rating their understanding at the commencement of the semesters as ‘very familiar’ or ‘somewhat familiar’; whereas students undertaking combined Communications/Law degrees and undergraduate Law degrees without other combinations tended to rate their understanding as ‘somewhat familiar’ or ‘not at all familiar’. Responses from students undertaking the graduate entry Juris Doctor course were mixed – which might be explained by the different study and work experiences of these students before enrolling in Corporate Law.

The responses to Question 2 (about students’ level of understanding of business concepts) and to Question 3 (asking them about challenges they anticipated in understanding business concepts during the semester) included a surprising number of candid and detailed answers from the students. Three examples of each form of response are discussed below.



### **Not at all familiar**

A common theme in the responses to Questions 2 and 3 by students who rated their understanding of business concepts as 'not at all familiar' was the foreign nature of such concepts and inability to relate the terminology to their previous studies or experiences. For example:

'When I was interviewing for clerkships last year I had to get my dad to sit down and explain what equity was. It still confuses me and I've done all the readings and listened to all the lectures this week! Same thing with securities - even though I've done commercial law. I know the terms, I just don't understand their significance' (Question 2 response); and 'I seem to get my head around a term when I read it or have it explained to me, but that understanding doesn't stay with me beyond that day! I think a lack of real world understanding of their application and not hearing them in my everyday life contributes to this difficulty' (Question 3 response, Communications/Law student, Autumn 2016)

'I have had no experience with business, whatsoever' (Question 2 response); and 'Yes, definitely! Since I don't understand how businesses operate - concepts like boards, directors, partners, mergers... they're all very foreign to me. It will take me a while to understand the basics, before I am able to understand complex legal questions. I would appreciate some introductory seminars regarding business terminology and processes'. (Question 3 response, Communications/Law student, Autumn 2016)

'Business jargon is completely new and all these assumed knowledge terms makes me feel dumb' (Question 2 response); and 'Yes, a lot because so far it just seems to be all about business and business structure, which is totally not in line with my major, which is science and medicine'. (Question 3 response) (Science/Law student, Autumn 2016)

### **Somewhat familiar**

Amongst the students rating their understanding as 'somewhat familiar', common responses included that they had previously studied business (albeit several years beforehand), and their desire to revise and practice the use of business terminology. Three selected responses were:

'A lot of business terminology thrown around however difficult to recall if put on the spot. The 15 lecture slide reminder of corporate law was very helpful. Please do not assume prior knowledge of terminology' (Question 2 response) 'However, this can be resolved if the class is able to revise and practice the terminology consistently' (Question 3 response) (Business/Law student, Autumn 2016)

'5 years of management experience though not at the directorate level. 3rd year of law'. (Question 2 response); and 'Yes, but this is tounge (sic) in cheek, if i wasn't challenged it might not be a good course (haha). No but seriously some of the terminology will be new but we'll see how we go. Did M&A over summer which was a bit of a 'throw in the deep end' for terminology when we talked equity/debt structures etc but after this baptism of fire i'm more confident'. (Question 3 response) (Juris Doctor student, Autumn 2016)

'I learnt business concepts during economics in High school' (Question 2 response); and 'I enjoyed the explanation of issues/jargon during the first class, maybe continue a small explanation during any hard terms in future'. (Question 3 response) (Law student, Autumn 2016)

### **Very familiar**

Students who rated their understanding of business concepts as 'very familiar' tended to have previously studied or worked in business and/or professional services firms. For example:

'Studied Business and have previous experience working in companies' (Question 2 response); 'Nothing a google search won't fix' (Question 3 response) (Business/Law student, Autumn 2016); and 'I work for a top tier professional services firm as a consultant so need to be across this. I also studied business in my undergrad degree'. (Question 2 response); and 'I guess assuming I know everything is bad and will mean I don't open myself up to learn new things'. (Question 3 response) (Juris Doctor student, Spring 2016)

One response was particularly interesting in that the respondent (who had several years of experience in governance roles in the financial services industry) placed themselves in the position of a student with less familiarity with business when responding:

'I have 10 years experience in financial services in the governance space' (Question 2 response); and 'Not to me personally. However I can see that familiarity with company structures and business processes will be an advantage. For example, Exercise 1.1 of the Week 1 tutorial exercise poses an ethical question and asks us to consider whether our answer would be different if we were the director for the local company or the overseas holding company. I wonder if concepts like holding company and subsidiary would be familiar to undergrads if they've not had to think about them before. (Question 3 response) (Juris Doctor student, Spring 2016)

These survey responses confirmed the anecdotal evidence noted in [1.2] that for many students without business backgrounds, making sense of business terminology and processes can prove challenging, creating the need for extra resources to enable them to make sense of such concepts.

### **[3.2] Analysis of responses to Survey 2 after the first two weeks of each semester**

In the second phase of the online survey, after the first two weeks, in Survey 2 students were invited to respond to the following two open ended questions:

- Question 1: ‘Are you finding any of the business terminology and processes in Corporate Law this semester challenging to understand? If so, please explain’; and
- Question 2: ‘Are you finding the Master Case Study of a hypothetical company used in the seminars to assist in developing your understanding of business terminology and processes? Do you have any suggestions on how it might be improved, or any other methods for helping students better understand business terminology?’

The second round of questions were posed in an open-ended manner to invite detailed feedback about whether the MCS was helpful in developing their understanding of business concepts as the semester progressed. In comparison to the 75 responses to the questions from the first two weeks, a total of 38 responses were received to the questions after the two weeks across both semesters. In the Autumn semester of 2016 there were 26 responses (17.6 percent of the 147 enrolled students) and in the Spring semester 12 responses were received (representing 9.8 percent of the 122 enrolled students). Whilst this represented a lower proportion of enrolled students, the candid and detailed responses provided several useful insights into students’ perceptions of the challenges of understanding business concepts covered in the seminars, and the usefulness of the MCS in helping to develop their knowledge.

On the whole the feedback from students about the usefulness of the MCS was very positive. A consistent theme in the survey responses was that the MCS was useful in putting the business and concepts covered in the weekly readings and podcasts into a practical context. One respondent commented that: ‘Yes this is very helpful for putting the content of the podcasts into a real life scenario. I've really enjoyed this element of the subject for setting out the content and practically applying it’. (Question 2 response, Autumn, 2016)

Other students commented that the weekly scenarios were useful in showing how the various business and legal issues might apply to the same business at the various stages of its growth. For example, in response to Question 2, one student commented that ‘It seems good to me. I like how it's a continuing issue from the

same company. I think it helps to follow the story hence we only have to pay more attention on the issues than the story'. (Question 2 response, Spring 2016) Along similar lines another student commented in their answer to Question 2 that the MCS was '... useful to see how all the different processes that we study can apply to the one business'. (Question 2 response, Spring 2016)

A number of responses detailed the specific concepts that the students were finding challenging, which provided useful real-time feedback to the Corporate Law teaching team on issues requiring further explanation in the seminars. For example: 'Somewhat challenging. Terms such as bonds, debentures etc. I still have no idea about. As the semester progresses though, I am slowly picking up on what the cases stand for and how this might apply to a business context. It certainly is a challenging subject though'. (Question 1 response, Spring 2016); and 'The master case study is helpful in applying theory to a 'real-life' example'. (Question 2 response, Spring 2016)

Another student commented that the MCS and the in-class discussions were useful as they were the '... First commercial-based subject to properly contextualise the commercial setting and it is much appreciated. I am still further interesting in looking at the terminology relating to Company Constitution and how companies can act in the best interests of the companies. Tad confused about prospectuses and their structure is a tad confusing. Also appreciate noting that (9) means -9. I would've made the same error as that director in court' (Question 1 response, Autumn 2016). The comment that '(9) means -9' relates to a case that was discussed during the seminars, *Quinlivan and ASIC* in which a director of several failed companies had exhibited a lack of financial literacy by not recognising that numbers with brackets on a financial statement indicated a loss during a cross-examination relating to the failure of the companies.<sup>63</sup>

As well as providing detail about challenging concepts, a number of respondents stated that other students in their seminar groups with business backgrounds contributed more actively to the in-class discussions. Two examples of these responses are noted below. These respondents nevertheless found the MCS helpful in putting the use of the business terminology and processes into a real life scenario. Examples of such responses included: 'I feel like people who work in a large business have had a much better grasp of the subject from the start'. (Question 1 response, Autumn 2016). Another student commented that: 'In the last

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<sup>63</sup> The decision was *Re Quinlivan and ASIC* (2010) 113 ALD 599; [2010] AATA 113 at [48] - where the Tribunal noted that 'during cross-examination, Mr Quinlivan was shown a balance sheet for National Consolidated Investments Pty Ltd When asked to comment on the document, he made an elementary error: he assumed one of the entries was positive when the fact it appeared in brackets indicated it was a negative'. For commentary on this decision, see Robin Bowley 'Flexible yet firm: The practice of the AAT and the courts in reviewing ASIC's s 206F management disqualification orders' (2017) 25 *Insolvency Law Journal* 170, 194

few weeks (company structure/fiduciary duties/duties of directors etc) I have found the terminology easier to understand as these terms have come up in other subjects before. However when looking at topics such as the prospectus topic, corporate fundraising and decision-making, I found these quite difficult to 'wrap my head' around. Coming from a Comms/Law undergrad, I have very little experience of these terms. I felt that the students who had studied Business/insurance law etc were at an advantage during these topics. in class, they were certainly the students who spoke up more because I imaging (sic) they were more familiar and confident with the terms and topics raised'. (Question 1 response, Autumn 2016); and 'I am still finding this useful. I notice in seminars 8, 9 and 10 the question is a multi-paged, multi-issue question which we explore over several weeks. I can see that this would be useful for the exam'. (Question 2 response, Autumn, 2016)

The main negative response was that there was scope for spending more time on the MCS in the seminars. One student responded that: '... I don't feel we elaborate enough on definitions of things like corporate secretary, special purpose vehicle, general managers. We need to go into more specifics about roles and types of things each group does' (Question 1 response, Autumn 2016); and 'Yes - it's good and very realistic but we need to again go into more detail. I think the main thing we need to do is go more step by step with everything in this course - and give more examples/ get guest speakers or actually have to write our own company constitution or job description'. (Question 2 response, Autumn 2016)

In a similar manner another student commented that: 'Terminology is mostly fine and nothing a quick google search can't clear up. Some corporate processes aren't always inherently natural concepts, so those without any corporate background/exposure are disadvantaged in this way at first, but generally get more of an understanding the further detail we go in to. It does mean you need to play catch up though which isn't ideal'. (Question 1 response, Autumn 2016); and 'Seems to have little use as we don't spend much time or effort in it in class. I can see how in theory it's a terrific idea, but there seems to be enough pressure to get through the regular seminar content. I think we've looked at the "master case study" maybe twice so far this semester. It's hard to not notice the time constraints the tutor is under ... Thanks for the opportunity to offer some feedback'. (Question 2 response, Autumn, 2016)

Overall the feedback from the student responses to Survey 2 was positive, with the students commenting that it was helpful in enabling them to develop and stricture their understanding of business concepts. This feedback indicated that the MCS was successful in achieving its objectives of assisting students to develop their understanding of business terminology and processes in a manner that they could relate to. It also indicated that by presenting the issues in the context of the same continually-evolving company – students

were able to focus on understanding the practical meaning of the business terminology and processes, rather than also having to follow the frequently complex factual story line as they need to do so with cases.

The final concluding section below considers the broader observations from the evaluation of the MCS as a teaching resource, and suggests some measures that might be implemented in other corporate and company law courses to assist law students in developing their understanding of business concepts.

#### **[4] Observations and recommendations**

Following the conclusion of the evaluation project in 2016 the MCS has continued to be used as part of the teaching strategy in Corporate Law at UTS. Anecdotal feedback from both students and lecturers continued to indicate that the MCS was a useful tool for assisting students to develop their understanding of the business terminology and processes covered in Corporate Law. The responses to the end of semester student feedback surveys also included favorable comments on the usefulness of the MCS – for example: ‘Content delivery through podcasts was effective and the use of both theoretical questions and a practical case study that evolved over weeks was extremely beneficial’ (Student Feedback Survey response, Spring 2017); and ‘The master case study was a good way of seeing how the principles of corporate law worked in practice and to link all the ideas of the course together’. (Student Feedback Survey response, Autumn 2018).

As noted in Part 1 of this article, a working knowledge of business concepts has been widely recognised as a highly important attribute for law graduates. However, as the survey responses discussed in this article indicated, for many law students who have not had any exposure to the world of business (either through previous studies or work experience), making sense of business terminology and processes may prove challenging and indeed daunting. Given that law courses attract students with a wide range of previous educational and professional backgrounds, students without previous business backgrounds may feel disadvantaged during in-class activities in comparison to their peers from business backgrounds. Given the complexity of both the background facts and legal issues in many corporate law cases, as the responses to Survey 1 discussed in [3.1] revealed, for many students making sense of the business terminology in Corporate Law may be likened to the challenges of mastering a foreign language. This may cause students to become disengaged with their studies in this field. Teachers of corporate law should be cognisant of such challenges and should not assume that students come to such courses with a working knowledge of business concepts already developed.

Ramsden listed 'learning from students' as one of the six principles of effective teaching in higher education,<sup>64</sup> and went on to reason that 'Good teaching is open to change; it involves constantly trying to find out what the effects of instruction are on learning, and modifying that instruction in light of the evidence collected'.<sup>65</sup> The surveys discussed in Part 3 above were a very good opportunity to learn from students, with the detailed and candid responses providing very useful insights into their learning processes. The key take-away points from the survey responses were that the students liked the opportunity to gradually develop their knowledge through seeing examples of business decision-making in the same company as it evolved over the corporate life-cycle. Through this process students were able to make sense of business terminology, and see examples of the rationale for business decisions at the various stages of a hypothetical company's evolution.

In developing the MCS as a resource to assist students to improve their understanding of business concepts, the extensive literature on strategies for effectively teaching law to business students<sup>66</sup> provided several valuable pointers. These included making students aware of the roles of professionals from other disciplines (such as accountants and financial advisors) and how they might interact with such professionals in their future roles as legal practitioners. The business law teaching literature also noted the value of involving students in the process of actively seeking out information. Through the incorporation of targeted internet searches and short in-class discussion activities, the MCS proved successful in actively involving students in the learning process.

It is recommended that teachers of corporate law should give consideration to developing business case studies similar to the MCS to incorporate into their teaching programmes. Additionally, as noted in [2.3] a number of online resources (particularly the websites of corporate regulators such as ASIC) can provide useful guidance for students on the practical application of the legal principles covered in corporate law courses. Whilst resources such as these could take considerable time to develop, if this article encourages teachers of corporate and company law to reflect on measures that might be incorporated to help their students to develop their understanding of business concepts it will have served its primary purpose.

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<sup>64</sup> In addition to learning from students, Ramsden listed the other five principles as interest and explanation; concern and respect for students and student learning; appropriate assessment and feedback; clear goals and intellectual challenge; and independence, control and engagement: Paul Ramsden *Learning to Teach in Higher Education* 2<sup>nd</sup> Edition (London: Routledge, 2003), 86 - 98

<sup>65</sup> Paul Ramsden *Learning to Teach in Higher Education* 2<sup>nd</sup> Edition (London: Routledge, 2003), 98

<sup>66</sup> Part [2.2] of this article examines the literature on strategies for effectively teaching law to business students