

Growing the Business Practitioner:
The Nature and Purpose of Legal Studies for Non Lawyers

Ayling, D. & Finlayson, P.

Unitec Institute of Technology

Abstract

Lyman Johnson explained the tenuous relationship between business people and the law in his paper, *Corporate Law Teachers as Gatekeepers*.¹ He draws upon the work of Milton Friedman explaining that “executives must also conform not only to the law but also to rules “embodied in ethical custom”. The recent global corporate collapse has demonstrated that while many business practitioners complied with the law, they did not embody the ethical custom of their time. The Global Financial Crisis (GFC) has caused business people, governments and educators to consider the nature of business education and how it serves the wider community. Of particular focus is the nature and extent of ethical education in our business schools. This paper explores the current nature of business education and suggests that future graduate profiles should include statements which reflect the specific behavioural requirements of graduates’ workplaces. Students should be provided with the opportunity to experience and explore values in team learning situations, work integrated learning and significant projects. Teachers are challenged to create assessments which will measure student learning achievement and success in a broader business perspective. This will require change in curriculum design to incorporate affective behaviours in business practice and embody an ethical framework reflecting society’s growing expectations of a socially responsible business community.

¹ Lyman Johnson, ‘Corporate law professors as gatekeepers’ (2009) 6 *University of St. Thomas Law Journal* 2.

Growing the Business Person:

The Nature and Purpose of Legal Studies for Non Lawyers

Introduction

Lyman Johnson explained the tenuous relationship between business people and the law in his paper, *Corporate Law Teachers as Gatekeepers*.² He draws upon the work of Milton Friedman explaining that “executives must also conform not only to the law but also to rules “embodied in ethical custom”. The recent global corporate collapse has demonstrated that while many business people in their practice complied with the law, they did not embody the ethical custom of their time. At the same time others chose to conduct business outside the law, with scant regard for ethics. Many of these business people were highly qualified having graduated from some of the world’s best business schools. Why did their business education fail to prepare them for the workplace? And what can be done to change this omission and ensure business graduates operate both legally and ethically?

Many commentators believe the source of the problem lies with business education. While business educators have espoused graduate affective behaviours, such as ethics, integrity and honesty in graduate profiles and lists of graduate attributes, they have found it more difficult to enact these in any meaningful way in the student learning experience and assessment tasks. Students may have completed three or four years of study in which they acquired business knowledge and skills. However, they were not required to act ethically in their practice and were not assessed and given feedback on their behaviours.

² Ibid.

For years business educators have evaded the responsibility of teaching and assessing ethical behaviour. Even less well planned is an accepted method for teachers' evaluation of student achievement and performance in attaining these espoused affective behaviours. This paper explores the difficulties in teaching and assessing affective behaviours in the business curriculum and highlights the strength of the legal curriculum for non legal graduates in developing, and assessing affective behaviours such as ethics, accountability and social responsibility.

Business Education Today

The authors of this paper have many years of experience of teaching legal skills to non legal undergraduates. In their experience and in their research Finlayson and Ayling,³ found legal studies are considered to be of great value to non legal graduates. However, legal studies and ethical studies are not always valued by other educators in a business department. The strength of the modern legal curriculum as it is incorporated into business education, is the ability to create value and to manage risk using legal knowledge and tools.⁴

To achieve a more stable, prosperous and productive global economy business people can learn from the past and educators can adapt business education to ensure that the GFC is not repeated. A strong feature of the GFC in New Zealand was the range and depth of the legal issues raised. These included the adequacy of legal rules; the failure of legal rules to protect the economy, governments, banks and citizens; and the legal consequences of business failure (including liquidations, receiverships,

³ Patricia Finlayson and Diana Ayling, 'Legal studies and the changing business environment' (Paper presented at New Zealand Applied Business Education (NZABE) Conference, Christchurch Polytechnic Institute of Technology, 28-29 September 2009). <http://www.nzabe.ac.nz/index.php/nzabe-2004-2009-conferences>.

⁴ Constance E. Bagley, 'What's Law Got to Do With It?: Integrating Law and Strategy' (2010) 47 *American Business Law Journal* 4.

foreclosures, mortgagee sales and bailouts). To understand and manage these legal issues is a key attribute of the modern business person.

In the aftermath of the GFC legislators, business and social commentators sought the source of the problems, and looked for long term solutions. Legal solutions, including new and amended legislation were identified as favourable tools to rein in outliers and moderate investor and business behaviours. Another solution is to improve the quality of business education. This has led to the development of the current business curriculum at Wharton,⁵ Harvard⁶ and Columbia⁷ business schools.

Johnson, suggests we can do much by ensuring business education instils the right thinking and conduct in those who will counsel key decision makers.⁸ Equally the same right thinking and conduct can be instilled in the decision makers themselves. For example in respect of sustainable business Chalkey, states:

... Higher Education's most valuable contribution to sustainability lies in providing large numbers of graduates with the knowledge, skills and values that enable business, government and society as a whole to progress towards more sustainable ways of living and working.⁹

Business education has often espoused affective behaviours such as honesty, integrity, ethics and professional behaviour in the graduate profile.¹⁰ However, in

⁵ Francesca Di Meglio, 'Columbia Set to Launch New MBA Curriculum' *Businessweek*, 27 February 2013. Retrieved from <http://www.businessweek.com/articles/2013-02-27/columbia-set-to-launch-new-mba-curriculum> .

⁶ Harvard, 'Required Curriculum' Retrieved from <http://www.hbs.edu/mba/academic-experience/curriculum/Pages/required-curriculum.aspx>.

⁷ Francesca Di Meglio, 'Columbia Set to Launch New MBA Curriculum' *Businessweek*, 27 February 2013. Retrieved from <http://www.businessweek.com/articles/2013-02-27/columbia-set-to-launch-new-mba-curriculum> .

⁸ Lyman Johnson, 'Corporate law professors as gatekeepers' (2009) 6 *University of St. Thomas Law Journal* 2.

⁹ Brian Chalkey, 'Education for Sustainable Development: Continuation' (2006) 30 *Journal of Geography in Higher Education* 2.

contrast with the health professions such as medicine and nursing, which not only required knowledge of affective behaviours but demonstration of them in practice, there was no opportunity to evaluate and assess most of business student behaviours. Another feature of business education that is unlike the education for the health professions is the degree or major of the business graduate's study does not identify the scope of practice for which the graduate is prepared.

The Value of Law to Business Studies

The study of law is an integral part of business study. Worldwide legal studies make up 10-20% of the business studies curriculum. In the United States of America and in the United Kingdom law courses are 15-20% of the business studies curriculum; in New Zealand 10-15%. To meet the professional and learning needs of business students, the amount of time dedicated to legal studies in business qualifications in New Zealand should be extended and not in any way diminished.

In learning environments, the process of learning is as important as the product or outcome. In business education, it is desirable that the learning pedagogies of business are connected to business practice. Legal pedagogies have always driven legal education for both lawyers and non-lawyers. These pedagogies include the application of legal problem solving methodology, using legal research tools, engaging in argument from a particular perspective, reasoning, and critical thinking. These pedagogies require learners to engage their hearts and minds, and they learn to explore, hold and engage with disparate ideas, perspectives and paradigms. The legal studies curriculum for non legal studies contains exploration and evaluation of the corporation's social and legal role in a lively and dynamic community, and in a

¹⁰ Kerry Shephard, 'Higher education for sustainability: seeking affective learning outcomes' (2007) 9 *International Journal of Sustainability in Higher Education* 1.

national and global context. This is the valuable contribution of legal studies to the business studies curriculum.

In the legal studies curriculum learners demonstrate not only their awareness of ethical and legal issues, they are trained and supported to consider a range of options and to integrate ethical behaviours into their action plans. In this way the legal curriculum integrates affective behaviours, and evaluates learner achievements and performance against agreed performance standards. It is through practicing legal reasoning and critical thinking that students of legal studies develop their capabilities for the workplace.

The Importance of Defining Graduate Competencies

Graduate attributes or graduate profiles are the learner's competency statements after years of higher education study. In business these graduate profiles contain requirements as to the body of knowledge acquired, skills attained and attitudes developed. In the past these graduate profile statements have tended to be broad and general, educators steering away from specific values. Current graduate profiles include statements regarding ethical knowledge, and behaviour and/or expectations of corporate social responsibility. However, few specify the behaviours and/or attitudes expected of a new graduate in their first five years of work.

In designing graduate profiles, "employability" is a key outcome. Writing of her work in developing graduate profiles Oliver states:

The vast majority of colleagues who engaged with this fellowship were convinced of the moral purpose of graduate employability – that it is our obligation, not just aspiration, to manage and enhance curricula and student experiences which enable graduates to be "successful in their

chosen occupations to the benefit of themselves, the workforce, the community and the economy.¹¹

Knight and Yorke, ask “what is graduate employability?” It is “achievement of skills, understanding, personal attributes, capabilities that make graduates more likely to gain employment and be successful in their chosen occupations to the benefit of themselves, the workforce, the community and the economy”.¹² Graduate profiles should include statements as to the specific behavioural requirements of graduates’ workplaces.

Although business educators appear reluctant to identify the behavioural requirements of the workplace business people are more open and demanding about the need for ethical behaviours in business. Warren Buffet, Chairman and CEO of Berkshire Hathaway, has identified the need for values at work. He states “In looking for people to hire, look for three qualities: integrity, intelligence, and energy. And if they don’t have the first one, the other two will kill you.”¹³ Clearly, he is advocating for more than legal compliance from business people. He is seeking demonstrated ethical capabilities.

In her book Mary Guy suggests there are nine values accepted by individuals regardless of race, ethnicity, background, and education any of which could be

¹¹ Beverly Oliver, *Teaching Fellowship: Benchmarking partnerships for graduate employability*. 2010 Australia: Australian Learning and Teaching Council. Retrieved from <http://tls.vu.edu.au/portal/site/design/resources/Benchmarking%20Partnerships%20for%20Graduate%20Employability.pdf>.

¹² Peter Knight and Mantz Yorke, *Learning, Curriculum and Employability in Higher Education* (RoutledgeFalmer, 2004).

¹³ Quoted in Amy Rees Anderson, ‘Success will come and go, but integrity is forever’, *Forbes*, 28 November 2012. Retrieved from <http://www.forbes.com/sites/amyanderson/2012/11/28/success-will-come-and-go-but-integrity-is-forever/>.

included in a graduate profile.¹⁴ These are: accountability, caring, integrity, honesty, responsible citizenship, fairness, respect for others, loyalty and pursuit of excellence. Each of these is capable of being studied in relation to individual and corporate responsibility. The list offers the curriculum development team writing graduate profiles a place to commence design of a curriculum for affective behaviours.

Awareness of values is insufficient in an educational programme. Learners should be provided with opportunities to consider how they view and engage with the values in their personal and working lives.¹⁵ In addition, students should be provided with the opportunity to experience these values in their workplace context. These values can be explored in team learning situations, work integrated learning and significant projects. The assessment of personal behaviours and decision making in substantive assessment activities is not only achievable but desirable.

The Student Perspective

The business students surveyed in our earlier research believed law courses were essential to increasing their knowledge and skills base for business. The same business students studying law believed that legal studies would assist them to solve complex problems in a variety of contexts.¹⁶ They agreed that the study of law and ethics are related and believed that there is value in including both in a business degree. Lastly, they believed that the study of law will help them in their business careers.¹⁷ Business students support the current curriculum finding it both useful and relevant.

¹⁴ Mary E. Guy, *Ethical decision making in everyday work situation*. (Greenwood Press, 1990).

¹⁵ Lorin Anderson, David Krathwohl, Peter Airasian and Kathleen Cruikshank, *A taxonomy for learning, teaching, and assessing* (Longman, 2nd ed, 2001).

¹⁶ Patricia Finlayson and Diana Ayling, 'Legal studies and the changing business environment' (Paper presented at New Zealand Applied Business Education (NZABE) Conference, Christchurch Polytechnic Institute of Technology, 28-29 September 2009). <http://www.nzabe.ac.nz/index.php/nzabe-2004-2009-conferences>.

The Curriculum Challenge

The challenge for educators is to design a curriculum from a graduate profile that models, explores and gives credit for affective behaviours. These learning outcomes must be realistic, acceptable and closely linked to the requirements of employability. In the research for this paper the authors found a range of ethical and values based statements in graduate profiles from a variety of sources. They included the requirement to understand, and demonstrate social responsibility, (University of Otago),¹⁸ and social and civic responsibilities, and professional rights and sustainability(Griffith).¹⁹ Ethical issues, social responsibility and cultural diversity are common themes in undergraduate business education.²⁰ Honesty and integrity are specifically stated attributes in some undergraduate business degree programmes (University of Technology Sydney).²¹

A Plan for the Future

Legal studies courses provide an opportunity to explore with students a variety of ethical ideas and values. However, it is not the only place in a business curriculum where ethical behaviours can be demonstrated and assessed. A whole curriculum approach with a strong foundation in legal studies and ethical values is required. A first step in the process of affective business education is to consider the “employability” for the workplace. A second stage is to identify essential ethical

¹⁷ Ibid.

¹⁸ University of Otago, *Learning and Teaching Plan 2005-2010*. (University of Otago, 2003). Retrieved from http://hedc.otago.ac.nz/tlp/graduate.do?cms=public_access.los.otago.ac.nz.

¹⁹ Griffith Institute for Higher Education, *Griffith Graduate Attributes Ethical Behaviour and Social Responsibility Toolkit* (Griffith University, 2nd ed, 2011). Retrieved from http://www.griffith.edu.au/data/assets/pdf_file/0009/290691/Ethical-behaviour.pdf.

²⁰ Deakin University (2010) Higher education courses operational policy. Australia: Deakin University. Retrieved from <http://www.deakin.edu.au/itl/pd/tl-modules/curriculum/grad-attrib/grad-attrib-02.php>.

²¹ UTS: Law, *The 10 Graduate Attributes*. University of Technology, 2013) Retrieved from <http://www.law.uts.edu.au/graduate-attributes/attributes.html>.

behaviours and values in undergraduate business education. The third stage is to include these requirements in graduate profiles and to have them embedded throughout the curricula as learning outcomes. Finally, students should be provided with learning activities, and assessments which encourage them to engage with ethical behaviours and values to prepare them for the workplace. A key part of this process is to ensure students demonstrate their knowledge, skills and values through meaningful assessments and personalised feedback. A coherent business programme will better prepare graduates for employment and reduce the likelihood of another GFC.

Achieving this has become a far more complex task than it may have been in the past as business has become increasingly global and mobile. Individual countries each trade across multiple borders involving communication and exchanges across societies with different languages, cultures, values and mores. This leaves open increasing possibilities for misunderstandings and misinterpretation of communications which can be damaging to a business and its reputation. Modern business graduates will need to demonstrate sensitivity to the people and context in which they are doing business. To enable them to do this their education in ethics will need not only to be more than superficial it will need to include a cross cultural perspective.

In addition, in most western countries the workforce in any given workplace is rarely now peopled by a homogeneous group whose ethnicity and life experiences are shared. It cannot therefore be taken for granted that all members of the workforce will be familiar with, and subscribe to, any particular ethical code that was in the past accepted as a given. Business degrees will need to equip graduates, who are likely to be the managers of the future, with the skills to manage in this environment ensuring buy in to the ethical values of the business.

Conclusion

The GFC has caused business people, governments and educators to consider the nature of business education. The nature and extent of legal and ethical education in many of the current business programmes appears to be inadequate for the purpose of producing graduates ready for employment in a business community with a commitment to social responsibility. To prepare graduates who are employable and likely to act ethically in the workplace in future, a significant change is required from undergraduate business education. The starting point should be an investigation into graduate employability. The results of this should then inform the reform of business curricula and learning activities with the objective of developing a coherent and valuable business educational experience which will ensure graduates benefit “themselves, the workforce the community and the economy”.²²

²² Beverly Oliver, *Teaching Fellowship: Benchmarking partnerships for graduate employability*. 2010 Australia: Australian Learning and Teaching Council. Retrieved from <http://tls.vu.edu.au/portal/site/design/resources/Benchmarking%20Partnerships%20for%20Graduate%20Employability.pdf>.