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19 March 2015

Law Admissions Consultative Committee
Law Council of Australia
GPO Box 1989
Canberra ACT 2601
AUSTRALIA
By email: frances.mcmurray@lawcouncil.asn.au

Dear Madam,

**Submission: Review of Academic Requirements for Admission to the Legal Profession
Question Addressed in this Submission:**

(6.1) Should any or all of the following areas of knowledge be omitted from the Academic Requirements: Company Law

This submission is made on behalf of the Corporate Law Teachers Association (CLTA). The CLTA has been actively involved in corporate law teaching, research and scholarship since 1991. The association has over 250 members based in the professions, academia and business, predominantly from Australia, New Zealand and South East Asia. Our executive committee comprises 11 leading academics in the area.

The CLTA submits that Company Law should not be omitted from the Academic Requirements for admission to the legal profession in Australia for the following reasons:

1. Companies are ubiquitous in all types and levels of commerce, trade, finance and in markets for household and individual goods and services. Nearly all transactions that graduates will encounter, whether they involve transaction advice, documentation or litigation, will have companies as the client or counter-party. Companies will almost certainly be involved, wherever financing of any type is sought. These circumstances will only intensify with the restructuring of the state over the last generation. Through privatisation, the self-provision of health care, education and retirement income there will be greater use of companies in everyday life. The development of individual entrepreneurialism is having the same effect. Law graduates will be asked to provide legal advice in relation to companies in an ever increasing variety of circumstances.

The depth of knowledge that will be required could not be imparted through brief and narrow practical legal training.

2. Companies are just one form of association through which business and other civil society activities can be pursued. Students will learn about trusts, partnership, unincorporated associations in law school. However, none of these have anything like the economic, political, social or cultural significance of companies and corporations. How are we to explain that the most important form of business association ever conceived has been taken out of the law school curriculum?
3. We would not dream of saying Constitutional Law or Administrative Law, which consider the limits of state power, could be taught as PLT. Yet the power of corporations is as great as that of states, and understanding the role of law in limiting and channelling that power is crucial to the continuation of the state and the health of civil society. This point is nowhere clearer than in the areas of labour law (occupational health and safety and labour conditions) and the protection of the environment. It should also be remembered that the Global Financial Crisis, and the damage it caused to civil society, was at its heart a failure of values and governance of corporations, including legal aspects. It is important to have well trained lawyers who understand how law and regulation might be made to work better, to restrain these types of failures in future.
4. Understanding corporations and the legal constraints on them, is fundamental to the rule of law and to democracy (see the difficulties thrown up by the Citizens United case in the US on this point: *Citizens United v. Federal Election Commission* 130 S. Ct. 876, (2010)).
5. Statutory interpretation is one of the most important legal skills in the modern regulatory state. It is part of a theory of law and government. However, it cannot be seen or taught as a narrow grammatical skill divorced from wider questions of government and legitimate authority. There is nothing wrong with practising statutory interpretation in a legal training context, but it is important that young lawyers' understand the place of their practical skills within the wider context of the purposes and authority of statutes and legal regulation.

Statutory Interpretation cannot be taught without context and application. While it could be taught separately, and preferably early, later subjects should be deployed to practice the skills inculcated. Company Law is ideally suited to provide this context and practice. In other words, it is not only the doctrines of Company Law that are important, it is also its nature as an exemplar as a statute-based subject. It is notable too, that the interpretative practices involved in, say, statutory director duties provide students with invaluable experience of statutory interpretation in practice.

6. The practical limitations on PLT courses suggest that relying on them for the teaching of corporate law would be unwise. These courses are designed to refine the practical skills of theoretically and doctrinally competent students. They are undertaken under considerable time pressure, with many students combining them with extensive work commitments. Students are often assessed on a pass/fail basis. Requiring corporate law to be taught in such a model inevitably means that the doctrinal and theoretical insights so critical to corporate law practice would be impoverished. Ultimately this would not be in the interests of clients, nor would it be likely that these law graduates would be in a position to contribute to the development of corporate law in the future.

Please do not hesitate to contact me should you require elaboration or clarification of the above.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'MW', followed by a period.

Associate Professor Michelle Welsh
President Corporate Law Teachers Association
Monash Business School
Monash University