Virtual firms: transactional learning on the web

by Paul Maharg

How today's Diploma students are introduced to legal transactions in a virtual environment

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If you have driven recently along the north bank of the Clyde past the Erskine Bridge, you would have noticed nothing unusual going on across the river. Reality, however, is deceptive. Look again: where Erskine gives way to green flatlands there stands a town that has been there since pre-medieval times – Ardcalloch. It was a flourishing medieval burgh and supported the Bruce cause in the Wars of Independence; it is mentioned in Froissart’s Chronicles; in the sixteenth century for a short time, like Fraserburgh, it had a university (a distinguished centre for the new Ramist curriculum in law); in the eighteenth century Boswell and Johnson visited it on their progress northwards. In the late twentieth century its riverside dereliction was transformed into a post-industrial Silicon Docks. In reality, it exists on a web server at the Glasgow Graduate School of Law. It represents the beginning of a twenty-first century transformation of Scottish professional legal education.

Why was it developed, and what is it being used for? The new curriculum for the Diploma in Legal Education came into effect in October 2000. One of its key aims is an emphasis on legal skills development, and the integration of this with legal knowledge that students gain in the LLB and Diploma. The Law Society have highlighted interviewing, advocacy, negotiation, drafting, legal writing and legal research as the skills it would like to see developed in the Diploma.

For the past four years on the Diploma we have carried out a personal injury negotiation project on the web. This followed on from a Foundation Course in the legal skills listed above, in which students were given role-play scenarios to prepare and perform in workshops, and which were supported by a multimedia CD-ROM. These were fairly small-scale simulations, where all relevant facts were given to students so that they could prepare for the role-play. The web-based Negotiation Project was a much more substantial simulation, however, one nearer the reality of practice. Last year, 256 students were divided into 64 ‘virtual firms’, with four students in each. Half the firms acted for an injured employee, half as the insurer’s solicitors. Each transaction was different, and therefore 23 documents sets were required. Students were given either a video of an initial interview with the injured client in their firm’s ‘Interview Room’ or if they were acting for the defenders, an Accident Book report and other documents. They were required to complete the negotiation within nine weeks. They were assessed on the extent to which they could:
- carry out factual research in Ardcalloch
- carry out practical legal research into liability, quantum and other issues
- form negotiation strategies
- negotiate with the opposite side.

Each firm worked from a virtual office that contained an intranet and gave access to transaction files, intra-firm email, frequently asked questions lists, discussion forums, task manager and calendar and access to the virtual community. From this, they could contact each other within the firm, their opposite firms, and any other person or institution in Ardcalloch whom they wished to contact for information. Requests for information directed to people and institutions in Ardcalloch was provided by teaching assistants who role-played anything up to 16 different parts and answered correspondence in character, using template letters, document banks, photographs and graphics.

Information about the Project was set out in a frequently-asked questions list on the Diploma web site. The Project was begun with an introductory lecture given by Charlie Hennessy of Hennessy Bowie (one of four Visiting Professors to the GGSL, and who wrote most of the scenario documentation) and the author; and it outlined the aims of the project; It concluded with a feedback lecture in which we presented to students general strengths and areas for improvement. Two discussion forums (one for the claimants’ agents and the other for the insurer’s solicitors) helped students to discuss and become aware of the practice conventions involved in PI negotiations. Charlie Hennessy and I answered questions on this forum. Students were allowed to negotiate face-to-face, and this meeting was recorded (either audio- or videotape) for assessment purposes. In addition each student was asked to comment on their experience of the negotiation in a reflective report for another subject called Practice Management. The practitioner-tutors in this subject were effectively practice managers for the firms. The report was used to triangulate between individual student, the firm as a whole, and the opposing firm, in order to ensure that what students said was happening in the negotiation process actually did occur.

Apart from some difficulties that students had when their respondents in Ardcalloch occasionally could not keep up with the volume of correspondence, the project proved a very useful way of facilitating negotiation skills learning and assessing them at the same time. In their reports, for example, many students observed that they needed to take more analytical attitude to facts and the law. Some thought in retrospect that they could have done more thorough research into liability and quantum; others felt they had done too much. Almost all students learned valuable lessons about not accepting the other side’s figures at face value. Many firms felt they should have started the process of fact-finding earlier, and interpersonal issues such as delegation and teamwork were felt to be the focus of learning. Some students who did negotiate face-to-face, and who came off worse felt in retrospect that they would have preferred to have had the space for reflection that negotiation by email offers by default. On the other hand, some of those who negotiated by email missed the voice, facial and gesture cues of a face-to-face session. Almost all were aware of the need to consider the needs of their different audiences in Ardcalloch as regards jargon, syntax and word choice, and throughout the project they improved their work efficiency, not only as regards communications, but also in the organisation of their work. As two students commented,
1. … overall this project reflects how the Diploma should be. It allowed us a degree of autonomy in completing a piece of work, as firms were allowed to progress at a pace they saw fit. The simulation of a real-life scenario, involving the collection of factual information, researching the legal position, while maintaining contact with our client, has set our minds to the realities of practising in an office.

2. The negotiation project certainly helped focus attention on letter writing skills and general IT skills. There were functions such as note to file and attachments that I was not familiar with at the beginning of the project, but now using them is second-nature. Furthermore, most projects/essays in the undergraduate degree have concentrated on testing your legal research skills; the negotiation project was probably the first assignment that I have done that has highlighted the importance of fact gathering. Finally the negotiation project gave you the opportunity to participate in the whole transaction from start to finish and take pride in the final settlement that you helped to achieve.

The PI negotiation project is only one of a number that students are involved in at the GGSL. They complete a sale and purchase of domestic property entirely over the Web in Conveyancing, while in Private Client they wind up an intestate estate. In the near future we are planning similar transactions in Public Administration (liquor licensing) and in Civil Procedure (a virtual court action). These developments will, we hope, make the virtual office ever more of an immersive environment where students learn practical law by actually doing whole transactions (Maharg, 2001, 2002).

‘Transaction’ is the key term. Above all, we are creating what might be termed a transactional environment where students act as learners, not merely knowers (Laszlo & Castro, 1995). In this environment, practitioner-tutors become coaches or facilitators (Wilson, 1996), and students can ‘work together and support each other as they use a variety of tools and information resources in their guided pursuit of learning goals and problem-solving activities’. (Wilson, ibid, p.5). Wilson’s words are applicable to all such learning environments, and describe well the ways that many students worked and learned in the personal injury negotiation outlined above. To complete the simulated transactions students needed to bring to bear their knowledge of the law and communicational skills in real-time tasks which closely mimicked those they will be involved in as trainees and assistants. These real-world tasks were much more sophisticated and challenging than the predetermined or bounded tasks and learning outcomes of their previous undergraduate experiences (Berliner 1992). As such, the transactional purpose of the virtual firm is valuable as a bridge between undergraduate learning and postgraduate professional education.

The virtual environment is used in other disciplines – Researchers at Karolinska Institute at Uppsala University and Stanford University have developed a case simulation system for medical students (http://websp.lime.ki.se/), for instance. Lawyers in other jurisdictions are developing similar tools. A virtual city has been created in the Netherlands in collaboration between Rotterdam and Leiden universities, and we are currently planning international transactions between the two learning environments of Ardcalloch and Sieberdam (Maharg, 2004). The environment is also ideal as a tool for professional development. If airline pilots can regularly retrain using simulators, there is no reason why simulations cannot be built
that would enhance practising lawyers’ skills and knowledge in specialist areas of law, without risk to the real firm or actual clients.

Such learning is sometimes termed ‘desktop learning’. But phrases such as these do not do justice to the power of simulation learning. Perhaps the best way of thinking about it is not to see it in terms of hardware such as computers, or in terms of courses such as the Diploma or CPD, or even in terms of things such as books or CDs. Think of it as a personalised environment, where there are distributed tools and knowledge for you to explore and use to a purpose, and where there is the possibility of accessing the knowledge of peers and experts.

The initial start-up costs of online simulations are not inconsiderable. There are of course financial, administrative and organisational costs. As important is the management of educational change involved in moving to the virtual realm. Sophisticated functionality brings increased complexity, which in turn requires us to train students and tutors in the use of web tools for professional legal practice. This is no bad thing, for it alerts students to the ways in which technology can be used imaginatively to help streamline office work, as well as facilitate learning. The change champions need to be aware of interdisciplinary research (Brooks & Brooks 1995; Lee & Zulkifli 1999), in law, education, in human-computing interfaces and the latest software developments. The results, though, are worth it. If such simulation of the real world requires complex, immersive environments (Wilson 1995) the great advantage is that simulated real-world tasks can enhance learning transfer to the real world (Duffy & Jonassen 1992). For students, the environment of their virtual law offices in Ardcalloch, that parallel universe of Scottish society, culture and law, is a unique learning experience.

References


