TEACHING NOTE

CREATING A CORPORATIONS LAW CASE STUDY

BRUCE DYER, MARY-ANNE HUGHSON, JOHN DUNS & SAM RICKETSON*

INTRODUCTION

The following paper draws on the experience of the Monash Law School in preparing a case study based on an actual court decision for use in teaching Corporations and Business Associations Law. This is the basic corporate law subject which is done by all law students at Monash as part of their LLB degree. As its name suggests, Corporations and Business Associations Law also deals with non-corporate forms of business association, in particular the partnership. Nonetheless, the primary focus of the subject is the corporation, and its place and role within Australia.

The preparation of the case study has been a major logistical exercise involving a number of complex legal and practical steps, which took us approximately 10–12 months to complete. The major legal obstacles which arose were in the areas of confidentiality, copyright and legal privilege. The permissions of the parties to use the court documents were difficult to obtain, and consequently, the majority of the cases which we identified for use had to be abandoned at an early stage. After two months of examining potentially appropriate cases, we were left with one case, *Dynasty Pty Ltd v Coombs* (1995) 12 ACLC 1,290, which fortunately canvassed a number of central legal issues in the area of corporations law. Approximately 7–8 months were then spent

obtaining the consents of the various parties to the litigation, and selecting, compiling and editing the relevant materials. The final step in the process involved the development of commentary, questions and associated problem exercises and assessment tasks, so that the students could receive the full benefit of the case study. The unexpected difficulties we encountered have prompted us to write this article, in the hope that others might benefit from our experience. We will attempt to explain why we wanted a case study, and describe the process we adopted (and obstacles we encountered) in developing one. We then offer some reflections on the use of case studies and their alternatives.

EDUCATIONAL ISSUES INVOLVED IN CREATING A CASE STUDY

The study of corporations law is a struggle for many students. The concepts and structures addressed by the subject are complex, artificial and abstract. Moreover students often lack direct experience of the operation of corporations (and business generally), and so have little concrete understanding of the phenomena which the law seeks to regulate. Such students may learn to parrot the legal principles, but their inability to relate those principles to their personal experience tends to make their learning short term and superficial.

Our main reason for seeking to develop a case study based on actual court proceedings for use in teaching corporations law at Monash is that we believe that such material has the potential to ameliorate these kinds of learning problems.[1] Case studies can provide much greater detail concerning the factual context of a transaction than one would normally find in reported decisions. If this detail addresses the circumstances of the participants, and reveals something of their motivation, it may help students to understand the driving forces behind the structures and transactions involved, and to gain at least a measure of vicarious experience. Case studies can also allow students to see examples of critical documents, such as memoranda and articles, shareholders' agreements and company charges, which they hear so much about and may one day need to draft.[2] Given that many law students have a strong vocational focus, the inclusion of such documents may also help them to recognise the relevance of what they are learning

and thereby increase their motivation.

In summary then, the use of an appropriate case study has the potential to promote a range of learning outcomes for students, including the following: greater depth of understanding; better skills acquisition; increased motivation to learn; enhanced awareness of the choices facing parties; and greater appreciation of the different perspectives of the parties involved. Some of these benefits could probably also be achieved through the use of simulated files (see further below). However, the knowledge that a case study deals with real persons and events is likely to make it more interesting for students.[3]

THE LOGISTICAL AND LEGAL STEPS

Stage One — Identifying Appropriate Cases

Beginning the process

The first stage in our project was to try to locate cases which canvassed issues central to the area of Corporations and Business Associations Law. A considerable amount of time was spent in meetings of teachers identifying and discussing potentially relevant cases in both the state and federal courts. We aimed to find cases which raised several of these central issues simultaneously, for example, issues surrounding formation/corporate personality, the internal structure and operations of the company, duties and liabilities of directors and officers, shareholders' rights and duties and corporate finance/winding up of companies. In this way, students could be referred back to the same case study at several points throughout the curriculum, and would therefore be able to appreciate the unfolding of the many related legal issues in a practical context.

What Kind of Cases?

The cases which we were looking for needed to have certain qualities to be useful for the purposes of our subject. We decided that:

- the company should not have too many shareholders;[4]
- the company could be public or private (preferably private);
- cases involving listed companies, or companies which had been listed in the past, family companies and tax driven companies

should be excluded;[5]

- the case should have facts which were interesting to students, showing the entity engaged in some real, ie "nuts and bolts" enterprise, but should not be too complex for students to appreciate;
- we would look for cases referring to documents providing evidence of the circumstances which led to the establishment/demise of the company, or to the litigation at hand eg. statements as to why the company was formed/ wound up, letters of advice from solicitors; circulars to shareholders explaining why a company needed to change its share capital; notices of meeting, minutes, shareholder agreements.[6]

Where to Look?

It is one thing to articulate these desirable qualities for a potential case study; it is quite another to locate even one or two actual cases which possess a majority of these qualities in an appropriate mix. In "shortlisting" our cases, we drew on a number of sources. An obvious starting point was the law reports, but, as noted above, these usually contain very little of the documentation relating to the companies concerned and the course of litigation. We therefore contacted law firms and asked whether it would be possible for us to inspect old files relating to cases, but found that, understandably, many of the partners whom we spoke to were resistant to the idea. We then performed ASCOT searches at the Australian Securities Commission, looking in particular for documents which matched the transactions described by judges in the facts of cases, for example, notices of meetings, notices of (or cancellation of) charges (obtained from a "Charges Extract") and notification of filing of an application for winding up.

The main source, however, which we were to draw upon was the court materials themselves. Initially, we decided to concentrate upon the Federal Court of Australia and the Supreme Court of Victoria. *So* far as the Federal Court was concerned, we approached the Chief Justice, the Hon Michael Black, asking whether it would be possible for us to examine the Federal Court Cases Database to ascertain whether there were any cases which might be suitable subjects for our project. His Honour was very supportive of the project and more than willing to let us see the computer print out of

cases. However, we now found that we faced an over-abundance of material, and that it was, in fact, easier to work from the facts of reported decisions. It also appeared unlikely that we would obtain the permissions of parties to any pending or current litigation that was disclosed by the data base.

At the same time, we also canvassed relevant recent decisions of the Supreme Court of Victoria, and, after careful consideration, approached the Court Registry to inspect the file in the matter of *Statewide Tobacco Services v Morley*.[7] Access to the file over the counter was easily gained,[8] however, the file contained very few documents which were of assistance to us, as the file had been culled. We contacted the solicitors of the parties asking for their, and their clients' permission, to grant us access to the file and allow us to copy relevant materials for use by our students. Within a few weeks, however, we had heard that one of the parties did not wish the matter to be used by us for teaching purposes and the matter rested there. There were similar well known cases in other state courts which we were interested in pursuing, but after some initial inquiries we decided not to proceed because of the logistical difficulties involved. We therefore limited our searches to cases arising before the Federal Court.

In the result, *Dynasty* v *Coombs* finally presented itself as the most appropriate case for our purposes, as it involved a number of transactions and documents, which, if presented to students, could give them a full insight into the nature and operations of the company. These documents/transactions included:

- the Memorandum and Articles of Dynasty Pty Ltd; minutes of meeting of members of Dynasty Pty Ltd;
- correspondence from the parties' solicitors and financial
- advisers;
- debentures;
- a certificate of entry of particulars of charge;
- a group guarantee and indemnity;
- correspondence regarding the proposed share transfers;
- reports from directors' meetings.

In addition, it was a case that had gone on appeal, and was also relatively recent, as the Full Court decision had been handed down only months earlier. It was therefore something of an irony that it was a non-Victorian case, which had been heard in the South Australian registry of the Federal Court. As will be seen below, this

did present some logistical problems.

Stage Two — Getting Access to the Actual Documents

Our next step therefore was to write to the parties in *Dynasty* v *Coombs* directly to obtain their permission to gain access to and use court documents relating to them as part of our study. These documents are not available to the public. Although any person may inspect a court file over the Registry desk at the Federal Court, Order 46(6) (1) of the *Federal Court Rules* prohibits non-parties, except with the leave of the Court or a Judge, from searching in the Registry or inspecting certain documents. This includes any judgment, order, transcript of a proceeding, or other document which the Court has ordered remain confidential, any affidavit, interrogatories or answers to interrogatories, lists of documents given on discovery, admissions, evidence taken on deposition, any subpoenas or documents lodged in answer to a subpoena for production of documents, and any other document which the Registrar considers ought to remain confidential to the parties. The documents which we were most interested in inspecting were listed under Order 46(6) and in lieu of obtaining a Court order, we needed to obtain the consents of the parties in order to examine the file. The District and Deputy District Registrars at the Federal Court were very helpful in finding out which state the court file was in, and in providing us with contact numbers and addresses for the parties' solicitors.

Quite apart from questions of confidentiality and client privacy, issues of legal privilege also arose as a potential barrier to our project. The relevant privilege here was that of solicitor-client, and, in so far as it still applied, could only be waived by the parties themselves. On the other hand, this did not appear to constitute a real impediment as we were only interested in obtaining documents and materials that had already been disclosed to the court and the other side in the course of discovery and litigation and which now formed part of the court record.[9] Accordingly, our only real concern was to ensure that we had the parties' consents to the disclosure and use of the confidential material protected by the court's order under Order 46(6).

We therefore contacted the parties' solicitors by correspondence, explaining to them in some detail the nature of our project and our aims. We informed them of the types of documents that we would like to inspect for the purposes of the study (such as background information, the memorandum and articles of association, some notices of meeting and the contents of some affidavits and other court documents). We asked the parties, through their solicitors, for their, and their solicitors' approval, to examine and copy the contents of these court documents. We also told the parties that we proposed to assemble extracts from the court record, and would then give them the opportunity to veto the use of any particular passages. We drafted consent forms for the parties to sign and return to us if they were agreeable to our endeavour. We explained to them that the effect of signing the consent form would be to indicate to the Court that the parties approved of the project and granted us permission to inspect the documents and to copy a selection of these. We informed each party that it was necessary to obtain the consents of all parties to a matter to overcome the effect of Order 46(6). Each party was then aware that we had contacted all relevant and interested parties and informed them of our intentions. We made it clear to the parties at all times that the documents were to be reproduced for teaching purposes only, and would be supplied to the students for a small fee to cover the costs of reproduction. We also indicated that the documents would only be used by students enrolled at Monash, ie that it was not intended that they should be made more generally available to other law students.

It took several weeks to obtain the initial consents of the two main parties. Once we had obtained these, we were about to arrange for transfer of the court file to the Victorian Registry of the Federal Court, but were able to avoid having to make this step, as one of the parties offered to provide us with a copy of the appeal books (court record) in the matter. This was a fortuitous event, and saved us having to plough through many boxes of documents to find the extracts and correspondence for which we were looking. Nonetheless, as the main parties resided in two different states, the transfer of the documents was still a complex and expensive exercise.

Stage 3 — The Obtaining of Approvals: Copyright

Once we had made our initial selection of documents, we carefully indexed them, using the references referred to in the Appeal Books, and sent the selection to both parties' solicitors. We asked them to approve our use of those documents, or extracts from them, or otherwise to indicate what they would like us to exclude. In this way, we took the view that we would overcome any problems of confidentiality and/or privilege that remained.

At this stage, we also considered the copyright issues involved in the use of these extracts for teaching purposes within Monash University.

The basic position is that, under the *Copyright Act* 1968 (Cth), copyright subsists in virtually all documents generated prior to, and during, the course of litigation. These will generally be original literary works which are protected under S 32 of the Act, and the authors (and putative copyright owners) will be the person(s) who wrote or created the document. While there are provisions of the Act that permit the copying of such documents for the purposes of judicial proceedings or the giving of professional legal advice (s 42(1) and (2)), these provisions clearly did not cover copying for the kind of purposes which we had in mind. Nor would such copying be permitted under the educational copying provisions of Part VB of the Act which provide for the making of multiple copying subject to payment of a specified royalty, as these provisions are essentially concerned with the copying of published material, not unpublished material as would usually be the case with documents in a court file. Furthermore, there is no "surrender" of copyright or dedication to the public that is to be implied from the inclusion of documents in a court file: the rights of the copyright owner continue to subsist for the term of the copyright, namely the life of the author plus 50 years. Accordingly, and quite separately from any issue of confidentiality or privilege, it was necessary to obtain permission directly from the author (or more correctly, the copyright owner) of each document which we wished to copy.

It soon became clear, particularly in relation to the correspondence, that more people were involved than we initially thought, and this made the logistics of obtaining copyright permissions more onerous. There had been several other parties

incidentally involved prior to and during the litigation in various capacities, and all of these individuals had to be contacted. For example, part of the evidence in the appeal books contained letters of advice from an accountant to one of the parties. Similarly, we wished to use the Memorandum and Articles of Association of Dynasty Pty Ltd in the case study, but these documents had been drafted by a firm of solicitors which had since been dissolved. We had to contact the two ex-partners of the firm, who were working in different areas of the profession (and in different jurisdictions), and ask for their permission to use the documents. We wrote to all of these parties, attaching copies of the documents bearing their names. Again, we attached consent forms, asking the relevant individuals to indicate to us whether they had any objections to the use of the documents, or part of any such document. Altogether, the consents of six different persons had to be obtained. Naturally, some were very cautious about giving their consent to the use of the documents. Quite apart from possible concerns about their clients (although we had releases from the clients in this regard), there was an obvious sensitivity on the part of several author practitioners about having their letters and other documents, which they had drafted, often in haste and under great pressure, now exposed at a later date for painstaking scrutiny by eager young law students. On the other hand, it is also true to say that each of the practitioners whom we contacted saw the great value of our project in presenting students with the real life documents, "warts and all". After four months of discussions and correspondence, we therefore managed to obtain the consents of all parties.

Stage 4 — Using the Case Study

The final stage of the project has been to develop commentaries, associated problem exercises, and other assessment tasks to use in conjunction with the case file. This part of the project involves both considerable time and thought, and it was only possible to do this partially in 1996 because of time constraints (see further below). Nonetheless, it is the most important aspect of the project from the point of view of student learning outcomes and is dealt with in more detail in the following section.

USE OF THE *DYNASTY* CASE STUDY

The Primary Documents Selected

The principal kinds of materials selected from the appeal book in *Dynasty* v *Coombs* for use in our case study consist of:

- examples of types of documents commonly encountered in corporate law practice;
- correspondence by the parties' advisers raising specific legal issues; and
- brief extracts from affidavits and the transcript providing further background information.

The specific documents selected include the following:

- Memorandum and Articles of Dynasty Pty Ltd;
- Debenture (Dynasty Pty Ltd) (creating fixed and floating charges and a negative pledge);
- Certificate of entry of particulars of a charge;
- Interlocking Group Guarantee and Indemnity (executed by four companies);
- Share Certificate;
- Transfer Notice (required by pre-emption provisions in the articles of Dynasty[10]);
- Transfer of Shares (which the directors of Dynasty Pty Ltd ultimately refused to register);
- Ascot Search — Company Extract;
- Directors' reports, accounts and independent auditors' report for Dynasty Pty Ltd;
- Notices of meetings;
- Proxy forms;
- Minutes of meetings;
- Minutes of meeting held using short notice provisions (S 249(3)).

The correspondence which is included covers the following issues:

- Members' rights to convene meetings. An exchange of correspondence discusses the ability of Mr Coombs to convene a meeting to consider appointment of an auditor.[11] Mr Coombs' advisers threatened to convene a meeting (to be held within 3 weeks) relying on the predecessor of s 247 *Corporations Law*. Mr Thomas's solicitors responded by pointing out that s 247 requires 2 or more members to convene. Section 247 is likely to

be repealed by the *Second Corporate Law Simplifications Bill* and replaced with s 49F. Nevertheless the correspondence illustrates the advantages of a right to convene (or in the terminology of s 249F "call") over a right to requisition (namely that it allows a meeting to be held more quickly and gives control over timing and location etc), and the potential for minority shareholders to make tactical use of the new right under s 249F.

- Notice periods, and place and timing of meetings.[12] An exchange of correspondence discusses the calculation of the notice period for a general meeting and the effect of a deeming provision in the articles as to the time of receipt. The correspondence also raises the issue of the extent of the directors freedom to choose the time and place of a meeting (cf proposed S 249R). In this case the meeting was held on Hamilton Island at 4.30pm on Christmas Eve.
- Transfer of shares and refusal of registration. Mr Coombs at one stage attempted (unsuccessfully) to transfer some of his shares.[13] His solicitors served a transfer notice on the company (as required by pre-emption provisions in the articles), obtained replacement share certificates (after a dispute concerning the cost of these), delivered an executed share transfer to the company, and sought to persuade the directors of the suitability of the transferee.

Using the Case Study

There are at least three ways in which the documents listed above can be used in the teaching of a basic corporations law subject, such as Corporations and Business Associations Law:

1. To allow students to see examples of essential types of company law documents (eg memorandum and articles, debenture etc) — providing "exhibits" for classes.
2. As a source of illustrative factual or legal examples for use in covering a wide range of topics in classes, eg:
    - Teaching "company meetings" by going through the correspondence concerning the convening of meetings.
    - Illustrating "authority to bind the company in contract" by asking: (1) Who would be able to bind Dynasty, having regard to the very broad terms of reg 116?[14] (2) In what

circumstances would the "Brooksea" security (found to have conferred no benefit on Dynasty) be held to be binding on Dynasty?

- Illustrating "conflicts of interest" by considering what disclosure would be required by Mr Thomas in respect of transactions between Dynasty and members of the Thomas group, and what would be the effect of non-disclosure having regard to reg 99.[15]

3. To provide a factual or legal context upon which to base assessment tasks eg by setting an assignment which requires students to address certain issues raised by the Case Study.

Unfortunately we were not able to make full use of the case study in 1996: by the time that all the necessary consents had been obtained we had already covered many of the topics in which the case study might have been most useful. Nevertheless we did distribute a short volume of documents (the contents of which are listed in appendix l), and used this as the basis for an optional assignment (appendix 2). The assignment required students to prepare a letter of advice and a draft resolution to amend Dynasty's constitution. The assignment was designed to require students to read and analyse the case study carefully, and to apply some of the knowledge they had acquired in the course. It was also intended to facilitate the acquisition of drafting skills.

Students' Responses

Not surprisingly, only a small number of students completed the optional assignment. However a larger group made other use of the case study, as was revealed in a survey of students which we conducted in order to obtain feedback. Thus, all students who completed the assignment (and responded to the survey) indicated that the case study had assisted their understanding of the subject in some manner. Of those who had not completed the assignment, but made some other use of the case study, 60% indicated that it had assisted their understanding. Furthermore 86% of all respondents thought that case studies of this kind had the potential to enhance student learning or understanding to some extent.

EVALUATION AND OVERVIEW

Was it Worth It? Issues to be Considered

Do we recommend that other teachers develop a similar case study for use in the teaching of corporate law? We are wary of generalising but overall our experience in developing a case study has confirmed our belief that materials of this kind offer significant potential benefits for teaching in this area. However, it must also be said that the development of these materials proved to be considerably more difficult than we initially envisaged. In particular, obtaining the necessary consents from the parties and their legal advisers can be a hazardous process, in the sense that a refusal from even one may undercut the entire project. At the very least, it can be said that the development of a case study is very time consuming.

Whether our *Dynasty* v *Coombs* case study will justify the time and effort it has required is difficult to gauge. It will depend in part on factors completely outside our control, in particular the pace of current legislative reform initiatives. The *Second Corporate Law Simplifications Bill* (if enacted) will obviously make changes in a number of areas addressed in the case study which, although not necessarily destroying the relevance of the materials, will undoubtedly make them more difficult for students to use. Any case study chosen would need to bear this in mind and either try to confine the case to one little affected by recent reforms, which would be difficult, or wait until an appropriate decision arises under the new law, which could take some time. If it is decided to develop a case study, it will be important to base it around an appropriate decision. Ideally, this will be one which has a stimulating factual context, raises a number of issues and is supported by a range of appropriate and relevant documents. There may be a danger, however, in choosing a complex decision. A decision which addresses a large number of topics may inhibit a thorough understanding of particular issues sought to be discussed.

Alternative Approaches

Some of the obstacles we encountered flowed from the fact that we were seeking to build a case study around a real (and identified) case. There are several alternative approaches which could be

considered.

1. An anonymous case study (i.e a real case study with fictitious names substituted). This may make it easier to obtain consents to the use of the materials from parties fearing an intrusion into their privacy. However the fact that consents must still be obtained (to avoid breach of copyright) is likely to limit the advantages of this approach. Furthermore, it would most probably not be practicable to use reported cases for such a case study[16] because of the risk of the parties being identified.
2. The use of a simulated (fictitious) case study.[17] There is a growing body of literature discussing the use of simulated case studies in teaching corporate and business law subjects in the US.[18] The main advantages of simulated case studies over real case studies appear to be that: (1) simulations give the teacher much greater control over content — they can be tailored to raise all (and only) the issues emphasised by the course; (2) simulations can be updated to take account of changes in the law, thereby avoiding the confusion created in real case studies by old section numbers and changes in the relevant legislation; and (3) there is no need to obtain consents if the simulation consists only of the original work of the authors. However, simulations also have some disadvantages: (1) the drafting of the relevant documents may take a considerable amount of time and effort; (2) unless the person(s) preparing the case study have a great deal of practical experience it may be very difficult to produce a realistic case study; (3) the fact that the case study is only a simulation may well reduce student interest and motivation; and (4) if existing precedents are used there may still be copyright issues to address.

We think it is doubtful that either of the above alternatives will make the development of a case study substantially easier, and therefore intend to develop further case studies along the lines of *Dynasty v Coombs*. Ideally, a "battery" of three or four studies would be required for the purposes of a subject such as Corporations and Business Associations Law, which would allow one or two to be "rested" from year to year so as to ensure their "freshness" for successive classes of students. It would also be

useful to develop case studies for the more advanced aspects of corporations law, such as insolvency, takeovers, public fund raising and securities regulation, which are taught in separate undergraduate subjects following the completion of Corporations and Business Associations Law. In this regard, we suspect that it would be easier to develop case studies involving public listed companies as much of this material will be in the public domain and the parties may be less sensitive about the use of the material than in the case of smaller unlisted companies.

APPENDIX 1

Case Study: Dynasty Pty Ltd v Coombs

CONTENTS

Directors' Statement
Independent Auditors' Report
Dynasty Pty Ltd v Coombs (1995) 13 ACLC 1290 (Full Fed Ct)

APPENDIX 2

MONASH UNIVERSITY — FACULTY OF LAW

CORPORATIONS AND BUSINESS ASSOCIATIONS LAW 512

1996 — Ricketson/Duns (Stream A) and Dyer (Stream B)

OPTIONAL ASSIGNMENT

Your assignment is to be handed in BEFORE 5 PM on FRIDAY 27 SEPTEMBER to Sheila Alley in Room 443 (Stream A — Duns) or Jan Jay in Room 211 (Stream B — Dyer).

NB: If you do not submit an assignment by the due date (or obtain an extension of time in advance) you will be deemed to choose the option of a final exam worth 85% of the marks in this subject.

Question

Read through *Corporations and Business Associations 1996 — Case Study: Dynasty Pty Ltd v Coombs* (copies of which are available on reserve in the Law Library, and for purchase, from Legibook).

Assume that the circumstances are exactly as set out in the case study at the end of 1985. Mr Coombs and Mr Thomas are still on good terms. Mr Coombs holds 28% of the issued shares in Dynasty Pty Ltd and the other 72% is held by Thomas interests.

Mr Coombs has approached you for advice. He asks you to review the constitution of Dynasty Pty Ltd, and advise whether there are any provisions which he should seek to have amended. He stresses that he does not want any amendments which would be likely to be contentious, since that might place his good relationship with Mr Thomas at risk. He asks you to pick out what

you consider to be the most important amendments to seek, and draft a resolution to give effect to these amendments. (You may assume that the difficulties which ultimately led to the litigation are indicative of the issues you need to focus on.) Mr Coombs also asks you to make sure that this resolution is *not more than* two pages long — he does not want to alienate Mr Thomas by putting forward a very lengthy set of proposed amendments.

Prepare a letter of advice to Mr Coombs together with a draft resolution which sets out the amendments which you think are most important (from Mr Coombs' perspective) but also most likely to be acceptable to the Thomas interests. Your letter should explain what you propose and your reasons for doing so, and also provide any other general advice you consider to be relevant. You should assume that the law applies as it stands at the date of this assignment (i.e. *not* as it was in 1985).

Style

Your letter of advice should be written in a style which is likely to be understood by a person who has no legal training. Its primary purpose should be, not to describe the law, but rather to indicate how the law applies in the particular circumstances of Mr Coombs. Any additional comments which you wish to provide for the benefit of the person marking the assignment should be set out in footnotes or endnotes (as to which, see E Campbell, & G Kewley, *Presentation of Legal Theses* (Clayton: Monash University, 1996). For example, you may wish to refer to authorities or acknowledge sources in footnotes or endnotes if you consider that such references are not appropriate for inclusion in a letter to your client.

The resolution should be drafted in a style which minimises ambiguity, and is as clear, concise and simple as possible. For general references on drafting and style see, for example, the following (which will be placed on reserve):

JK Aiken, The *elements of drafting/Piesse* (Sydney: Law Book Company Limited, 1995)

MM Asprey, *Plain language for lawyers* (Canberra: AGPS, 1991)

RD Eagleson, *Writing in Plain English* (Sydney: Federation Press, 1991)

Honesty and Acknowledgment and Citations

The assignment you submit must represent your own work and ideas. You are free to discuss your topic with others, provided that the paper you write can truly be said to be your own work, and not a collaborative effort.

It is very important that the sources of your ideas and information are always properly acknowledged. This means that any use of the actual words of another writer must be presented as a quotation. If you paraphrase the work of another writer and express it in your own language, you must still acknowledge the source in your footnotes (or endnotes). Failure to observe these requirements will constitute plagiarism and will be regarded as cheating (see E Campbell, & R Fox, *Guide to Preparation and Presentation of Written Work in the Law School* (1990) Part 1, para. 3.3).

Length

The assignment, including the resolution (which should not in itself be more than 700 words), must not exceed 2500 words (including any footnotes or endnotes). Assignments which exceed this word limit by more than 10% may attract a penalty.

Format

Assignments may be typed or handwritten. In either case please use only one side of the page and leave a wide margin on the left. Hand written assignments must be legible.

Computers providing for word processing and legal information retrieval are available for use by students in the Law Library.

Criteria for Assessment

The following matters will be considered in assessing the assignment:

Understanding of the materials and factual background; Understanding and application of the relevant legal principles; Analysis — the cogency of the argument and analysis provided;

Expression and Organisation — the quality and clarity of expression, and the extent to which the paper is organised in a logical order;

Style — use of appropriate style, accuracy in spelling, punctuation and citation, and conformity with the directions in this handout.

* Faculty of Law, Monash University. A version of this paper was presented at the National Corporate Law Teachers Conference, Melbourne, February 1997.
© 1997. (1997) 8 *Legal Educ Rev* 161.

1 See further: B Dyer, Making Company Law More Practical and More Theoretical (1995) 5 *Austl J Corp L* 281.

2 Traditional teaching materials rarely reproduce anything more than brief extracts from such documents. However a number of useful documents are collected in L Griffith, & S Woodward, *Corporations Law Workbook* 3rd ed (Sydney: Law Book Company, 1996).

3 Especially if the case study in question involves interesting subject matter.

4 Because the focus of Corporations and Business Associations Law at Monash is on closely-held companies. Listed companies are covered in another (optional) subject. For justification of this approach see: Dyer, *supra* note 1, at 282–3.

5 In order to avoid undue overlap with issues explored more fully in other subjects (namely, The Law of Public Listed Companies, Family Law and Taxation).

6 In order to provide more of a factual context for students.

7 (1990) l ACSR 405, 8 ACLC 827; (on appeal), (1992) 8 ACSR 305, 10 ACLC 1233.

8 See also Rule 28.05 of the *General Rules of Procedure in Civil Proceedings* 1986 (Vic) which states: "(1) When the office of the Court is open, any person may, on payment of the proper fee, inspect and obtain a copy of any document filed in a proceeding. (2) Notwithstanding paragraph (1)-(a) no person may inspect or obtain a copy of a document which the Court has ordered remain confidential; (b) a person not a party may not without leave of the Court inspect or obtain a copy of a document which in the opinion of the Prothonotary [Registrar] ought to remain confidential to the parties. In *Little* v *Law Institute of Victoria* [l9901 VR 257, 285: the Court discusses the modern application of r28.05: "… it is necessary to contrast the relative lack of publicity of civil court documents and the allegations contained therein in late nineteenth century England with the right to inspect and obtain copies of any filed documents now given explicitly in this State by r28.05(1) of the General Rules of Procedure in Civil Proceedings 1986. The only exceptions to that rule are in relation to documents which the court orders to be confidential or which the prothonotary considers should remain confidential, such as documents filed in the course of discovery or interrogation. cf: Order 46(6)(1) of the *Federal Court Rules* 1975 (Cth), discussed *supra*, and in note 5.

9 Note, however, that documents expressly referred to in Order 46(6) do not necessarily become open to inspection by the public simply because they are taken into evidence in court. Similarly, documents in the custody of the court which are not specified in Order 46(6) are not necessarily documents which any member of the public is entitled to inspect. See, for example, the competing public policy considerations discussed by the Federal Court in *Tradestock Pty Ltd* v *TNT (Management) Pty Ltd* (1983) 81 FLR 91.

10 See *Coombs* v *Dynasty Pty Ltd* (1994) 14 ACSR 60, 88–9.

11 See the discussion of this by von Doussa J in *Coombs* v *Dynasty Pty Ltd* (1994) 14 ACSR 60, 90–1.

12 *Id* at 92–3.

13 *Id* at 88–9.

14 Reg 116 of the articles of Dynasty Pty Ltd included the following provisions: (5) All documents which of legal necessity need not be under the Seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by one of the Directors by order of or with approval of a quorum of Directors. (6) In favour of any purchaser or other person bona fide dealing with the Company a signature purporting to be that of a Director and to

be affixed by order of or with the approval of a quorum of Directors shall be conclusive evidence of the fact that the document has been properly signed in accordance with this Article.

[15] Reg 99 of the articles of Dynasty Pty Ltd provided that:
(1) A Director shall not be disqualified by his office from contracting with the Company either as Vendor purchaser or otherwise.
(2) No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company with any company or partnership of or in which any Director is a Director member or otherwise in any way interested shall be avoided by reason only of such Director holding his office or of the fiduciary relation thereby established.
(3) No Director so contracting or being such director member or so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding his office or of the fiduciary relation thereby established.
(4) A Director may vote in respect of any contract or arrangement in which he is so interested as aforesaid and may attest the affixing of the Seal to any deed or document relating thereto.

[16] Which may in turn make it more difficult to identify potentially suitable cases.

[17] For useful general discussion of simulations, see eg: JM Feinman, Simulations: An Introduction (1995) 45 *J Legal Educ* 469; *S* Rice, A *Guide to Implementing Clinical Teaching Method in the* Law *School Curriculum* (Sydney: Centre for Legal Education, 1996) 103–113.

[18] See eg JF Dolan, & RA McNair Jr., Teaching Commercial Law in the third Year: A Short Report on a Business Organizations and Commercial Law Clinic (1995) 45 *J Legal Educ* 283; LL Dallas, Limited-Time Simulations in Business Law Classes (1995) 45 *J Legal Educ* 487; KS Okamoto, Learning and Learning-to Learn by Doing: Simulating Corporate Practice in Law School (1995) 45 *J Legal Educ* 498.